

October 2008

Introduced by

1 A BILL for an Act to create and enact three new subdivisions to subsection 7 of section  
2 57-38-30.3 and three new sections to chapter 57-38 of the North Dakota Century Code, relating  
3 to income tax credits for purchases of manufacturing machinery and equipment for the purpose  
4 of automating manufacturing processes, qualified expenditures for lean manufacturing, and  
5 qualified expenses for innovation; and to provide an effective date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** Three new subdivision to subsection 7 of section 57-38-30.3 of the North  
8 Dakota Century Code are created and enacted as follows:

9 Automating manufacturing processes tax credit under section 2 of this Act.

10 Lean manufacturing tax credit under section 3 of this Act.

11 Innovation tax credit under section 4 of this Act.

12 **SECTION 2.** A new section to chapter 57-38 of the North Dakota Century Code is  
13 created and enacted as follows:

14 **Income tax credit for purchases of manufacturing machinery and equipment for**  
15 **the purpose of automating manufacturing processes.**

16 1. A taxpayer that is a primary sector business is allowed a nonrefundable credit  
17 against the tax imposed under section 57-38-29, 57-38-30, or 57-38-30.3 for  
18 purchases of manufacturing machinery and equipment for the purpose of  
19 automating manufacturing processes in this state. The amount of the credit under  
20 this section is seven and one-half percent of expenses for purchases of  
21 manufacturing machinery and equipment for the purpose of automating  
22 manufacturing processes.

- 1           2.   For purposes of this section:
- 2           a.   "Manufacturing machinery and equipment for the purpose of automating
- 3                 manufacturing processes" means automation and robotic equipment.
- 4           b.   "Primary sector business" means a business that, through the employment of
- 5                 knowledge or labor, adds value to a product, process, or service and which
- 6                 has been certified by the department of commerce.
- 7           3.   The taxpayer shall claim the total credit amount for the tax year in which the
- 8                 manufacturing machinery and equipment is purchased. The credit under this
- 9                 section may not exceed the taxpayer's liability as determined under this chapter for
- 10                any taxable year.
- 11          4.   If the amount of the credit determined under this section for any taxable year
- 12                 exceeds the limitation under subsection 3, the unused credit may be used as an
- 13                 automation credit carryover to each of the five succeeding taxable years. The
- 14                 entire amount of the unused credit for the taxable year must be carried first to the
- 15                 earliest of the taxable years to which the credit may be carried and then to each
- 16                 successive year to which the credit may be carried.
- 17          5.   In the case of a taxpayer that is a partner in a partnership or a member in a limited
- 18                 liability company, the credit allowed for the taxable year may not exceed an
- 19                 amount separately computed with respect to the taxpayer's interest in the trade,
- 20                 business, or entity equal to the amount of tax attributable to that portion of the
- 21                 taxpayer's taxable income which is allocable or apportionable to the taxpayer's
- 22                 interest in the trade, business, or entity.
- 23          6.   If a taxpayer entitled to the credit provided by this section is a member of a group
- 24                 of corporations filing a North Dakota consolidated tax return using the combined
- 25                 reporting method, the credit may be claimed against the aggregate North Dakota
- 26                 tax liability of all the corporations included in the North Dakota consolidated return.
- 27          7.   A partnership, subchapter S corporation, limited partnership, limited liability
- 28                 company, or any other passthrough entity entitled to the credit under this section
- 29                 must be considered to be the taxpayer for purposes of calculating the credit. The
- 30                 amount of the allowable credit must be determined at the passthrough entity level.
- 31                 The total credit determined at the entity level must be passed through to the

1 partners, shareholders, or members in proportion to their respective interests in the  
2 passthrough entity. An individual taxpayer may take the credit passed through  
3 under this subsection against the individual's state income tax liability under  
4 section 57-38-29 or 57-38-30.3.

5 **SECTION 3.** A new section to chapter 57-38 of the North Dakota Century Code is  
6 created and enacted as follows:

7 **Income tax credit for qualified expenditures necessary for implementing lean**  
8 **manufacturing.**

- 9 1. A taxpayer that is a primary sector business is allowed a nonrefundable credit  
10 against the tax imposed under section 57-38-29, 57-38-30, or 57-38-30.3 for  
11 qualified expenditures necessary for implementing lean manufacturing in this state.  
12 The amount of the credit under this section is ten percent of expenses for qualified  
13 expenditures necessary for implementing lean manufacturing.
- 14 2. For purposes of this section:
- 15 a. "Lean manufacturing" means a manufacturing improvement approach based  
16 on using the minimum amount of manpower, materials, money, machines,  
17 and space.
- 18 b. "Primary sector business" means a business that, through the employment of  
19 knowledge or labor, adds value to a product, process, or service and which  
20 has been certified by the department of commerce.
- 21 c. "Qualified expenditures" means expenditures for training programs, materials,  
22 tools, technology, software, or consultant services used to implement lean  
23 manufacturing which have been certified by the department of commerce as  
24 necessary for implementing lean manufacturing.
- 25 3. The taxpayer shall claim the total credit amount for the tax year in which the  
26 qualified expenditures were incurred. The credit under this section may not exceed  
27 the taxpayer's liability as determined under this chapter for any taxable year.
- 28 4. If the amount of the credit determined under this section for any taxable year  
29 exceeds the limitation under subsection 3, the unused credit may be used as a  
30 lean manufacturing credit carryover to each of the five succeeding taxable years.  
31 The entire amount of the unused credit for the taxable year must be carried first to

1           the earliest of the taxable years to which the credit may be carried and then to  
2           each successive year to which the credit may be carried.

3           5. In the case of a taxpayer that is a partner in a partnership or a member in a limited  
4           liability company, the credit allowed for the taxable year may not exceed an  
5           amount separately computed with respect to the taxpayer's interest in the trade,  
6           business, or entity equal to the amount of tax attributable to that portion of the  
7           taxpayer's taxable income which is allocable or apportionable to the taxpayer's  
8           interest in the trade, business, or entity.

9           6. If a taxpayer entitled to the credit provided by this section is a member of a group  
10          of corporations filing a North Dakota consolidated tax return using the combined  
11          reporting method, the credit may be claimed against the aggregate North Dakota  
12          tax liability of all the corporations included in the North Dakota consolidated return.

13          7. A partnership, subchapter S corporation, limited partnership, limited liability  
14          company, or any other passthrough entity entitled to the credit under this section  
15          must be considered to be the taxpayer for purposes of calculating the credit. The  
16          amount of the allowable credit must be determined at the passthrough entity level.  
17          The total credit determined at the entity level must be passed through to the  
18          partners, shareholders, or members in proportion to their respective interests in the  
19          passthrough entity. An individual taxpayer may take the credit passed through  
20          under this subsection against the individual's state income tax liability under  
21          section 57-38-29 or 57-38-30.3.

22          **SECTION 4.** A new section to chapter 57-38 of the North Dakota Century Code is  
23          created and enacted as follows:

24          **Income tax credit for innovation.**

25          1. A taxpayer that is a primary sector business is allowed a nonrefundable innovation  
26          credit against the tax imposed under section 57-38-29, 57-38-30, or 57-38-30.3 for  
27          incurring qualified research expenses in this state. The amount of the credit under  
28          this section is:

29          a. Twenty-five percent of the qualified research expenses for conducting  
30          qualified research activities in collaboration with a North Dakota research  
31          university; and

b. Twenty percent of the qualified research expenses for conducting qualified research activities in collaboration with a North Dakota-based contract organization.

2. For purposes of this section:

a. "Contract organization" means contract organization as defined in section 41(e) of the Internal Revenue Code [26 U.S.C. 41(e)].

b. "Primary sector business" means a business that, through the employment of knowledge or labor, adds value to a product, process, or service and which has been certified by the department of commerce.

c. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)].

d. "Research university" means a tier I research university that offers graduate, doctoral, or professional degrees.

3. The taxpayer shall claim the total credit amount for the tax year in which the qualified research expenses were incurred. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.

4. If the amount of credit determined under this section for any taxable year exceeds the limitation under subsection 3, the unused credit may be used as an innovation credit carryover to each of the five succeeding taxable years. The entire amount of the unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried.

5. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.

6. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined

1           reporting method, the credit may be claimed against the aggregate North Dakota  
2           tax liability of all the corporations included in the North Dakota consolidated return.

3           7. A partnership, subchapter S corporation, limited partnership, limited liability  
4           company, or any other passthrough entity entitled to the credit under this section  
5           must be considered to be the taxpayer for purposes of calculating the credit. The  
6           amount of the allowable credit must be determined at the passthrough entity level.  
7           The total credit determined at the entity level must be passed through to the  
8           partners, shareholders, or members in proportion to their respective interests in the  
9           passthrough entity. An individual taxpayer may take the credit passed through  
10          under this subsection against the individual's state income tax liability under  
11          section 57-38-29 or 57-38-30.3.

12           **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
13   December 31, 2008.