

Sixty-third
Legislative Assembly
of North Dakota

SENATE BILL NO. 2295

Introduced by

Senators Luick, Klein, Wanzek

Representatives Brandenburg, Wall, Williams

A BILL for an Act to create and enact a new section to chapter 57-38 ~~and subsection 10 to section 57-38.6-03~~ of the North Dakota Century Code, relating to the passthrough of the new and expanding business exemption ~~and the agricultural business investment tax credit to patrons of farmers' cooperatives; to amend and reenact subdivision c of subsection 7 of section 57-38-30.3 and section 57-38.6-01 of the North Dakota Century Code, relating to the passthrough of the agricultural business investment tax credit to patrons of farmers' cooperatives~~; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

New and expanding business exemption - Farmers' cooperative.

1. A farmers' cooperative as described in section 199(d)(3)(F) of the Internal Revenue Code [26 U.S.C. 199(d)(3)(F)] that receives an income tax exemption for a new or expanding business under chapter 40-57.1 may elect to pass the exemption through to its patrons. The patrons may be allowed to exclude the income attributable to the project as otherwise provided by this chapter. If an election is made by the cooperative to pass the exemption through to the cooperative's patrons, the election:
 - a. Is irrevocable and must be made on the cooperative's timely filed income tax return for the tax year in which the income tax exemption began; and
 - b. Applies to the entire duration of the exemption granted under chapter 40-57.1.
2. If the cooperative elects to pass the exemption through to its patrons:
 - a. The amount of income eligible to be exempted for a tax year is equal to the amount of the cooperative's income apportioned to this state under the provisions of this chapter and chapter 57-38.1, plus the patronage dividends ~~and per unit~~

~~retained allocations~~ described in section ~~1382(b)~~ 1382(b)(1) of the Internal Revenue Code [26 U.S.C. 1382(b)] deducted in determining federal taxable income, that is attributable to the exempt project.

b. The amount of exemption passed through to each patron for each tax year shall be determined based on the proportionate share of patronage activity as reflected by the written notices of allocation issued by the cooperative for that tax year.

c. The written notices of allocation issued by the cooperative must identify each patron's allocation of project income separately from the allocation of nonproject income.

3. Within thirty days of the cooperative issuing the written notice of allocation, the cooperative shall transmit to the tax commissioner, in an electronic format approved by the commissioner, a list of patrons and the allocation of the exemption to each patron. The list must include the patron's name, address, federal identification number, and the amount of exemption allocated to each patron, and any other information that may be required by the tax commissioner.

4. The patron shall be entitled to claim the exemption in the patron's tax year in which the written notice of allocation in subsection 3 is issued.

5. Nothing in this section precludes the tax commissioner from auditing the cooperative's computation of the income tax exemption or the patron's income exemption claimed on its tax return.

~~SECTION 2. AMENDMENT. Subdivision c of subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:~~

~~c. Agricultural business investment tax credit under section sections 57-38.6-03 and subsection 10 of section 57-38.6-03.~~

~~SECTION 3. AMENDMENT. Section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:~~

~~57-38.6-01. Definitions.~~

~~As used in this chapter, unless the context otherwise requires:~~

~~1. "Agricultural commodity processing facility" means:~~

- ~~a. A facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state; or~~
- ~~b. A livestock feeding, handling, milking, or holding operation that uses as part of its operation a byproduct produced at a biofuels production facility.~~
- ~~2. "Biofuels production facility" means a corporation, limited liability company, partnership, individual, or association in this state:~~
- ~~a. Involved in production of diesel fuel containing at least five percent biodiesel or green diesel as defined in section 57-43.2-01;~~
- ~~b. Involved in the production of corn-based ethanol or cellulose-based ethanol; or~~
- ~~c. Involved in a soybean or canola crushing facility.~~
- ~~3. "Director" means the director of the department of commerce division of economic development and finance.~~
- ~~4. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:~~
- ~~a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of being an agricultural commodity processing facility;~~
- ~~b. Has been certified by the securities commissioner to be in compliance under the securities laws of this state; and~~
- ~~c. Has an agricultural commodity processing facility, or intends to locate one, in this state.~~
- ~~5. "Qualified investment" means an investment in cash or an investment of a fee simple interest in real property located in this state. For purposes of this chapter, the definition of real property does not include any personal property that may become a fixture to the real property, as defined by chapter 41-09, which is added to the real property following investment of the real property in the qualified business. For a farmers' cooperative described in section 199(d)(3)(F) of the Internal Revenue Code [26 U.S.C. 199(d)(3)(F)], a qualified investment may include the cooperative's capital investment in the certified qualified business.~~
- ~~6. "Taxpayer" means an individual, estate, trust, corporation, partnership, or limited liability company.~~

1 — **SECTION 4.** Subsection 10 to section 57-38.6-03 of the North Dakota Century Code is
2 ~~created and enacted as follows:~~

3 — ~~10. a. A farmers' cooperative as described in section 57-38.6-01 of this Act, that would~~
4 ~~otherwise be entitled to claim a credit under this chapter, may elect to pass the~~
5 ~~credit through to its patrons. The patrons shall be allowed to claim the credit as~~
6 ~~otherwise provided by this chapter. If an election is made by the cooperative to~~
7 ~~pass the exemption through to the cooperative's patrons, the election:~~

8 — ~~(1) Is irrevocable and must be made on the cooperative's timely filed income~~
9 ~~tax return for the first year a credit for the certified qualified business is~~
10 ~~earned; and~~

11 — ~~(2) Applies to all credits earned in the same certified qualified business.~~

12 — ~~b. If the cooperative elects to pass the credit through to its patrons, the amount of~~
13 ~~the credit passed through to each patron for each tax year shall be determined~~
14 ~~based on the proportionate share of patronage activity as reflected by the written~~
15 ~~notices of allocation issued by the cooperative for that tax year.~~

16 — ~~c. Within thirty days of the cooperative issuing the written notice of allocation, the~~
17 ~~cooperative shall transmit to the tax commissioner, in an electronic format~~
18 ~~approved by the commissioner, a list of patrons and the allocation of the credit to~~
19 ~~each patron. The list must include the patron's name, address, federal~~
20 ~~identification number, and the amount of credit allocated to the patron, and any~~
21 ~~other information that may be required by the tax commissioner.~~

22 — ~~d. A patron is entitled to claim the credit in the patron's tax year in which the written~~
23 ~~notice of allocation in subsection b is issued.~~

24 — ~~e. For purposes of applying the limitations in section 57-38.6-03, the patron of the~~
25 ~~cooperative shall be considered to be the taxpayer.~~

26 — ~~f. Nothing in this section precludes the tax commissioner from auditing the~~
27 ~~cooperative's computation of the credit or the credit claim on the patron's tax~~
28 ~~return.~~

29 **SECTION 2. EFFECTIVE DATE.** This Act is effective for ~~investments made~~ projects
30 approved after December 31, 2012.