

FIRST ENGROSSMENT
with House Amendments

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2081

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact sections 57-38.6-01, 57-38.6-02, and 57-38.6-03 of the
2 North Dakota Century Code, relating to definitions and to the certification of a qualified
3 business and calculation of the agricultural business investment tax credit; and to provide an
4 effective date.

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

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

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

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

1 ~~d. Is among the first ten businesses that meets the requirements of this~~
2 ~~subsection, but not a business that was previously certified as a qualified~~
3 ~~business under chapter 57-38.5.~~

4 4. "Qualified investment" means an investment in cash or an investment of a fee
5 simple interest in real property located in this state. For purposes of this chapter,
6 the definition of real property does not include any personal property that may
7 become a fixture to the real property, as defined by chapter 41-09, which is added
8 to the real property following investment of the real property in the qualified
9 business.

10 5. "Taxpayer" means an individual, estate, trust, corporation, partnership, or limited
11 liability company.

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

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

20 1. The director shall certify whether a business that has requested to become a
21 qualified business meets the requirements of subsection 3 of section 57-38.6-01.
22 The director shall establish the necessary forms and procedures for certifying
23 qualified businesses.

24 2. A qualified business may apply to the director for a recertification. Only one
25 recertification is available to a qualified business. The application for recertification
26 must be filed with the director within ninety days before the original certification
27 expiry date. The recertification issued by the director must comply with the
28 provisions of subsection 3.

29 3. The director may not certify more than ten qualified businesses during each
30 calendar year. This limitation does not apply to a qualified business that is seeking
31 recertification during the calendar year.

- 1 4. A certification letter must be issued by the director to the qualified business. The
2 certification letter must include:
3 a. The certification effective date.
4 b. The certification expiry date. The expiry date may not be more than four
5 years from the certification effective date.

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

8 **57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a
9 qualified investment in a qualified business, the taxpayer is entitled to a credit against state
10 income tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3. ~~The~~
11 ~~amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by~~
12 ~~the taxpayer in qualified businesses during the taxable year, subject to the following:~~

- 13 1. ~~The maximum annual credit a taxpayer may obtain under this section is fifty~~
14 ~~thousand dollars and no taxpayer may obtain more than two hundred fifty~~
15 ~~thousand dollars in credits under this section over any combination of taxable~~
16 ~~years. This subsection may not be interpreted to limit additional investment by a~~
17 ~~taxpayer for which that taxpayer is not applying for a credit. The amount of the~~
18 ~~credit to which a taxpayer is entitled is thirty percent of the amount invested by the~~
19 ~~taxpayer in qualified businesses during the taxable year.~~
20 2. ~~In any taxable year, a taxpayer may claim no more than fifty percent of the credit~~
21 ~~under this section which is attributable to qualified investments in a single taxable~~
22 ~~year. The amount of the credit allowed under this section for any taxable year may~~
23 ~~not exceed fifty percent of the taxpayer's tax liability as otherwise determined~~
24 ~~under chapter 57-38. The maximum annual credit a taxpayer may obtain under~~
25 ~~this section is fifty thousand dollars and no taxpayer may obtain more than two~~
26 ~~hundred fifty thousand dollars in credits under this section over any combination of~~
27 ~~taxable years. This subsection may not be interpreted to limit additional~~
28 ~~investment by a taxpayer for which that taxpayer is not applying for a credit.~~
29 3. ~~Any amount of The credit under this section not allowed because of the limitations~~
30 ~~in this section may not exceed the liability for tax under chapter 57-38. If the~~
31 ~~amount of credit under this section exceeds the liability for tax, the excess may be~~

- 1 carried forward for up to ~~five~~ ten taxable years after the taxable year in which the
2 investment was made.
- 3 4. A partnership, subchapter S corporation, limited liability company that for tax
4 purposes is treated like a partnership, or any other passthrough entity that invests
5 in a qualified business must be considered to be the taxpayer for purposes of the
6 investment limitations in this section and, except for the tax liability limitation under
7 subsection 2, the amount of the credit allowed with respect to the passthrough
8 entity's investment in a qualified business must be determined at the passthrough
9 entity level. The amount of the total credit determined at the passthrough entity
10 level must be allowed to the passthrough entity's owners, in proportion to their
11 respective ownership interests in the passthrough entity.
- 12 5. An investment made in a qualified business from the assets of a retirement plan is
13 deemed to be the retirement plan participant's investment for the purposes of this
14 chapter if a separate account is maintained for the plan participant and the
15 participant directly controls where the account assets are invested.
- 16 6. The investment must be made on or after the certification effective date and must
17 be at risk in the business to be eligible for the tax credit under this section. A
18 qualified investment must be in the form of a purchase of ownership interests or
19 the right to receive payment of dividends from the business. An investment for
20 which a credit is received under this section must remain in the business for at
21 least three years. An investment placed in escrow does not qualify for the credit.
- 22 ~~6.~~ 7. 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. Real property that qualifies as an investment must be used in, and be
26 an integral part of, the qualified business's North Dakota business operations.
- 27 8. If the investment is a contribution of real property:
- 28 a. The value of the contribution may not exceed the appraised value as
29 established by a licensed or certified appraiser licensed or certified under the
30 requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06,
31 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.

- 1 b. The value of the contribution must be approved by the governing body of the
2 qualified business applying the valuation standards set forth in subsection 3
3 of section 10-19.1-63.
- 4 c. The qualified business receiving the contribution of real property shall provide
5 to the tax commissioner a copy of the appraised valuation, a copy of the
6 governing body's resolution approving the value of the contribution, and a
7 copy of the statement of full consideration within thirty days after the
8 instrument transferring title to the real property is recorded with the register of
9 deeds as provided in chapter 47-19.
- 10 d. A taxpayer making a contribution of real property is entitled to the tax credit in
11 the taxable year in which the instrument transferring title to the real property is
12 recorded with the register of deeds as provided in chapter 47-19.
- 13 ~~7.~~ 9. The tax commissioner may disallow any credit otherwise allowed under this
14 section if any representation by a business in the application for certification as a
15 qualified business proves to be false or if the taxpayer or qualified business fails to
16 satisfy any conditions under this section or any conditions consistent with this
17 section otherwise determined by the tax commissioner. The amount of any credit
18 disallowed by the tax commissioner that reduced the taxpayer's income tax liability
19 for any or all applicable tax years, plus penalty and interest provided under section
20 57-38-45, must be paid by the taxpayer.

21 **SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
22 December 31, 2006, and for qualified businesses certified or recertified after December 31,
23 2006.