Fifty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2281

Introduced by

Senators Klein, Grindberg, Taylor

Representatives Belter, Mueller, Pollert

A BILL for an Act to amend and reenact sections 57-38.6-01 and 57-38.6-03 of the North Dakota Century Code, relating to agricultural business investment income tax credits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state.
2. "Director" means the director of the department of commerce division of economic development and finance.
3. "Qualified business" means a cooperative<u>, corporation, partnership,</u> or limited liability company that:
    a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of processing and marketing agricultural commodities capable of being raised in this state;
    b. ~~Is~~ <u>Has been certified by the securities commissioner to be</u> in compliance ~~with the requirements for filings with the securities commissioner~~ under the securities laws of this state;
    c. Has an agricultural commodity processing facility<u>, or intends to locate one</u>, in this state; and

d. ~~Has a majority of its ownership interests owned by producers of unprocessed agricultural commodities~~ Is among the first ten businesses that meets the requirements of this subsection.

4. "Taxpayer" means an individual, estate, ~~or~~ trust, corporation, partnership, or limited liability company.

SECTION 2. AMENDMENT. Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-03. Agricultural business investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The ~~aggregate~~ maximum annual ~~investment for which~~ credit a taxpayer may obtain ~~a tax credit~~ under this section is ~~not more than twenty~~ fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit under this section which is attributable to qualified investments in a single taxable year. The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under chapter 57-38.
3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to ~~fifteen~~ five taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2 of this section, the amount of the credit allowed with respect to ~~a~~

~~partnership's~~ the passthrough entity's investment in a qualified business must be determined at the ~~partnership~~ passthrough entity level. The amount of the total credit determined at the ~~partnership~~ passthrough entity level must be allowed to the ~~partners, limited to individuals, estates, and trusts~~ passthrough entity's owners, in proportion to their respective ownership interests in the ~~partnership~~ passthrough entity.

5. The investment must be at risk in the business. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years.

6. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.

7. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.