

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED 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 involvement on
10 a continuous basis in the daily management and operation of the business.
- 11 b. "Director" means the director of the department of commerce division of
12 economic development and finance.
- 13 c. "Microbusiness" means a business employing five or fewer employees inside
14 the city limits of a city of three thousand or less population.
- 15 d. "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. For the purposes of calculating the increase in new
19 employment, the employer may not include merit or equity based salary
20 increases, cost of living adjustments, or any other increase in compensation
21 not directly related to the hiring of new employees during the taxable year.
- 22 e. "New investment" means the increase in the applicant's purchases of
23 microbusiness buildings and depreciable personal property located in this
24 state, not including vehicles required to be registered for operation on the

1 roads and highways of this state, during the taxable year as compared with
2 the previous taxable year. If the buildings or depreciable personal property is
3 leased, the amount of new investment is the increase in average net annual
4 rents multiplied by the number of years of the lease for which the taxpayer is
5 bound, not exceeding ten years. For the purposes of calculating the increase
6 in new investment, the employer may not include any increases in rents for
7 property leased before the current taxable year. Only rents for leases
8 completed in the current taxable year may be included.

9 e. "Related person" means:

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

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

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

26 2. The director shall accept an application for qualification as a microbusiness under
27 this section from a taxpayer that is actively engaged in the operation of a
28 microbusiness or that will establish a microbusiness in which the taxpayer will be
29 actively engaged in or operating within the current or subsequent taxable year.
30 The application must be on a form provided by the director 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 addressed the market;
4 d. The amount of projected new investment or employment increases;
5 e. The projected improvement in income or creation of new self-employment or
6 jobs in the area in which the microbusiness is located;
7 f. The nature of the applicant's engagement in the operation of the
8 microbusiness; and
9 g. Any other document, plan, or specification required by the director.
10 3. A business may be certified by the director as a microbusiness if:
11 a. The applicant is actively engaged in the operation of the microbusiness or will
12 be actively engaged in the operation of the microbusiness upon its
13 establishment;
14 b. The applicant will make new investment or employment in the microbusiness;
15 and
16 c. The new investment or employment will create new income or jobs in the area
17 in which the business is located.
18 4. If the applicant meets the requirements of subsection 3, the director shall issue a
19 certification letter to the microbusiness. The certification letter must include the
20 certification effective date.
21 5. The director may not certify more than two hundred qualified businesses as a
22 microbusiness.
23 6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax
24 liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3 equal to
25 twenty percent of the taxpayer's new investment and new employment in the
26 microbusiness during the taxable year. A taxpayer may not obtain more than ten
27 thousand dollars in credits under this section over any combination of taxable
28 years.
29 7. The credit under this section may not exceed a taxpayer's liability as determined
30 under this chapter for the taxable year. Each year's unused credit amount may be
31 carried forward for up to five taxable years.

- 1 8. The taxpayer only may claim the tax credit under this section by filing a form
2 provided by the tax commissioner and attaching the microbusiness certification
3 letter.
- 4 9. A partnership, subchapter S corporation, limited partnership, limited liability
5 company, or any other passthrough entity to the credit under this section must be
6 considered to be the taxpayer for purposes of calculating the credit. The amount
7 of the allowable credit must be determined at the passthrough entity level. The
8 total credit determined at the entity level must be passed through to the partners,
9 shareholders, or members in proportion to their respective interests in the
10 passthrough entity.
- 11 10. The tax commissioner shall prepare a report for the director identifying the
12 following aggregate amounts for the previous calendar year:
- 13 a. The actual amount of new investment and new employment in the previous
14 calendar year which was reported by taxpayers certified as a microbusiness
15 under this section; and
- 16 b. The tax credit claimed during the previous calendar year.
- 17 11. The report required by this subsection must be issued by January 1, 2009, and
18 each January fifteenth thereafter. Information may not be included in the report
19 which is protected by the state or federal confidentiality laws.

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

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

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