

HOUSE BILL NO. 1403

Introduced by

Representatives Onstad, DeKrey, D. Johnson, Weisz

Senators Klein, Taylor

1 A BILL for an Act to create and enact a new section to chapter 57-38 and a new subsection to
2 section 57-38-30.3 of the North Dakota Century Code, relating to an individual and corporate
3 income tax credit for operation of a microbusiness; 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
6 created and enacted as follows:

7 **Microbusiness income tax credit.**

8 1. For purposes of this section:

9 a. "Actively engaged" in the operation of a microbusiness means personal
10 involvement on a continuous basis in the daily management and operation of
11 the business.

12 b. "Microbusiness" means a business employing five or fewer employees and
13 which does not have its primary business location inside the city limits of a city
14 of seven thousand five hundred or more population.

15 c. "New employment" means the amount by which the total compensation paid
16 during the taxable year to North Dakota resident employees exceeds the total
17 compensation paid to North Dakota resident employees in the taxable year
18 before the application.

19 d. "New investment" means the increase in the applicant's purchases of
20 microbusiness buildings and depreciable personal property located in this
21 state, not including vehicles required to be registered for operation on the
22 roads and highways of this state, during the taxable year as compared with
23 the previous taxable year. If the buildings or depreciable personal property is
24 leased, the amount of new investment is the increase in average net annual

1 rents multiplied by the number of years of the lease for which the taxpayer is
2 bound, not exceeding ten years.

3 e. "Related person" means:

4 (1) Any corporation, partnership, limited liability corporation, cooperative, or
5 joint venture which is or would otherwise be a member of the same
6 unitary group, if incorporated, or any person who is considered to be a
7 related person under section 267(b)(c) or section 707(b) of the Internal
8 Revenue Code; and

9 (2) Any individual who is a parent, son, daughter, brother, or sister of the
10 taxpayer.

11 f. "Taxpayer" means any person subject to income taxes under this chapter and
12 any corporation, partnership, limited liability company, cooperative, or joint
13 venture that is or would otherwise be a member of the same unitary group, if
14 incorporated, which is, or whose partners, members, or owners representing
15 an ownership interest of at least ninety percent of such entity are, subject to
16 such tax, and any other partnership, limited liability, subchapter S corporation,
17 cooperative, or joint venture when the partners, shareholders, or members
18 representing an ownership interest of at least ninety percent of such entity are
19 subject to such tax.

20 2. The tax commissioner shall accept applications for tax credits under this section
21 from a taxpayer who is actively engaged in the operation of a microbusiness or
22 who will establish a microbusiness which the taxpayer will be actively engaged in
23 operating within the current or subsequent taxable year. Applications for tax
24 credits must be considered in the order in which they are received.

25 3. The tax commissioner may convene an advisory committee of individuals with
26 expertise in small business development, lending, and community development to
27 evaluate applications under this section and to advise the commissioner in
28 authorizing tentative tax credits.

29 4. An application for a tax credit under this section must be on a form provided by the
30 commissioner and must contain:

31 a. A description of the microbusiness;

- 1 b. The projected income and expenditures of the microbusiness;
- 2 c. The market to be served by the microbusiness and the way the expansion
- 3 addresses that market;
- 4 d. The amount of projected investment or employment increase that would
- 5 generate the credit;
- 6 e. The projected improvement in income or creation of new self-employment or
- 7 jobs in the area in which the business is located;
- 8 f. The nature of the applicant's engagement in the operation of the
- 9 microbusiness; and
- 10 g. Other documents, plans, and specifications as required by the commissioner.
- 11 5. If the tax commissioner determines that an application meets the requirements of
- 12 this section and that the investment or employment is eligible for the credit, the
- 13 commissioner shall approve the application and authorize tentative tax credits to
- 14 the applicant within the limits of this section and certify the amount of tax credits as
- 15 approved for the applicant if:
- 16 a. The applicant is actively engaged in the operation of the microbusiness or will
- 17 be actively engaged in the operation of the microbusiness upon its
- 18 establishment;
- 19 b. The applicant will make new investment and employment in the
- 20 microbusiness; and
- 21 c. The new investment or employment will create new income or jobs in the area
- 22 in which the business is located.
- 23 6. The tax commissioner may approve applications up to the adjusted limit of credits
- 24 for each calendar year through December 31, 2010. After applications totaling the
- 25 adjusted limit of credits have been approved for a calendar year, no further
- 26 applications may be approved for that year. The adjusted limit of credits in a given
- 27 year is two million dollars plus tax credits under this section that were not granted
- 28 or were not used for the preceding calendar year.
- 29 7. A taxpayer is entitled to tax credits against tax liability as determined under section
- 30 57-38-29, 57-38-30, or 57-38-30.3 equal to twenty percent of the taxpayer's new
- 31 investment and employment in the microbusiness during the taxable year not to

1 exceed the amount of tentative tax credits approved by the commissioner under
2 this section. The taxpayer must claim the tax credit under this section by filing a
3 form provided by the tax commissioner and attaching the tentative tax credit
4 certification granted by the tax commissioner. Tentative tax credits expire after the
5 end of the taxable year following the taxable year the tentative tax credit was
6 certified. The total lifetime tax credit claimed by one taxpayer and any related
7 person under this section is limited to ten thousand dollars. A partnership,
8 subchapter S corporation, limited partnership, limited liability company, or other
9 passthrough entity that qualifies for the credit under this section must be
10 considered the taxpayer for purposes of this section and the amount of the credit
11 allowed with respect to the entity must be determined at the passthrough entity
12 level. The amount of the total credit determined at the entity level must be passed
13 through to the partners, shareholders, or members in proportion to their respective
14 interests in the passthrough entity.

- 15 8. The tax commissioner shall prepare a report identifying the following aggregate
16 amounts for the previous calendar year:
- 17 a. The amount of projected employment and investment anticipated by
18 taxpayers receiving tentative tax credits under this section and the tentative
19 tax credits granted;
 - 20 b. The actual amount of new investment and employment by taxpayers that
21 were granted tentative tax credits in the previous calendar year;
 - 22 c. The tax credits used; and
 - 23 d. The tax credits that were not granted or were not used.

24 The report required by this subsection must be issued by July 15, 2008, and each
25 July fifteenth thereafter. Information may not be included in the report which is
26 protected by state or federal confidentiality laws.

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

29 A taxpayer filing a return under this section is entitled to the microbusiness income
30 tax credit provided under section 1 of this Act.

1 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
2 December 31, 2006.