

SENATE BILL NO. 2329

Introduced by

Senators Cook, Grindberg, J. Lee

Representatives R. Kelsch, Porter

1 A BILL for an Act to create and enact a new section to chapter 57-38 and a new subdivision to
2 subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an individual
3 and corporate income tax credit for targeted retail businesses; 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 created
6 and enacted as follows:

7 **Targeted retail business credit.**

8 Upon application by the owner ~~or operator~~ of a new or expanding retail business ~~or the~~
9 owner of a new or expanding retail business location, a credit against tax liability determined
10 under section 57-38-30 or 57-38-30.3 may be granted by the department of commerce to that
11 taxpayer applicant as provided in this section.

12 1. Grants of credits by the department of commerce ~~must be made in credit grant rounds~~
13 ~~awarded by December fifteenth and June fifteenth of each year. December grants~~
14 ~~must be based on applications received by the department from the immediately~~
15 ~~preceding period from May sixteenth through November fifteenth. June grants must be~~
16 ~~based on applications received by the department from the immediately preceding~~
17 ~~period from November sixteenth through May fifteenth.~~ may be made on the basis of
18 applications submitted and may be awarded until the credits available for the calendar
19 year are fully utilized.

20 2. A grant application must identify the name of the owner ~~or operator~~ of the retail
21 business ~~or the owner of the retail business location~~ and the location of the retail
22 business ~~or retail business location~~ of the applicant. The retail business ~~or retail~~
23 business location that is the subject of the application must be located in a city with a
24 population of fewer than thirty thousand which imposes a city sales tax at a rate of at

1 least one percent and ranks below the state average of city sales tax collections per
2 capita at one percent equivalents as computed by the tax department for the most
3 recent full calendar year.

4 3. The department of commerce shall score the applications for credits by assigning
5 points within selected categories determined by the department which relate to
6 ~~encouragement~~the establishment of new retail businesses and the expansion of
7 existing retail businesses in cities with a population of fewer than thirty thousand and
8 below-average city sales tax collections per capita. Among the categories that must be
9 used by the department to score applicants are:

10 a. The city sales tax collections per capita at one percent equivalents as computed
11 by the tax department for the most recent full calendar year for the city where the
12 property is located, with greater scoring points awarded for a lower collections
13 per capita ranking;

14 b. The expected additional annual retail sales tax collections for the business ~~, as~~
15 estimated or the businesses that are expected to occupy the new or expanding
16 retail location must be reviewed by the department of commerce, with
17 consideration of the estimates provided by the owner ~~or operator~~, with greater
18 scoring points awarded for greater expected collections;

19 c. The ~~percentage that~~ratio of the credit applied for ~~is of~~to the amount of private
20 investment from all sources in the business, with greater scoring points awarded
21 as the percentage declines;

22 d. The existence of a strategic plan for retail business development, implemented
23 by the city in which the business is located, with greater scoring points awarded
24 based on the department's judgment of the viability of the plan; and

25 e. If the retail sector in which the business will operate is underrepresented in the
26 city, as evidenced by information provided by the applicant or by a retail gap
27 analysis performed by the city, greater scoring points must be awarded for lower
28 representation of that retail sector in the city.

29 4. To be eligible for a credit, an applicant must score at least seventy-five percent of
30 points available under subsection 3 and the applicant may not be closing or reducing

1 its business operations in one area of the state and relocating substantially the same
2 business operations to another area.

3 5. The ~~total~~ aggregate amount of credits that may be awarded under this section is limited
4 to not more than ~~one~~two million ~~two~~five hundred ~~fifty~~ thousand dollars in each ~~grant~~
5 ~~round~~calendar year. The credit awarded to an applicant is limited to not more than
6 forty percent of the initial or estimated investment in the business or the retail business
7 location, which may be awarded:

8 a. In a single installment;

9 b. In an amount equal to twenty percent per year for five years; or

10 c. In annual installments for a period not to exceed five years, in an amount to be
11 determined by the department of commerce contingent on the applicant meeting
12 the annual performance goals as set forth in the original grant application.

13 6. The department of commerce shall notify the tax commissioner of the credit amount
14 awarded to each applicant.

15 7. For purposes of the determination of the credit, qualifying initial investments are
16 material investments in the business, including the purchase of land, equipment,
17 inventory, building materials, and payments for construction contracts and franchise
18 fees. The applicant must notify the department of commerce of any material changes
19 to, or withdrawal of, an application. If an approved application is withdrawn by the
20 applicant before the credit being awarded, the credit amount allocated to the
21 withdrawn application must be added back into the aggregate amount of credits that
22 may be awarded during the calendar year. The department of commerce shall place
23 conditions on the credit award including circumstances that will trigger a clawback and
24 the amount of the credit that may be recouped if those circumstances occur. The
25 department of commerce shall notify the tax commissioner of the amount of credit to
26 be recouped.

27 ~~5.8. The credit awarded to an applicant is limited to not more than forty percent of the initial~~
28 ~~investment in the business. All or part of the credit received by an applicant may be~~
29 ~~transferred by the applicant to the owner of the property in which the business is~~
30 ~~located, upon compliance with any conditions and reporting required by the tax~~

1 commissioner. Any credit awarded to an applicant or transferred to a property owner
2 may be carried forward for up to five taxable years.

3 ~~6.9.~~ An The owner of an expanding existing business or the owner of an expanding retail
4 location may apply for and receive a credit subject to the same provisions provided for
5 a new business or a new business location under this section except:

6 a. The expansion must be estimated by the department of commerce, with
7 consideration of the estimates provided by the applicant, to result in an increase
8 in taxable sales of the business or of the businesses that are expected to occupy
9 the expanding retail location of ~~fifty~~twenty-five percent or more within ~~five~~three
10 years;

11 b. ~~Not more than twenty-five percent of the credits available in the credit grant~~
12 ~~round may be awarded to expanding existing businesses~~ If the expansion is of a
13 retail location, the investment in the expansion must be an amount equal to or in
14 excess of twenty-five percent of the current true and full value of the commercial
15 portion of the existing structure; and

16 c. The credit for an expanding existing business or existing retail location is limited
17 to not more than ~~twenty~~forty percent of the initial or estimated investment in the
18 expansion.

19 ~~7. — If within five years after a credit is awarded under this section the recipient ceases~~
20 ~~doing retail business at the location for which the credit was awarded, the credit is~~
21 ~~terminated and any benefit provided to the business, or transferred by the business,~~
22 ~~under this section and used in any previous taxable year~~

23 10. Upon certification by the department of commerce that the credit or any portion of the
24 credit is revoked, the amount certified becomes a tax obligation of the taxpayer that
25 claimed the credit, to be ~~paid~~assessed and ~~subject to enforcement~~collected as
26 provided under this chapter, notwithstanding the time limitations in section 57-38-38.

27 ~~8.11.~~ A partnership, subchapter S corporation, limited partnership, limited liability company,
28 or any other passthrough entity entitled to the credit under this section must be
29 considered to be the taxpayer for purposes of this section, and the amount of the
30 credit allowed must be determined at the passthrough entity level. The amount of the
31 total credit determined at the entity level must be passed through to the partners.

1 shareholders, or members in proportion to their respective interests in the passthrough
2 entity.

3 **SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota
4 Century Code is created and enacted as follows:

5 Targeted retail business credit under section 1 of this Act.

6 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
7 December 31, 2010.