

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2329

Introduced by

Senators Cook, Grindberg, J. Lee

Representatives R. Kelsch, Porter

1 A BILL for an Act to create and enact a new section to chapter 57-38 and a new subdivision to
2 subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an individual
3 and corporate income tax credit for targeted retail businesses; and to provide an effective date.

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

5 **SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Targeted retail business credit.**

8 Upon application by the owner or operator of a new or expanding retail business, a credit
9 against tax liability determined under section 57-38-30 or 57-38-30.3 may be granted by the
10 department of commerce to that taxpayer as provided in this section.

11 1. Grants of credits by the department of commerce must be made in credit grant rounds
12 awarded by December fifteenth and June fifteenth of each year. December grants
13 must be based on applications received by the department from the immediately
14 preceding period from May sixteenth through November fifteenth. June grants must be
15 based on applications received by the department from the immediately preceding
16 period from November sixteenth through May fifteenth.

17 2. A grant application must identify the name of the owner or operator and location of the
18 retail business of the applicant. The retail business that is the subject of the application
19 must be located in a city with a population of fewer than thirty thousand which imposes
20 a city sales tax at a rate of at least one percent and ranks below the state average of
21 city sales tax collections per capita at one percent equivalents as computed by the tax
22 department for the most recent full calendar year.

23 3. The department of commerce shall score the applications for credits by assigning
24 points within selected categories determined by the department which relate to

encouragement of new retail businesses in cities with a population of fewer than thirty thousand and below-average city sales tax collections per capita. Among the categories that must be used by the department to score applicants are:

a. The city sales tax collections per capita at one percent equivalents as computed by the tax department for the most recent full calendar year for the city where the property is located, with greater scoring points awarded for a lower collections per capita ranking;

b. The expected annual retail sales tax collections for the business, as estimated by the department of commerce, with consideration of the estimates provided by the owner or operator, with greater scoring points awarded for greater expected collections;

c. The percentage that the credit applied for is of the amount of private investment in the business, with greater scoring points awarded as the percentage declines;

d. The existence of a strategic plan for retail business development, implemented by the city in which the business is located, with greater scoring points awarded based on the department's judgment of the viability of the plan; and

e. If the retail sector in which the business will operate is underrepresented in the city, as evidenced by information provided by the applicant or by a retail gap analysis performed by the city, greater scoring points must be awarded for lower representation of that retail sector in the city.

4. The total of credits that may be awarded under this section is limited to not more than one million two hundred fifty thousand dollars in each grant round.

5. The credit awarded to an applicant is limited to not more than forty percent of the initial investment in the business. All or part of the credit received by an applicant may be transferred by the applicant to the owner of the property in which the business is located, upon compliance with any conditions and reporting required by the tax commissioner. Any credit awarded to an applicant or transferred to a property owner may be carried forward for up to five taxable years.

6. An expanding existing business may apply for and receive a credit subject to the same provisions provided for a new business under this section except:

- 1 a. The expansion must be estimated by the department of commerce, with
2 consideration of the estimates provided by the applicant, to result in an increase
3 in taxable sales of the business of fifty percent or more within five years;
4 b. Not more than twenty-five percent of the credits available in the credit grant
5 round may be awarded to expanding existing businesses; and
6 c. The credit for an expanding existing business is limited to not more than twenty
7 percent of the investment in the expansion.
8 7. If within five years after a credit is awarded under this section the recipient ceases
9 doing retail business at the location for which the credit was awarded, the credit is
10 terminated and any benefit provided to the business, or transferred by the business,
11 under this section and used in any previous taxable year becomes a tax obligation of
12 the taxpayer that claimed the credit, to be paid and subject to enforcement as provided
13 under this chapter.
14 8. A partnership, subchapter S corporation, limited partnership, limited liability company,
15 or any other passthrough entity entitled to the credit under this section must be
16 considered to be the taxpayer for purposes of this section, and the amount of the
17 credit allowed must be determined at the passthrough entity level. The amount of the
18 total credit determined at the entity level must be passed through to the partners,
19 shareholders, or members in proportion to their respective interests in the passthrough
20 entity.

21 **SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota
22 Century Code is created and enacted as follows:

23 Targeted retail business credit under section 1 of this Act.

24 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
25 December 31, 2010.