

Introduced by

Senators Luick, Klein, Wanzek

Representatives Brandenburg, Wall, Williams

1 A BILL for an Act to create and enact a new section to chapter 57-38 and subsection 10 to
2 section 57-38.6-03 of the North Dakota Century Code, relating to the passthrough of the new
3 and expanding business exemption and the agricultural business investment tax credit to
4 patrons of farmers' cooperatives; to amend and reenact subdivision c of subsection 7 of section
5 57-38-30.3 and section 57-38.6-01 of the North Dakota Century Code, relating to the
6 passthrough of the agricultural business investment tax credit to patrons of farmers'
7 cooperatives; and to provide an effective date.

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

9 **SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created
10 and enacted as follows:

11 **New and expanding business exemption - Farmers' cooperative.**

- 12 1. A farmers' cooperative as described in section 199(d)(3)(F) of the Internal Revenue
13 Code [26 U.S.C. 199(d)(3)(F)] that receives an income tax exemption for a new or
14 expanding business under chapter 40-57.1 may elect to pass the exemption through
15 to its patrons. The patrons may be allowed to exclude the income attributable to the
16 project as otherwise provided by this chapter. If an election is made by the cooperative
17 to pass the exemption through to the cooperative's patrons, the election:
- 18 a. Is irrevocable and must be made on the cooperative's timely filed income tax
19 return for the tax year in which the income tax exemption began; and
- 20 b. Applies to the entire duration of the exemption granted under chapter 40-57.1.
- 21 2. If the cooperative elects to pass the exemption through to its patrons:
- 22 a. The amount of income eligible to be exempted for a tax year is equal to the
23 amount of the cooperative's income apportioned to this state under the provisions
24 of this chapter and chapter 57-38.1, plus the patronage dividends and per unit

- 1 retained allocations described in section 1382(b) of the Internal Revenue Code
2 [26 U.S.C. 1382(b)] deducted in determining federal taxable income, that is
3 attributable to the exempt project.
- 4 b. The amount of exemption passed through to each patron for each tax year shall
5 be determined based on the proportionate share of patronage activity as
6 reflected by the written notices of allocation issued by the cooperative for that tax
7 year.
- 8 c. The written notices of allocation issued by the cooperative must identify each
9 patron's allocation of project income separately from the allocation of nonproject
10 income.
- 11 3. Within thirty days of the cooperative issuing the written notice of allocation, the
12 cooperative shall transmit to the tax commissioner, in an electronic format approved by
13 the commissioner, a list of patrons and the allocation of the exemption to each patron.
14 The list must include the patron's name, address, federal identification number, and
15 the amount of exemption allocated to each patron, and any other information that may
16 be required by the tax commissioner.
- 17 4. The patron shall be entitled to claim the exemption in the patron's tax year in which the
18 written notice of allocation in subsection 3 is issued.
- 19 5. Nothing in this section precludes the tax commissioner from auditing the cooperative's
20 computation of the income tax exemption or the patron's income exemption claimed
21 on its tax return.

22 **SECTION 2. AMENDMENT.** Subdivision c of subsection 7 of section 57-38-30.3 of the
23 North Dakota Century Code is amended and reenacted as follows:

- 24 c. Agricultural business investment tax credit under ~~section~~sections 57-38.6-03 and
25 subsection 10 of section 57-38.6-03.

26 **SECTION 3. AMENDMENT.** Section 57-38.6-01 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **57-38.6-01. Definitions.**

29 As used in this chapter, unless the context otherwise requires:

- 30 1. "Agricultural commodity processing facility" means:

- 1 a. A facility that through processing involving the employment of knowledge and
2 labor adds value to an agricultural commodity capable of being raised in this
3 state; or
- 4 b. A livestock feeding, handling, milking, or holding operation that uses as part of its
5 operation a byproduct produced at a biofuels production facility.
- 6 2. "Biofuels production facility" means a corporation, limited liability company,
7 partnership, individual, or association in this state:
- 8 a. Involved in production of diesel fuel containing at least five percent biodiesel or
9 green diesel as defined in section 57-43.2-01;
- 10 b. Involved in the production of corn-based ethanol or cellulose-based ethanol; or
- 11 c. Involved in a soybean or canola crushing facility.
- 12 3. "Director" means the director of the department of commerce division of economic
13 development and finance.
- 14 4. "Qualified business" means a cooperative, corporation, partnership, or limited liability
15 company that:
- 16 a. Is incorporated or organized in this state ~~after December 31, 2000~~, for the
17 primary purpose of being an agricultural commodity processing facility;
- 18 b. Has been certified by the securities commissioner to be in compliance under the
19 securities laws of this state; and
- 20 c. Has an agricultural commodity processing facility, or intends to locate one, in this
21 state.
- 22 5. "Qualified investment" means an investment in cash or an investment of a fee simple
23 interest in real property located in this state. For purposes of this chapter, the definition
24 of real property does not include any personal property that may become a fixture to
25 the real property, as defined by chapter 41-09, which is added to the real property
26 following investment of the real property in the qualified business. For a farmers'
27 cooperative described in section 199(d)(3)(F) of the Internal Revenue Code [26 U.S.C.
28 199(d)(3)(F)], a qualified investment may include the cooperative's capital investment
29 in the certified qualified business.
- 30 6. "Taxpayer" means an individual, estate, trust, corporation, partnership, or limited
31 liability company.

1 **SECTION 4.** Subsection 10 to section 57-38.6-03 of the North Dakota Century Code is
2 created and enacted as follows:

- 3 10. a. A farmers' cooperative as described in section 57-38.6-01 of this Act, that would
4 otherwise be entitled to claim a credit under this chapter, may elect to pass the
5 credit through to its patrons. The patrons shall be allowed to claim the credit as
6 otherwise provided by this chapter. If an election is made by the cooperative to
7 pass the exemption through to the cooperative's patrons, the election:
8 (1) Is irrevocable and must be made on the cooperative's timely filed income
9 tax return for the first year a credit for the certified qualified business is
10 earned; and
11 (2) Applies to all credits earned in the same certified qualified business.
12 b. If the cooperative elects to pass the credit through to its patrons, the amount of
13 the credit passed through to each patron for each tax year shall be determined
14 based on the proportionate share of patronage activity as reflected by the written
15 notices of allocation issued by the cooperative for that tax year.
16 c. Within thirty days of the cooperative issuing the written notice of allocation, the
17 cooperative shall transmit to the tax commissioner, in an electronic format
18 approved by the commissioner, a list of patrons and the allocation of the credit to
19 each patron. The list must include the patron's name, address, federal
20 identification number, and the amount of credit allocated to the patron, and any
21 other information that may be required by the tax commissioner.
22 d. A patron is entitled to claim the credit in the patron's tax year in which the written
23 notice of allocation in subsection b is issued.
24 e. For purposes of applying the limitations in section 57-38.6-03, the patron of the
25 cooperative shall be considered to be the taxpayer.
26 f. Nothing in this section precludes the tax commissioner from auditing the
27 cooperative's computation of the credit or the credit claim on the patron's tax
28 return.

29 **SECTION 5. EFFECTIVE DATE.** This Act is effective for investments made after
30 December 31, 2012.