

Sixty-second
Legislative Assembly
of North Dakota

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

- 12 1. Grants of credits by the department of commerce may be made on the basis of
13 applications submitted and may be awarded until the credits available for the calendar
14 year are fully utilized.
- 15 2. A grant application must identify the name of the owner of the retail business or the
16 owner of the retail business location and the location of the retail business or retail
17 business location of the applicant. The retail business or retail business location that is
18 the subject of the application must be located in a city with a population of fewer than
19 thirty thousand which imposes a city sales tax at a rate of at least one percent and
20 ranks below the state average of city sales tax collections per capita at one percent
21 equivalents as computed by the tax department for the most recent full calendar year.
- 22 3. The department of commerce shall score the applications for credits by assigning
23 points within selected categories determined by the department which relate to the
24 establishment of new retail businesses and the expansion of existing retail businesses

1 in cities with a population of fewer than thirty thousand and below-average city sales
2 tax collections per capita. Among the categories that must be used by the department
3 to score applicants are:

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

8 b. The expected additional annual retail sales tax collections for the business or the
9 businesses that are expected to occupy the new or expanding retail location must
10 be reviewed by the department of commerce, with consideration of the estimates
11 provided by the owner, with greater scoring points awarded for greater expected
12 collections;

13 c. The ratio of the credit applied for to the amount of private investment from all
14 sources in the business, with greater scoring points awarded as the percentage
15 declines;

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

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

23 4. To be eligible for a credit, an applicant must score at least seventy-five percent of
24 points available under subsection 3 and the applicant may not be closing or reducing
25 its business operations in one area of the state and relocating substantially the same
26 business operations to another area.

27 5. The aggregate amount of credits that may be awarded under this section is limited to
28 not more than two million five hundred thousand dollars in each calendar year. The
29 credit awarded to an applicant is limited to not more than forty percent of the initial or
30 estimated investment in the business or the retail business location, which may be
31 awarded:

- 1 a. In a single installment;
- 2 b. In an amount equal to twenty percent per year for five years; or
- 3 c. In annual installments for a period not to exceed five years, in an amount to be
- 4 determined by the department of commerce contingent on the applicant meeting
- 5 the annual performance goals as set forth in the original grant application.
- 6 6. The department of commerce shall notify the tax commissioner of the credit amount
- 7 awarded to each applicant.
- 8 7. For purposes of the determination of the credit, qualifying initial investments are
- 9 material investments in the business, including the purchase of land, equipment,
- 10 inventory, building materials, and payments for construction contracts and franchise
- 11 fees. The applicant must notify the department of commerce of any material changes
- 12 to, or withdrawal of, an application. If an approved application is withdrawn by the
- 13 applicant before the credit being awarded, the credit amount allocated to the
- 14 withdrawn application must be added back into the aggregate amount of credits that
- 15 may be awarded during the calendar year. The department of commerce shall place
- 16 conditions on the credit award including circumstances that will trigger a clawback and
- 17 the amount of the credit that may be recouped if those circumstances occur. The
- 18 department of commerce shall notify the tax commissioner of the amount of credit to
- 19 be recouped.
- 20 8. All or part of the credit received by an applicant may be transferred by the applicant to
- 21 the owner of the property in which the business is located, upon compliance with any
- 22 conditions and reporting required by the tax commissioner. Any credit awarded to an
- 23 applicant or transferred to a property owner may be carried forward for up to five
- 24 taxable years.
- 25 9. The owner of an expanding existing business or the owner of an expanding retail
- 26 location may apply for and receive a credit subject to the same provisions provided for
- 27 a new business or a new business location under this section except:
- 28 a. The expansion must be estimated by the department of commerce, with
- 29 consideration of the estimates provided by the applicant, to result in an increase
- 30 in taxable sales of the business or of the businesses that are expected to occupy
- 31 the expanding retail location of twenty-five percent or more within three years;

- 1 b. If the expansion is of a retail location, the investment in the expansion must be an
2 amount equal to or in excess of twenty-five percent of the current true and full
3 value of the commercial portion of the existing structure; and
4 c. The credit for an expanding existing business or existing retail location is limited
5 to not more than forty percent of the initial or estimated investment in the
6 expansion.
- 7 10. Upon certification by the department of commerce that the credit or any portion of the
8 credit is revoked, the amount certified becomes a tax obligation of the taxpayer that
9 claimed the credit, to be assessed and collected as provided under this chapter,
10 notwithstanding the time limitations in section 57-38-38.
- 11 11. A partnership, subchapter S corporation, limited partnership, limited liability company,
12 or any other passthrough entity entitled to the credit under this section must be
13 considered to be the taxpayer for purposes of this section, and the amount of the
14 credit allowed must be determined at the passthrough entity level. The amount of the
15 total credit determined at the entity level must be passed through to the partners,
16 shareholders, or members in proportion to their respective interests in the passthrough
17 entity.

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

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

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