

Introduced by

Senators Klein, Grindberg, Taylor

Representatives Belter, Mueller, Pollert

1 A BILL for an Act to amend and reenact sections 57-38.6-01, 57-38.6-02, 57-38.6-03, and  
2 57-38.6-04 of the North Dakota Century Code, relating to agricultural business investment  
3 income tax credits; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38.6-01 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **57-38.6-01. Definitions.** As used in this chapter, unless the context otherwise  
8 requires:

- 9 1. "Agricultural commodity processing facility" means a facility that through  
10 processing involving the employment of knowledge and labor adds value to an  
11 agricultural commodity capable of being raised in this state.
- 12 2. "Director" means the director of the department of commerce division of economic  
13 development and finance.
- 14 3. "Qualified business" means a cooperative, corporation, partnership, or limited  
15 liability company that:
  - 16 a. Is incorporated or organized in this state after December 31, 2000, for the  
17 primary purpose of processing and marketing agricultural commodities  
18 capable of being raised in this state;
  - 19 b. ~~Is~~ Has been certified by the securities commissioner to be in compliance with  
20 ~~the requirements for filings with the securities commissioner~~ under the  
21 securities laws of this state;
  - 22 c. Has an agricultural commodity processing facility, or intends to locate one, in  
23 this state; and

1           d. ~~Has a majority of its ownership interests owned by producers of unprocessed~~  
2           ~~agricultural commodities~~ Is among the first ten businesses that meets the  
3           requirements of this subsection, but not a business that was previously  
4           certified as a qualified business under chapter 57-38.5.

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

7           **SECTION 2. AMENDMENT.** Section 57-38.6-02 of the North Dakota Century Code is  
8           amended and reenacted as follows:

9           **57-38.6-02. Certification - Investment reporting by qualified businesses.** The  
10          director shall certify whether a business that has requested to become a qualified business  
11          meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the  
12          necessary forms and procedures for certifying qualified businesses. The director is not  
13          required to recertify a business as a qualified business under this chapter if the business was  
14          previously certified by the director as a qualified business under chapter 57-38.5.

15          **SECTION 3. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is  
16          amended and reenacted as follows:

17          **57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a  
18          qualified investment in a qualified business, the taxpayer is entitled to a credit against state  
19          income tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3. The  
20          amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by  
21          the taxpayer in qualified businesses during the taxable year, subject to the following:

- 22          1. ~~The aggregate maximum annual investment for which credit~~ a taxpayer may  
23          obtain ~~a tax credit~~ under this section is ~~not more than twenty~~ fifty thousand dollars  
24          and no taxpayer may obtain more than two hundred fifty thousand dollars in credits  
25          under this section over any combination of taxable years. This subsection may not  
26          be interpreted to limit additional investment by a taxpayer for which that taxpayer is  
27          not applying for a credit.
- 28          2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit  
29          under this section which is attributable to qualified investments in a single taxable  
30          year. The amount of the credit allowed under this section for any taxable year may

- 1 not exceed fifty percent of the taxpayer's tax liability as otherwise determined  
2 under chapter 57-38.
- 3 3. Any amount of credit under this section not allowed because of the limitations in  
4 this section may be carried forward for up to ~~fifteen~~ five taxable years after the  
5 taxable year in which the investment was made.
- 6 4. A partnership, subchapter S corporation, limited liability company that for tax  
7 purposes is treated like a partnership, or any other passthrough entity that invests  
8 in a qualified business must be considered to be the taxpayer for purposes of the  
9 investment limitations in this section and, except for the tax liability limitation under  
10 subsection 2 of this section, the amount of the credit allowed with respect to a  
11 ~~partnership's~~ the passthrough entity's investment in a qualified business must be  
12 determined at the ~~partnership~~ passthrough entity level. The amount of the total  
13 credit determined at the ~~partnership~~ passthrough entity level must be allowed to  
14 the ~~partners, limited to individuals, estates, and trusts~~ passthrough entity's owners,  
15 in proportion to their respective ownership interests in the ~~partnership~~ passthrough  
16 entity.
- 17 5. The investment must be at risk in the business. A qualified investment must be in  
18 the form of a purchase of ownership interests or the right to receive payment of  
19 dividends from the business. An investment for which a credit is received under  
20 this section must remain in the business for at least three years. An investment  
21 placed in escrow does not qualify for the credit.
- 22 6. The entire amount of an investment for which a credit is claimed under this section  
23 must be expended by the qualified business for plant, equipment, research and  
24 development, marketing and sales activity, or working capital for the qualified  
25 business.
- 26 7. The tax commissioner may disallow any credit otherwise allowed under this  
27 section if any representation by a business in the application for certification as a  
28 qualified business proves to be false or if the taxpayer or qualified business fails to  
29 satisfy any conditions under this section or any conditions consistent with this  
30 section otherwise determined by the tax commissioner. The amount of any credit  
31 disallowed by the tax commissioner that reduced the taxpayer's income tax liability

1 for any or all applicable tax years, plus penalty and interest provided under section  
2 57-38-45, must be paid by the taxpayer.

3 8. An investment in an agricultural commodity processing facility made before  
4 January 1, 2005, that did not qualify for the tax credit because of the two million  
5 five hundred thousand dollar credit limitation in section 57-38.5-02, is entitled to a  
6 credit against state income tax liability under section 57-38-29 or 57-38-30.3 in the  
7 amount of thirty percent of the amount invested by the taxpayer in a qualified  
8 business subject to the following:

9 a. The aggregate investment for which a taxpayer may obtain a credit under this  
10 subsection is not less than five thousand dollars and not more than two  
11 hundred fifty thousand dollars.

12 b. In any taxable year, a taxpayer may claim no more than one-fourth of the  
13 credit under this subsection which is attributable to an investment made  
14 before January 1, 2005.

15 c. Any amount of credit under this subsection not allowed because of the  
16 limitations in this section may be carried forward for up to five taxable years  
17 after the taxable year in which the investment was made.

18 **SECTION 4. AMENDMENT.** Section 57-38.6-04 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **57-38.6-04. Taxable year for agricultural business investment tax credit.** The tax  
21 credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in which ~~full~~  
22 ~~consideration for~~ the investment in the qualified business was received by the qualified  
23 business.

24 **SECTION 5. EFFECTIVE DATE.** Section 1 of this Act is effective for any business  
25 certified by the director after December 31, 2004. Sections 2 and 3 of this Act are effective for  
26 taxable years beginning after December 31, 2004. Section 4 of this Act is effective for tax year  
27 2004 and is thereafter ineffective, except any unused credit may be carried forward as provided  
28 in chapter 57-38.6.