90301.0300

# FIRST ENGROSSMENT

Sixty-first
Legislative Assembly
of North Dakota

# ENGROSSED HOUSE BILL NO. 1066

Introduced by

Legislative Council

(Workforce Committee)

A BILL for an Act to create and enact three new subdivisions to subsection 7 of section 57-38-30.3 and three new sections to chapter 57-38 of the North Dakota Century Code, relating to income tax credits for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes, qualified expenditures for lean manufacturing, and qualified expenses for innovation; and to provide an effective date.

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

**SECTION 1.** Three new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code are created and enacted as follows:

Automating manufacturing processes tax credit under section 2 of this Act.

Lean manufacturing tax credit under section 3 of this Act.

Innovation tax credit under section 4 of this Act.

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

**Income tax credit for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes.**

1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against the tax imposed under section 57-38-29, 57-38-30, or 57-38-30.3 for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes in this state. The amount of the credit under this section is seven and one-half percent of expenses for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes.

2. For purposes of this section:

a. "Manufacturing machinery and equipment for the purpose of automating manufacturing processes" means new or used automation and robotic equipment.

b. "Primary sector business" means a business that, through the employment of knowledge or labor, adds value to a product, process, or service and which has been certified by the department of commerce.

3. The taxpayer shall claim the total credit amount for the tax year in which the manufacturing machinery and equipment is purchased. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.

4. If the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 3, the unused credit may be used as an automation credit carryover to each of the five succeeding taxable years. The entire amount of the unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried.

5. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.

6. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return.

7. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level.

The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-29 or 57-38-30.3.

**SECTION 3.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Income tax credit for qualified expenditures necessary for implementing lean manufacturing.**

1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against the tax imposed under section 57-38-29, 57-38-30, or 57-38-30.3 for qualified expenditures necessary for implementing lean manufacturing in this state. The amount of the credit under this section is ten percent of expenses for qualified expenditures necessary for implementing lean manufacturing.
2. For purposes of this section:
   a. "Lean manufacturing" means a manufacturing improvement approach based on using the minimum amount of manpower, materials, money, machines, and space.
   b. "Primary sector business" means a business that, through the employment of knowledge or labor, adds value to a product, process, or service and which has been certified by the department of commerce.
   c. "Qualified expenditures" means expenditures for training programs, materials, tools, technology, software, or consultant services used to implement lean manufacturing which have been certified by the department of commerce as necessary for implementing lean manufacturing.
3. The taxpayer shall claim the total credit amount for the tax year in which the qualified expenditures were incurred. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.
4. If the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 3, the unused credit may be used as a

lean manufacturing credit carryover to each of the five succeeding taxable years. The entire amount of the unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried.

5. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.

6. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return.

7. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-29 or 57-38-30.3.

**SECTION 4.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Income tax credit for innovation.**

1. A taxpayer that is a primary sector business is allowed a nonrefundable innovation credit against the tax imposed under section 57-38-29, 57-38-30, or 57-38-30.3 for incurring contract research expenses in this state. A taxpayer may not claim a credit under this section for expenses for which the taxpayer claims a credit under section 57-38-30.5. The amount of the credit under this section is:

a. Twenty percent of the contract research expenses; and

b. Twenty-five percent of the contract research expenses for conducting contract research activities under contract with a North Dakota research university.

2. For purposes of this section:

a. "Contract research expenses" means any amount paid or obligation incurred by the taxpayer to any person living or working in North Dakota, other than an employee of the taxpaper or a North Dakota research university, for qualified research.

b. "Primary sector business" means a business that, through the employment of knowledge or labor, adds value to a product, process, or service and which has been certified by the department of commerce.

c. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)].

d. "Research university" means a tier I research university that offers graduate, doctoral, or professional degrees.

3. The taxpayer shall claim the total credit amount for the tax year in which the qualified research expenses were incurred. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.

4. If the amount of credit determined under this section for any taxable year exceeds the limitation under subsection 3, the unused credit may be used as an innovation credit carryover to each of the five succeeding taxable years. The entire amount of the unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried.

5. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.

6. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return.

7. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-29 or 57-38-30.3.

**SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.