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Sixty-second
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2055

Introduced by

Legislative Management

(Workforce Committee)

A BILL for an Act to create and enact two new sections to chapter 57-38 and two new subdivisions to subsection 7 of section 57-38-30.3 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 and for qualified expenditures for lean manufacturing; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subdivisions 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.

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 57-38-30 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 twenty percent of the costs incurred in the taxable year to purchase manufacturing machinery and equipment for the purpose of automating manufacturing processes. Qualified expenditures under this section may not be used in the calculation of any other income tax deduction or credit allowed by law.
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 certified by the department of commerce which, through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth.

3. The taxpayer shall claim the total credit amount for the taxable year in which the manufacturing machinery and equipment are 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 exceeds the liability for tax under this chapter, the excess may be carried forward to each of the next five succeeding taxable years.

5. The aggregate amount of credits allowed under this section may not exceed two million dollars in any calendar year. Credits subject to this limitation must be determined based upon the date of the qualified purchase.

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 57-38-30.3.

8. The department of commerce shall provide the tax commissioner the name, address, and federal identification number or social security number of the taxpayer approved as qualifying for the credit under this section, and a list of those items that were

approved as a qualified expenditure by the department. The taxpayer claiming the credit shall file with the taxpayer's return, on forms prescribed by the tax commissioner, the following information:

a. The name, address, and federal identification number or social security number of the taxpayer who made the purchase; and

b. An itemization of:

(1) Each item of machinery or equipment purchased for automation;

(2) The amount paid for each item of machinery or equipment if the amount paid for the machinery or equipment is being used as a basis for calculating the credit; and

(3) The date on which payment for the purchase was made.

9. Notwithstanding the time limitations contained in section 57-38-38, this section does not prohibit the tax commissioner from conducting an examination of the credit claimed and assessing additional tax due under section 57-38-38.

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 57-38-30 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 twenty percent of the costs incurred in the taxable year for qualified expenditures necessary for implementing lean manufacturing. Qualified expenditures under this section may not be used in the calculation of any other income tax deduction or credit allowed by law.

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 certified by the department of commerce which, through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth.

c. "Qualified expenditures" means expenditures for training programs, materials, tools, technology, software, or consultant services used to implement lean manufacturing which have been qualified by the department of commerce as necessary for implementing lean manufacturing.

3. The taxpayer shall claim the credit in the taxable year in which the qualified expenditures were made. 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 exceeds the liability for tax under this chapter, the excess may be carried forward to each of the next five succeeding taxable years.

5. The aggregate amount of credits allowed under this section may not exceed two million dollars in any calendar year. Credits subject to this limitation must be determined based upon the date of the qualified expenditure.

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 57-38-30.3.

8. The department of commerce shall provide the tax commissioner the name, address, and federal identification number or social security number of the taxpayer approved as qualifying for the credit under this section, and a list of those items that were

<u>approved as a qualified expenditure by the department. The taxpayer claiming the credit shall file with the taxpayer's return, on forms prescribed by the tax commissioner, the following information:</u>

<u>a.</u> <u>The name, address, and federal identification number or social security number of the taxpayer who made the purchase; and</u>

<u>b.</u> <u>An itemization of:</u>

<u>(1)</u> <u>Each qualified expenditure;</u>

<u>(2)</u> <u>The amount paid for each qualified expenditure if the amount paid for the qualified expenditure is being used as a basis for calculating the credit; and</u>

<u>(3)</u> <u>The date on which payment for the qualified expenditure was made.</u>

<u>9.</u> <u>Notwithstanding the time limitations contained in section 57-38-38, this section does not prohibit the tax commissioner from conducting an examination of the credit claimed and assessing additional tax due under section 57-38-38.</u>

SECTION 4. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first four taxable years beginning after December 31, 2010, and is thereafter ineffective.