

# MICROFILM DIVIDER

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SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2081

2007 SENATE FINANCE AND TAXATION

SB 2081

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2081**

Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 15, 2007

Recorder Job Number: # 1062

Committee Clerk Signature

*Sharon Penrow*

Minutes:

**Sen. Urlacher** called the committee to order and opened the hearing on SB 2081.

**Donita Wald** from the Tax Dept. appeared in support with written testimony, a proposed amendment and handout on Agricultural Commodity processing facility investment tax credit program form. (See attached)

**Sen. Anderson**: What is the credit that we are talking about and who are the investors and why this came about?

**Ms. Wald**: this tax program was created to provide an investment or a capital raising tool for agricultural and commodity processing facility to ethanol farms. It originally was limited to investors who were individual tax payers and pass through entities who could then pass through that tax credit to their individual owners. One thing I forgot is by removing, by adding the language clarifying that 10 businesses can be qualified for each year, I forgot to repeal the one that limited it as a life time. 10 year qualification period, so we are proposing to take care of that, it's a small repealer.

**Sen. Anderson**: so it was developed for economic development in ND to encourage people to build these plants.

**Sen. Urlacher**: now when they reach that cap of the numbers that are eligible, do they have to wait until the next biennial then to reapply?

**Ms. Wald**: the way the law is currently, if we meet that 10 cap, no further businesses will qualify for this investment program. We are proposing that that can change to 10 qualified businesses per calendar year.

**Sen. Horne**: do I understand that 5 million 700 thousand dollars plus has been allocated in tax credits to benefit agricultural production in ND?

**Ms. Wald**: yes

**Sen. Triplett**: you mentioned to date that there is only 4 businesses that have qualified, can you tell us who these are?

**Ms. Wald**: I cannot tell you that because we are bound by confidentiality but Mr. Lucy from the Commerce Dept. can.

**Sen. Cook**: the amount of the credit you wish the tax payers entitled is 30%, that's 30% per year or is that 30%, if you invest 100,000, the credit is limited to \$30,000 in one calendar year.

**Ms. Wald**: Yes but there is a lifetime investment maximum of \$50,000. A lifetime max of \$250,000 in credits. And \$50,000 per year.

**Sen. Cook**: you make a 100,000 investment, over the course of all these years, you get to take the tax credits, its not going to total the tax credits that your allowed is not going to total more than \$30,000.

**Ms. Wald**: that's correct!

**Sen. Cook**: when was the total of 10 put on? Last session?

**Ms. Wald**: last session. The reason for that was that a number of businesses were transferred from the seed capital to this program was a way that I think they thought would limit fiscal effect.

**Sen. Anderson:** the limited fiscal impact, you say with 10, but we never had that money before. Why is it limited?

**Ms. Wald:** the business never had the money, the investor did.

**Paul Lucy:** from the Dept. of Commerce appeared to answer Sen. Triplett's question from earlier. There was a number of projects that agricultural commodities \_\_\_\_\_ that received a tax credit \_\_\_\_\_ tax credit in the past that were transferred into agricultural commodities tax credit. Those projects were grandfathered in from what I understand are not a part of the, do not get included in the 10.

**Joel Gilbertson:** on behalf of the Grain Growers Assoc. and the ND Ethanol Producers Assoc. appeared in support and submitted a proposed amendment. (See attached) What this amendment does is allows you to carry over to 10 years.

**Sen. Cook:** It sounds to me from what I hear that ethanol plants are pretty profitable right now, if so, do we need to question whether or not pay taxes \_\_\_\_\_ needs to be applied as a carrot to get ethanol plants or is there enough financial incentive for them to rebuild on their own?

**Mr. Gilbertson:** I can tell you that groups that are interested in getting ethanol plants that are working now on getting ethanol plants started that is changing quickly. The costs are jumping dramatically, in a year from now it could be totally different.

**Sen. Urlacher:** what has driven that cost?

**Mr. Gilbertson:** primarily there are a number of things, as I understand it Fagan Co. is the primary contractor for these plants and they are way behind and their cost of the products, equipment has sky rocketed.

**Sen. Cook:** is there a point where we could have too many ethanol plants built and that supply and demand and profitability of these plants could go down too?

**Mr. Gilbertson:** It could certainly happen but not anywhere close to that happening yet and what is happening is the popularity of building ethanol plants now has also created an economic incentive as this moves forward.

**Sen. Anderson:** my personal feeling is that we're behind, we're catching up but we need the encouragement.

**Sen. Tollefson:** It's right as long as the market is there for it. If the markets changes and it does change quickly, I would think the investors are wondering if this is going to be good.

**Sen. Cook:** You said that there were 7 that were grandfathered in and then you referenced two other projects and you called one of them Natural Beef, that doesn't sound like an ethanol plant to me

**Paul Lucy:** actually they are available to agricultural commodity processing facility and so it would include any kind of project that is processing in ND \_\_\_\_\_. There is ethanol plant.

**Sen. Oehlke:** If it does anything negatively impact something down the line is there anything in this where those folks could apply for similar credits? Ethanol is more corrosive than regular fuels are, it may be necessary for people who have gas stations and pump ethanol to upgrade and change their equipment so that it doesn't corrode or deteriorate as quickly as if they didn't make those changes. So the impact of ethanol down the line will force some of those changes, what I'm wondering is if there is any way for those folks to get similar benefit as the initial plants?

**Paul Lucy:** on the surface I wouldn't necessarily see a company like that qualifying for any of these seed capital investment tax credits.

**Sen. Cook:** made a motion to **move the amendments by the Tax Dept.**, seconded by Sen.

Triplett. Voice vote: 7-0-0, amendments adopted.

**Sen. Triplett**: made a motion to **move the amendments by Joel Gilbertson**, seconded by

Sen. Horne. Voice vote: 7-0-0, amendments adopted.

Committee will wait to act the bill until a rough draft can be drawn up to see what the bill will look like with the amendments.

Meeting adjourned.

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2081

Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 16, 2007

Recorder Job Number: # 1164

Committee Clerk Signature

*Sharon Kenyon*

Minutes:

**Sen. Urlacher** called the committee to order to see if further action could be taken on SB 2081.

**Donita Wald**: from the Tax Dept. appeared with the mock bill that contains the amendments that the committee adopted earlier. (See attached)

**Sen. Horne**: made a **MOTION of DO PASS AS AMENDED**, seconded by Sen. Anderson. 7-0-0. Sen. Oehlke will carry the bill.

Meeting adjourned.



**FISCAL NOTE**  
**Requested by Legislative Council**  
03/05/2007

Amendment to: Engrossed  
SB 2081

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2081 with House Amendments simplifies some of the procedures for certification of qualified businesses and calculations of the agricultural investment tax credit.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The provisions of Engrossed SB 2081 with House Amendments may accelerate the claiming of certain tax credits, but will not change the total amount of credits available to a taxpayer. The number of qualifying businesses may grow to ten per year, under the provisions of the bill. How many new businesses may become qualified and any associated tax credits are unknown.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	03/06/2007

# FISCAL NOTE

Requested by Legislative Council

01/18/2007

Amendment to: SB 2081

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2081 simplifies some of the procedures for certification of qualified businesses and calculations of the agricultural investment tax credit.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The provisions of Engrossed SB 2081 may accelerate the claiming of certain tax credits, but will not change the total amount of credits available to a taxpayer. The number of qualifying businesses may grow to ten per year, under the provisions of the bill. How many new businesses may become qualified and any associated tax credits are unknown.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/19/2007

**FISCAL NOTE**  
 Requested by Legislative Council  
 12/27/2006

Bill/Resolution No.: SB 2081

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2081 simplifies some of the procedures for certification of qualified businesses and calculations of the agricultural investment tax credit.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The provisions of SB 2081 may accelerate the claiming of certain tax credits, but will not change the total amount of credits available to a taxpayer. The number of qualifying businesses may grow to ten per year, under the provisions of the bill. How many new businesses may become qualified, and any associated tax credits are unknown.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/12/2007

PROPOSED AMENDMENTS TO SENATE BILL NO. 2081

Page 1, line 3, after the semicolon insert "to repeal subdivision d of subsection 3 of section 57-38.6-01 of the North Dakota Century Code, relating to the number of businesses eligible for certification;"

Page 3, line 1, overstrike "five" and insert immediately thereafter" ten"

Page 4, after line 2, insert:

**SECTION 3. REPEAL.** Subdivision d of subsection 3 of section 57-38.6-01 of the North Dakota Century Code is repealed.

Page 4, line 3, replace "3" with "4"

Re-number accordingly



**REPORT OF STANDING COMMITTEE**

**SB 2081: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2081 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 3 of section 57-38.6-01 and"

Page 1, line 2, after "to" insert "the definition of and"

Page 1, after line 4, insert:

**"SECTION 1. AMENDMENT.** Subsection 3 of section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:
  - a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of processing and marketing agricultural commodities capable of being raised in this state;
  - b. Has been certified by the securities commissioner to be in compliance under the securities laws of this state; and
  - c. Has an agricultural commodity processing facility, or intends to locate one, in this state; ~~and~~
  - d. ~~is among the first ten businesses that meets the requirements of this subsection, but not a business that was previously certified as a qualified business under chapter 57-38.5."~~

Page 3, line 1, overstrike "five" and insert immediately thereafter "ten"

Renumber accordingly

2007 HOUSE FINANCE AND TAXATION

SB 2081

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2081 A

## House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 26, 2007

Recorder Job Number: 3800

Committee Clerk Signature

*Mickie Schmidt*

Minutes:

Chairman Belter opened the hearing on SB 2081 and asked the clerk to take the roll; everyone was present except Rep.'s Brandenburg and Kelsh. He asked for testimony in support.

**Donnita Wald, Legal Counsel for the Tax Dept.: (See Attachment #1)**

**Chairman Belter:** changing from the 5 to the 10 year, what was the reason for that?

**Donnita Wald:** The amount of credit because of those 50% limitations and you couldn't take more than the 50% of the tax credit and you couldn't take more than 50% of your tax dollar authority, so what happened was people weren't able to use the full credit within a 5 year period so they wanted to extend that.

**Chairman Belter:** Because they didn't have enough income?

**Donnita Wald:** Yes, or tax liability.

**Wade Moser, ND Stockman's Association:** We're here to support this Bill and I have some proposed amendments for you. **(See Attachment #2)** We've also worked with the Commerce Dept. and the Tax Dept. and the fact that Donnita was very helpful in drafting the language that we're looking at. There are two amendments. The clarifications that we would like to have and the first one has to do with what a qualified investment is. In most cases we have real estate that is being considered to be used as part of the investment and it's really unclear at this



point. It doesn't state in the law that that's allowable in visiting with the Tax Dept. and Commerce, they didn't seem to have a problem in doing that, so actually real estate is being considered as a qualified investment. The second part of it in section 3, on page 4 of the engrossed Bill, we're just adding the language to item number 7, the last part, and then 8 would have to be renumbered on the Bill. This gives further clarification and I believe we'll probably need to add some additional language to help clarify it further.

**Chairman Belter:** So what you want with these amendments then is that there has to be an Ag business on that land?

**Wade Moser:** Yes, that's correct. Either the land or a building. In the case that we're looking at, it's the ND National Beef has got an opportunity to get a building adjacent to the building that's already purchased, they want to sell and actually what's going to happen is, they would like to take stock in the company in exchange for the building. We agree that it needs to be an appraised building and qualify in that way, to make sure that it's a fair value. So an appraisal is going to be required and then they would be able to take stock in the Company and then be eligible for the Investment Tax Credit.

**Deana Wiese, Administrator of the ND Ag Coalition: (See Attachment #3)**

**Chairman Belter:** Is there any other testimony in support? Any opposition?

**Donnita Wald:** We did help assist in the drafting of these. When the issue first came to us we believe that the statute did not intend for contributions of real property or any other kinds of property to be eligible for the tax enhancement. We drafted these so that they would be tight enough so other kinds of property wouldn't be involved. So we believe what we've done here is draft something that's nice and tight and applies only to real property and buildings. The amendments also protect the shareholders. In order for us to properly administer this tax credit

we would like to add some language that requires that they provide a copy of the appraisal and copies of the accompanying form

**Chairman Belter:** Do you have language prepared?

**Donnita Wald:** No.

**Vice Chairman Drovdal:** I have to admit that I don't understand this too well, but we're talking about a corporation in here owning an Ag processor, that appropriation could be an out of State corporation. Lands donated to them, wouldn't that be in violation of our ND laws about non Ag owned by a corporation other than the family farm?

**Donnita Wald:** I don't know the answer to that.

**Chairman Belter:** Any other questions? Any neutral testimony? If not, we'll close the hearing on SB 2081.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2081B

House Finance & Taxation Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3875

Committee Clerk Signature

*N. Penrose*

Minutes:

**Rep. Belter:** We will take a look at SB 2081. We are waiting for amendments.

**Rep. Pinkerton:** Can we discuss 2081. As far as I can tell, there is no cap on this bill.

**Rep. Belter:** This is the Agribusiness investment credit bill. The bill that we heard today.

There is a cap of \$250,000. It would be the same as the bill we had on the Floor last week.

**Rep. Pinkerton:** No taxpayer can take more than \$250,000.

**Rep. Belter:** But a taxpayer could be the corporation.

**Rep. Pinkerton:** It could be multiple corporations getting it?

**Rep. Belter:** But only one \$250,000 tax limit on each qualified...

**Rep. Pinkerton:** Is it each qualifying investment...

**Rep. Belter:** Page 2, the director shall certify whether a business has requested to become a qualified business and meets the requirement, so \$250,000 per business, not per investor; if you only have one investor, he'd get all of it.

**Rep. Froseth:** Per business not investor.

**Rep. Pinkerton:** On page 3, line 7-12, doesn't that pertain to the maximum annual credit a taxpayer may obtain under this section is \$50,000 and no more than \$250,000. But that's not the business that's each individual taxpayer.

**Rep. Belter:** Correct.

**Rep. Pinkerton:** So if you had multiple corporations that went together on this...

**Rep. Grande:** It talks about here, it's a taxpayer qualified investment of that business, and it's a whole different section...

**Rep. Belter:** What is your concern again.

**Rep. Pinkerton:** Like these ethanol plants, if you had multiple investors and corporations where the limit is \$250,000 per investor, as far as I can see there is no limit as far as the business itself. An ethanol plant that cost \$100 million dollars, if you had corporate investors, (can't hear).

**Rep. Belter:** Maybe it isn't feasible. The amount, look on line 1, the amount of the credits which a taxpayer is entitled is 30% of the amount invested by the taxpayer in a qualified business during the taxable year. I am assuming the corporation is eligible for the tax credit.

**Rep. Pinkerton:** A corporation that would be part of the business and energy would be eligible for up to \$2 million dollars in tax credit.

**Rep. Belter:** Yes.

**Rep. Pinkerton:** So if you had multiple partnerships, they could all qualify (can't hear).

**Rep. Grande:** I'm trying to figure out the fiscal note, and I realize it's kind of one of those vague things, how do you know how many people participate, if you've got a lot of people that were to invest in this, you've got all those tax credits for them to come out that are not going to be part of this income. I would think that there should be some kind of a number for us to work off of. There are a lot of unknowns here.

**Rep. Drovdal:** On page 3, section 5, it talks about an investment may be out of a retirement plan and will be deemed to be a retirement plan for purposes... will somebody walk me

through how that would work. I don't understand retirement plans, or why they would want it as part of a retirement plan or consequences of that particular situation.

**Rep. Belter:** Well, they are just saying that if you wanted to take your retirement plan and put it into one of those investments that would be allowed.

**Rep. Drovdal:** So if the retirement plan is taxable....

**Rep. Belter:** Some are pretax and some aren't.

**Rep. Owens:** That doesn't matter since the tax credit is against any tax liability, so it doesn't have to be against profits from your retirement. If you get the tax credit because you have a qualifying thing that you self-direct and you want to invest, in order to get the maximum amount here, you'd have to invest \$833,000+ or \$250,000 to get 30% and then you turn around and you can only do \$50,000 a year in your tax credit. In order for you to get the full tax credit, your tax liability has to be \$50,000 because if your tax liability is only \$10,000, you only get to deduct \$10,000. So I don't think we ought to get hung up on the \$50,000 or \$250,000 because as an individual, the only place this might come in is with the corporations.

**Rep. Grande:** We don't have a lot of individuals that are able to take that.

**Rep. Froseth:** The Corporation is still only one entity.

**Rep. Belter:** Right.

**Rep. Pinkerton:** The business entity isn't limited at all, it is only the individual that gets a portion of the corporation, such as an S-Corp. So if multiple partners that go into these things...

**Rep. Belter:** If it is a straight corporation, it's going to be the one that's eligible for the tax credit, if it's a subchapter S, then all the individual investors could be eligible.

**Rep. Pinkerton:** Limited liability...

**Rep. Froseth:** In the Century Code it reads as follows: "In any taxable year, a taxpayer may claim no more than 50%", then it defines a taxpayer in the previous section, a taxpayer means an individual, estate, trust corporation, partnership or limited liability company.

**Rep. Pinkerton:** So any business entity can be a taxpayer there, and there is a limit to what individual taxpayer can take a tax credit, but there's no limit on the number of individuals.

**Rep. Belter:** No.

**Rep. Pinkerton:** There are two bills that are similar, this one and the one that we went through the other day, is very similar. The one from the other day does have limits on it, on how many dollars, like \$5 million dollars per year. This bill has no limits.

**Rep. Belter:** No, I think the reasoning behind no limits, is because I don't think there is a great fear that there is going to be a huge amount of companies started that qualify for the Agbusiness investment. It isn't like...I mean, sure we have some of these ethanol plants that are coming online, which we want to come online, but there probably isn't that much concern that there are going to be so many and that it's going to break the state. The spin-off from all of those being started is going to far outweigh the tax law. That's why the legislature has been willing to take the risk.

**Rep. Headland:** If I understand you correctly, doesn't the fiscal note say that the number of businesses under this bill, can only grow to 10 in a year.

**Rep. Belter:** It's in Century Code, that's right. There's your limiter.

**Rep. Pinkerton:** Even if one of the businesses that you had was like a \$3 million dollar tax credit being used, (can't hear). The tax return is confidential, the Dept of Commerce and Tax Department, the Commerce department can't look at the numbers. How do we make sure that it does what it is supposed to (can't hear).

**Rep. Headland:** I can't dispute that. These investments are risky. Honestly, I've lost every penny I've ever invested in one of these. I don't people are going to do this.

**Rep. Belter:** Of course, it doesn't make any difference whether you make money or not on that investment as long as..

**Rep. Headland:** But people aren't going to invest just so that they get a tax credit.

**Rep. Belter:** No.

**Rep. Grande:** Did you discuss the amendment while I was out.

**Rep. Belter:** No we didn't discuss any amendments, we're waiting for more amendments. Donnita is to be bringing more amendments. We will take this up later.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2081C

House Finance & Taxation Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3879

Committee Clerk Signature

*R. Penrose*

Minutes:

**Rep. Belter:** We will take a look at the amendments.

**Donnita Wald, Office of State Tax Commissioner:** This is a combination of what Wade Moser presented and what we asked to be placed on the amendments. The first amendment, a new subsection 4 was in Mr. Moser's amendment. So now it defines a qualified investment as a cash investment or a contribution for real property. There's no change from what he proposed. The rest of the amendment, on page 3, line 10, real property that qualifies as an investment must be used in, and be an integral part of the qualified business's as a North Dakota business operations. We want to make sure that the contributing property in ND, not a building or property in MN is a company's headquarters, so that is what that is in there for. The new subsection 8 puts on some additional clarification limitations on investments of real property. If the investment is a contribution of real property, subsection (a) the value of the contribution cannot exceed the appraised value as established by a licensed or certified appraiser; (b) the value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3; (c) is the part that we requested that requires the qualified business receiving this real property contribution to provide documentation to us, that being a copy of the appraised valuation, a copy of the



governing body's resolution approving the value of the contribution and a copy of the statement of full consideration that must be filed before instruments relating to real property can be registered with the Register of Deeds. All that must be provided to us within 30 days after it is filed with the Register of Deeds. The new subsection (d) and this is something I didn't address this morning, but thought of it as I was drafting this up, we have to clarify when that taxpayer is giving the property would be able to take that tax credit. Would it be when they provided the appraisal to the company, or when the governing body approved the appraisal and decided to accept the property as a contribution, or when the property was fully transferred to the business. So subsection (d) is saying that the taxpayer can take that tax credit in the taxable year in which the instrument transferring title is reported to the Register of Deeds. We think that is consistent with what we do with cash investments. We don't allow cash investments that are in escrow to be qualifying contribution so we want to make sure that everything's been done before that taxpayer can take a tax credit for that property contribution. I did show them to Woody Barris, who has also been involved, and he had no problem with them. Mr. Moser has not seen them.

**Rep. Belter:** Now if the amount of the property was more than this, this could be taken over several years, this tax credit.

**Rep. Owens:** That was one of my questions about carry forward, because this doesn't say anything about carry forward, and it doesn't say anything about limits to the tax liability in the taxable year.

**Donnita Wald:** Once the value of the property has been determined, that value is what you determine the credit on, and all the other limitations, and how that applies.

**Rep. Grande:** Is that where the carry over is going to be a 10 year taxable, you have 10 taxable years.

**Donnita Wald:** Yes.

**Rep. Pinkerton:** Can you show me those figures, if someone had taken that \$3.5 million dollars in tax credit, is that correct.

**Donnita Wald:** In 2005, there were \$3 million dollars or \$3.5 million dollars that was allowable credit, that's how many credits could have been taken. We don't know how many actually were used.

**Rep. Pinkerton:** I guess that's the problem that I have with this, this is allowable, but you don't know how much was taken, nor does the Dept of Commerce (Can't hear).

**Donnita Wald:** We can share that data I showed you this morning in the agribusiness but not by individuals (can't hear). That was the largest year since the program had started.

**Rep. Pinkerton:** There have been a lot of problems, once the population, citizens of mine, don't like that there wasn't accountability, (can't hear). I'm not saying I'm against this, but I think there is a degree of risk. (can't hear). There's a lot of trust that has to exist between Commerce and Tax.

**Rep. Belter:** I don't see the degree of risk, as how many are going to take it and how much it is going to cost the state.

**Rep. Pinkerton:** It is my concern that someone does take it, and gets into a scandal.

**Rep. Belter:** That's when they go to jail.

**Rep. Headland:** I move the amendments.

**Rep. Owens:** Second.

**Rep. Froseth:** I don't know if it makes any difference, in the amendments where she has page 3, line 10, it should say page 4, lines 10.

**Donnita Wald:** You're right, I'm sorry.

**Rep. Belter:** What was the correction.

**Rep. Froseth:** On the amendment it says page 3, line 10, it should read page 4, line 10.

**Rep. Grande:** On page 4, line 11 also.

**Rep. Belter:** Voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes.

**Rep. Drovdal:** I still have that question that I need answered. When I read this, it really doesn't define what type of real estate could be donated to this corporation, if its land classified as agricultural, it's against our law. I'm no lawyer, I don't understand this. We just had in the paper this week, something about that.

**Rep. Belter:** In order for the land to be considered part of the qualified investment, that land would have to be part of a construction site, or not, what do you...

**Donnita Wald:** I could see Ag land that's being transferred to a corporation, but in that instance, it's not necessarily dealing with farm, it can be for processing and agricultural products. It changes the classification from Ag. property to commercial property. I don't see how..

**Rep. Drovdal:** So we're only talking about real estate that's going to be actually part of the processing facility, not something out there that they can raise grain on to feed them.

**Donnita Wald:** Yes, as we tried to tie that down with the language on page 4, after line 20 (?), a qualified business isn't necessarily land that grows a crop (can't hear). Any donation like that would not be illegal.

**Rep. Belter:** What are the committee's wishes. We have the bill before us as amended.

**Rep. Grande:** I move a Do Pass as amended.

**Rep. Owens:** Second.

9 YES 0 NO 5 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Schmidt

#1

2:15 pm

PROPOSED AMENDMENTS TO SENATE BILL NO. 2081

Page 1, after line 19, insert:

- "4. "Qualified investment" means an investment in cash or an investment of a fee simple interest in real property located in North Dakota. For purposes of this chapter, the definition of real property shall not include any personal property which may become a fixture to the real property, as defined by chapter 41-09, that is added to the real property following investment of the real property in the qualified business."

Page 3, line 10, after the period insert "Real property that qualifies as an investment must be used in, and be an integral part of the qualified business's North Dakota business operations.

- 8. If the investment is a contribution of real property:
  - a. The value of the contribution must not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04 to 43-23.3-12.
  - b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.
  - c. The qualified business receiving the contribution of real property must provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within 30 days after the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
  - d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19."

Page 3, line 11, replace "8." with "9."

Renumber accordingly

Date: 2-26  
Roll Call Vote #: 2081-C

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House \_\_\_\_\_ Finance & Tax \_\_\_\_\_ Committee

Check here for Conference Committee

Legislative Council Amendment  
Number \_\_\_\_\_

Action Taken Do Pass AS Amended

Motion Made By Rep. Grande Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich		
Vice Chairman Drovdal	✓		Rep. Kelsh		
Rep. Brandenburg			Rep. Pinkerton	✓	
Rep. Froseth	✓		Rep. Schmidt	✓	
Rep. Grande	✓		Rep. Vig		
Rep. Headland	✓				
Rep. Owens	✓				
Rep. Weiler					
Rep. Wrangham	✓				

Total (Yes) 9 No 0

Absent 5

Floor Assignment Rep. Schmidt

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

SB 2081, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 0 NAYS, 5 ABSENT AND NOT VOTING). Engrossed SB 2081 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection 3 of section 57-38.6-01 and" and after "sections" insert "57-38.6-01,"

Page 1, line 2, after "57-38.6-02" insert a comma and replace "the definition and" with "definitions and to the"

Page 1, replace lines 6 through 19 with:

**"SECTION 1. AMENDMENT.** Section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Agricultural commodity processing facility" means a facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state.
2. "Director" means the director of the department of commerce division of economic development and finance.
3. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:
  - a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of processing and marketing agricultural commodities capable of being raised in this state;
  - b. Has been certified by the securities commissioner to be in compliance under the securities laws of this state; and
  - c. Has an agricultural commodity processing facility, or intends to locate one, in this state; ~~and~~
  - d. ~~Is among the first ten businesses that meets the requirements of this subsection, but not a business that was previously certified as a qualified business under chapter 57-38.5.~~
4. "Qualified investment" means an investment in cash or an investment of a fee simple interest in real property located in this state. For purposes of this chapter, the definition of real property does not include any personal property that may become a fixture to the real property, as defined by chapter 41-09, which is added to the real property following investment of the real property in the qualified business.
5. "Taxpayer" means an individual, estate, trust, corporation, partnership, or limited liability company."

Page 4, line 10, after the period insert "Real property that qualifies as an investment must be used in, and be an integral part of, the qualified business's North Dakota business operations."

8. If the investment is a contribution of real property:
- a. The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.
  - b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.
  - c. The qualified business receiving the contribution of real property shall provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
  - d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19."

Page 4, line 11, replace "8." with "9."

Renumber accordingly

2007 TESTIMONY

SB 2081



**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER  
BEFORE THE  
SENATE FINANCE AND TAXATION COMMITTEE**

**SENATE BILL 2081**

**January 15, 2007**

Chairman Urlacher, members of the Senate Finance and Taxation Committee, I am Donnita Wald, Legal Counsel for the Office of State Tax Commissioner and I am here today on behalf of the Commissioner to testify in support of Senate Bill 2081.

**BACKGROUND**

This bill, relating to the Agriculture Commodity Processing Facility Investment Tax Credit program, and its companion bill, Senate Bill 2084 (relating to the Seed Capital Investment Tax Credit program) were introduced by the Tax Commissioner to address administrative issues encountered by our Department and the Department of Commerce since the inception of these two programs. The Tax Department consulted with the Commerce Department during the drafting of this bill and incorporated changes to clarify the qualified business certification requirements that are administered by the Commerce Department.

**REASONS FOR PROPOSED CHANGES**

The amendments are made for the following reasons:

- (1) The multiple layers of limitations in the calculation of the tax credit, combined with the present statutory language, have been a source of confusion for businesses certified under the program and the investing taxpayers, and have prompted challenges to the Tax Department's interpretation and application of the tax credit statute.
- (2) Clearer and stronger language is needed with respect to the certification of businesses and its importance to the eligibility of the credit, including a prescribed limit on the amount of time a businesses maintains its qualified status under the program.
- (3) Potential investment funds are to be found in retirement plans, such as IRA's and deferred compensation plans. Investors in these plans would like to direct some of those funds to qualified businesses under the program. The statute does not define a qualified investment and so it has not been clear whether or not the investment of funds from a retirement plan would qualify a taxpayer for the credit.
- (4) Current law sets a ceiling on the program by limiting the number of new businesses that may be certified to the first 10 businesses certified after 2004.

**EXPLANATION OF THE BILL**

**Section 1- Certification of Qualified Businesses.** This section of the bill amends the statute relating to the certification of businesses for qualification in the Agriculture Commodity Processing Facility Investment Tax Program.

The first change to the certification process is on found on page 1, lines 17-20. Since inception of the program, the Department of Commerce administratively certified a business for a set period of time. Because many businesses are unable to meet its capitalization needs before the certification expiration date, they have sought to be "recertified" under the program. The proposed recertification process limits a qualified business to one recertification and requires that a request for recertification must be made before the original certification period ends.

New language also requires the issuance of a certification letter that clearly sets out the beginning and ending dates of the certification period, and limits the certification period to no more than 4 years. We believe this new language, in conjunction with the new language clarifying that an investment must be made on or after the effective date set out in the certification letter (page 3, lines 16-17) will eliminate any confusion on the part of qualified businesses and potential investors as to whether an investment will qualify for the tax credit.

Lines 22-24 on page 1, limits the number of businesses that may be certified under this program to 10 each calendar year, as opposed to a lifetime limit of 10 businesses. This ceiling will soon be reached, shutting down what has been a good program for incenting new investment in the state. The repeal of the current limitation was inadvertently omitted from this bill and therefore, we are offering an amendment that will repeal this section of the law.

**Section 2 - Eligibility for and Calculation of the Tax Credit.** Section 2 of the bill amends N.D.C.C. § 57-38.6-03, which contains the tax credit calculation and defines who is eligible for the credit. These changes simplify the tax credit calculation by removing the multiple layers of limitations on the tax credit and revising the current language.

The current tax credit is 30% of the amount invested by the taxpayer (page 2, lines 11 and 18-19), with a maximum annual credit of \$50,000 (which equals

\$166,666.67 of investment dollars) (page 2, lines 13-17 and 24-28). These aspects of the tax credit are not being changed, but are being placed in separate subsections.

The limitations we propose be removed are found on lines 20-24. These limitations restrict the amount of credit an investor can claim each year to 50% of the available credit. This amount is further limited in that it cannot exceed 50% of the investor's income tax liability. In the past few years, these limits have raised many questions from both investors and qualified businesses, particularly with respect to the calculation of the amount to be used to calculate the unused credit carryforward. Removal of these tax credit limits does not change the total amount of the credit to which the taxpayer is entitled, only its timing. We believe the proposed changes will remove any uncertainty that exists and improve program administration.

The final change is the creation of subsection 5 (page 3, line 12-15), which allows investments made by retirement plans to be eligible for the tax credit if a separate account is maintained for the plan participant and the participant directly controls investment of the account's assets.

#### **CONCLUSION**

Many of these same changes are being proposed for the Seed Capital Investment Tax Credit Program in Senate Bill 2084. The Office of State Tax Commissioner believes the changes we propose today will improve the Ag Commodity Processing Facility Tax Credit by providing certainty to businesses seeking investors and to those potential investors, as well as improving administration of the program. The Tax Commissioner respectfully requests that you give favorable consideration to Senate Bill 2081.

PROPOSED AMENDMENTS TO SENATE BILL 2081

Page 1, line 3 after the semicolon insert "to repeal subdivision d of subsection 3 of section 57-38.6-01 of the North Dakota Century Code, relating to the number of businesses eligible for certification;"

Page 4, after line 2, insert

**"SECTION 3. REPEAL.** Subdivision d of subsection 3 of section 57-38.6-01 of the North Dakota Century Code is repealed."

Re-number accordingly

# Agricultural commodity processing facility investment tax credit program

Reflects changes made by the 2005 North Dakota Legislature

## Law provision

## Summary

### Overview of program

The purpose of this program is provide an incentive to invest in a qualified business in North Dakota that adds value to an agricultural commodity grown in North Dakota. The incentive is a nonrefundable income tax credit (dollar-for-dollar offset against the tax liability) for making an investment in the qualified business.

To participate in this program, a business must apply to the North Dakota Commerce Department's Division of Economic Development and Finance to be certified as a qualified business. The entire amount of the investment for which a tax credit is allowed must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital.

### Legislative history

Location in Code: N.D.C.C. Chapter 57-38.6.  
 Created: 2001 (Session Law 2001, chapter 527).  
 Amended: 2005 (Session Law 2005, chapter 568).

### Definition of qualified business

A "qualified business" is a business that:

- Is a cooperative, limited liability company, corporation, or partnership;
- Is incorporated or organized in North Dakota after December 31, 2000, for the primary purpose of processing and marketing agricultural commodities capable of being raised in North Dakota;
- Has been certified by the North Dakota Securities Commissioner to be in compliance with North Dakota's securities laws;
- Has an agricultural commodity processing facility, or intends to locate one, in North Dakota that adds value to an agricultural commodity grown in North Dakota; and,
- Is one of the first ten businesses that meet all of the above requirements, as certified by the ND Commerce Department's Division of Economic Development and Finance.<sup>1</sup>

### Certification

A business must apply to and be certified by the ND Commerce Department's Division of Economic Development and Finance as meeting the qualifications of a "qualified business."<sup>2</sup>

### Use of investment monies by qualified business

The investment monies must be expended for plant, equipment, research and development, marketing and sales activity, or working capital.

<sup>1</sup> An agricultural commodity processing facility previously certified for purposes of the seed capital investment tax credit program under N.D.C.C. ch. 57-38.5 (but now excluded from that program beginning January 1, 2005) that is deemed certified for the agricultural commodity processing facility investment tax credit program under N.D.C.C. ch. 57-38.6 is not considered when counting the first ten businesses.

<sup>2</sup> An agricultural commodity processing facility previously certified for purposes of the seed capital investment tax credit program under N.D.C.C. ch. 57-38.5 (but now excluded from that program beginning January 1, 2005) that is deemed certified for the agricultural commodity processing facility investment tax credit program under N.D.C.C. ch. 57-38.6 does not have to reapply for certification under the latter program.

**Eligible taxpayers**

- Individual (on Form ND-1 or Form ND-2)
- Estate (on Form 38, Schedule 1 or 2)
- Trust (on Form 38, Schedule 1 or 2)
- Partnership (see Note)
- Regular ("C") corporation (on Form 40)
- S corporation (see Note)
- Limited liability company (see Note)

*Note: In the case of a partnership, S corporation, or limited liability company treated like a partnership, the credit is determined at the passthrough entity level and passed through to the partners, shareholders, or members in proportion to their ownership interests.*

**Rate of tax credit**

30%

**Maximum tax credit per taxpayer per tax year**

\$50,000

*Note: The equivalent investment amount is \$166,666.67 (\$50,000 divided by 30%).*

**Cumulative limit on amount of tax credits allowed per taxpayer for all tax years**

\$250,000

*Note: The equivalent investment amount is \$833,333.33 (\$250,000 divided by 30%).*

**Other limitations/conditions on tax credit**

- In any tax year, a taxpayer may claim no more than one-half of the total allowable tax credit attributable to the investments made in a given tax year.
- In any tax year, a taxpayer may claim a credit amount that is no more than one-half of the tax liability (before credits) for the tax year.
- Investment must remain in qualified business for at least 3 years.

**Carryover of unused tax credit**

5-year carryover

**Lifetime limit on amount of eligible investments a qualified business may receive**

Not applicable.

**Limit on amount of tax credits allowed under the program for all tax years**

Not applicable.

**Administrative provisions**

- Within 30 days after receiving an investment, the qualified business must complete an investment reporting form prescribed by the Office of State Tax Commissioner. A copy of the form must be filed with the Office of State Tax Commissioner and the Commerce Department's Division of Economic Development and Finance.
- If the Office of State Tax Commissioner determines that either the taxpayer or the qualified business has misrepresented anything in the application for certification, or fails to satisfy any condition of the law, the credit will be disallowed and must be paid back with applicable penalty and interest.

## Agricultural Commodity Processing Facility Investment Tax Credit Program— Summary of investments and credits for all years

Prepared by: Joseph J. Becker, North Dakota Office of State Tax Commissioner  
January 11, 2007

Calendar year	Number of investments	Number of investors	Total amount invested <sup>1</sup>	Eligible amount of investment	Allowable credits
2001	318	316	\$ 3,086,992.00	\$ 2,744,804.00	\$ 823,441.20
2002	81	78	764,295.00	664,295.00	199,288.50
2003	87	80	429,476.30	405,476.30	121,642.89
2004	73	72	463,150.00	370,650.00	111,195.00
2005	499	448	14,211,771.50	11,161,438.17	3,348,431.45
2006	119	114	6,183,455.00	3,691,787.67	1,107,536.31
<b>Total</b>	<b>1,177</b>	<b>- <sup>2</sup></b>	<b>\$ 25,139,139.80</b>	<b>\$ 19,038,451.14</b>	<b>\$ 5,711,535.35</b>

<sup>1</sup> The investment figures shown only reflect investments reported under the program by the qualified seed capital businesses. Only investments eligible for the tax credit are required to be reported.

<sup>2</sup> Some investors made more than one investment and invested in more than one year.

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2081**

Page 3, line 1, overstrike "five" and insert immediately thereafter "ten"

Renumber accordingly



#1 SB 2081  
2-26-07

**Testimony—  
House Finance and Taxation Committee**

**Engrossed Senate Bill 2081**

February 26, 2007

Prepared by: Donnita Wald, Legal Counsel  
North Dakota Office of State Tax Commissioner  
Phone: 328-2777  
E-mail: dwald@nd.gov

Good morning, Chairman Belter and Members of the Committee:

For the record, my name is Donnita Wald, and I'm here on behalf of the North Dakota Office of State Tax Commissioner (Tax Department) to testify in support of Senate Bill 2081.

**BACKGROUND**

This bill, relating to the Agriculture Commodity Processing Facility Investment Tax Credit program, and its companion bill, Senate Bill 2084 (relating to the Seed Capital Investment Tax Credit program) were introduced by the Tax Commissioner to address administrative issues encountered by our Department and the Department of Commerce since the inception of these two programs. The Tax Department consulted with the Commerce Department during the drafting of this bill and incorporated changes to clarify the qualified business certification requirements that are administered by the Commerce Department.

In addition, the Senate amended the bill to increase the number of years any unused credits can be carried forward – from five to ten years. The Department takes a neutral position with respect to the change in the carryforward provisions.

**REASONS FOR PROPOSED CHANGES**

The amendments are made for the following reasons:

- (1) Clearer and stronger language is needed with respect to the certification of businesses and its importance to the eligibility of the credit, including a prescribed limit on the amount of time a businesses maintains its qualified status under the program.

(2) The multiple layers of limitations in the calculation of the tax credit, combined with the present statutory language, have been a source of confusion for businesses certified under the program and the investing taxpayers, and have prompted challenges to the Tax Department's interpretation and application of the tax credit statute.

(3) Potential investment funds are to be found in retirement plans, such as IRA's and deferred compensation plans. Investors in these plans would like to direct some of those funds to qualified businesses under the program. The statute does not define a qualified investment and so it has not been clear whether or not the investment of funds from a retirement plan would qualify a taxpayer for the credit.

(4) Current law sets a ceiling on the program by limiting the number of new businesses that may be certified to the first 10 businesses certified after 2004.

#### **EXPLANATION OF THE BILL**

**Section 1- Certification of Qualified Businesses.** This section of the bill amends the statute relating to the certification of businesses for qualification in the Agriculture Commodity Processing Facility Investment Tax Program.

The first change to the certification process is on found on page 1, lines 17-20. Since inception of the program, the Department of Commerce administratively certified a business for a set period of time. Because many businesses are unable to meet its capitalization needs before the certification expiration date, they have sought to be "recertified" under the program. The proposed recertification process limits a qualified business to one recertification and requires that a request for recertification must be made before the original certification period ends.

New language also requires the issuance of a certification letter that clearly sets out the beginning and ending dates of the certification period, and limits the certification period to no more than 4 years. We believe this new language, in conjunction with the new language clarifying that an investment must be made on or after the effective date set out in the certification letter (page 3, lines 16-17) will eliminate any confusion on the part of qualified businesses and potential investors as to whether an investment will qualify for the tax credit.

Lines 22-24 on page 1, limits the number of businesses that may be certified under this program to 10 each calendar year, as opposed to a lifetime limit of 10 businesses. This ceiling will soon be reached, shutting down what has been a good program for

incenting new investment in the state. The repeal of the current limitation is found on page 1, lines 17-19.

**Section 2 – Eligibility for and Calculation of the Tax Credit.** Section 2 of the bill amends N.D.C.C. § 57-38.6-03, which contains the tax credit calculation and defines who is eligible for the credit. These changes simplify the tax credit calculation by removing the multiple layers of limitations on the tax credit and revising the current language.

The current tax credit is 30% of the amount invested by the taxpayer (page 2, lines 11 and 18-19), with a maximum annual credit of \$50,000 (which equals \$166,666.67 of investment dollars) (page 2, lines 13-17 and 24-28). These aspects of the tax credit are not being changed, but are being placed in separate subsections.

The limitations we propose be removed are found on lines 20-24. These limitations restrict the amount of credit an investor can claim each year to 50% of the available credit. This amount is further limited in that it cannot exceed 50% of the investor's income tax liability. In the past few years, these limits have raised many questions from both investors and qualified businesses, particularly with respect to the calculation of the amount to be used to calculate the unused credit carryforward. Removal of these tax credit limits does not change the total amount of the credit to which the taxpayer is entitled, only its timing. We believe the proposed changes will remove any uncertainty that exists and improve program administration.

The final change proposed by the Tax Department is the creation of subsection 5 (page 3, line 12-15), which allows investments made by retirement plans to be eligible for the tax credit if a separate account is maintained for the plan participant and the participant directly controls investment of the account's assets.

The change in the tax credit carry forward period is on page 3, line 16.

## **CONCLUSION**

Many of these same changes are being proposed for the Seed Capital Investment Tax Credit Program in Senate Bill 2084. The Office of State Tax Commissioner believes the changes we propose today will improve the Ag Commodity Processing Facility Tax Credit by providing certainty to businesses seeking investors and to those potential

investors, as well as improving administration of the program. The Tax Commissioner respectfully requests that you give favorable consideration to Senate Bill 2081.

AMENDMENTS TO SB 2081

**SECTION 1. AMENDMENT.** Section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-01. Definitions.** As used in this chapter, unless the context otherwise requires:

4. "Qualified Investment" means an investment in cash or an investment of a fee simple interest in real property in a Qualified business. For purposes of this Chapter 57-38.6, the definition of real property shall not include any personal property which may become a fixture to the real property, as defined by Article 9 of the Uniform Commercial Code as adopted, that is added to the real property following investment of the real property in the Qualified business.

5. "Taxpayer" means an individual, estate, trust, corporation, partnership or limited liability company.

**SECTION 3. AMENDMENT.** Section 57-38.6-03(6) of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-03. Agricultural business investment tax credit.**

7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity or working capital for the qualified business. The real property must be located in North Dakota, used in and be an integral part of the North Dakota operations of the Qualified business.

8. If the investment is a contribution of real property:

a. the value of the contribution must not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of N.D. Cent. Code §§ 43-23.3-04 to 43-23.3-12; and

b. the value of the contribution must be approved by the governing body of the Qualified business applying the valuation standards set forth in N.D. Cent. Code § 10-19.1-63(3).

#3 SB 2081A



P.O. Box 2599  
Bismarck, ND 58502  
(701) 355-4458  
FAX (701) 223-4645

**MEMBERS**

- AmeriFlax
- Milk Producers Association of North Dakota, Inc.
- Minn-Dak Farmers Co-op
- North Dakota Ag Aviation Association
- North Dakota Ag Consultants
- North Dakota Agricultural Association
- North Dakota Agri-Women
- North Dakota Association of Soil Conservation Districts
- North Dakota Association of Agricultural Educators
- North Dakota Barley Council
- North Dakota Beef Commission
- North Dakota Corn Growers Association
- North Dakota Corn Utilization Council
- North Dakota Crop Improvement and Seed Association
- North Dakota Department of Agriculture
- North Dakota Dry Bean Council
- North Dakota Elk Growers
- North Dakota Farm Bureau
- North Dakota Farm Credit Council
- North Dakota Grain Dealers Association
- North Dakota Grain Growers Association
- North Dakota Lamb and Wool Producers
- North Dakota Oilseed Council
- North Dakota Pork Producers
- North Dakota Soybean Growers Association
- North Dakota State Seed Commission
- North Dakota Wheat Commission
- Northern Canola Growers Association
- Plains Potato Growers Association
- Pulse Growers Association
- Red River Valley Sugarbeet Growers

Testimony of Deana Wiese

North Dakota Ag Coalition

Senate Bill 2081

February 26, 2007

Mr. Chairman, members of the House Finance and Taxation Committee:

My name is Deana Wiese, and I am here today as the administrator of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I would encourage your support of SB 2081.

For more than 20 years, the North Dakota Ag Coalition has provided a unified voice for North Dakota agricultural interests. Today, the Coalition is made up of 30 statewide organizations or associations that represent specific commodities or have a direct interest in agriculture. Through the Ag Coalition, these members seek to enhance the business climate for North Dakota's agricultural producers.

The Ag Coalition takes a position on a limited number of issues that have a significant impact on North Dakota's ag industry. SB 2081 is one of these issues as it will extend the number of years during which taxpayers may carry this credit from five to 10 years. This provides an additional incentive for those considering investing in ag-related businesses statewide and across commodities.

The agricultural business investment tax credit, as it stands without this bill, is a great tool for agriculture-related economic development. The extension of years in which the credit can be accessed is just one more benefit that will enhance the climate for further investments in ag business throughout our state.

We appreciate your support of the agricultural business tax credit in the past and would encourage your support of the proposed changes to the tax credit included in SB 2081.