2013 SENATE AGRICULTURE

SB 2295

2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2295
February 1, 2013
18150

☐ Conference Committee

The intent of the bill is to make technical corrections that would allow North Dakota farmers/taxpayers to benefit from business incentives already in the Century Code.

Minutes:

Written testimony

Chairman Miller opened the hearing on SB 2295 relating to the pass through of the new and expanding business exemption and the agricultural business investment tax credit to patrons of farmers' cooperatives; relating to the passthrough of the agricultural business investment tax credit to patrons of farmers' cooperatives.

All committee members were present.

Senator Luick introduced the bill and testified in support of SB 2295.

Allen Larson, Business Development Manager for Minn-Dak Farmers' Cooperative, explained SB 2295 and asked for their support. **Written testimony #1**

Senator Luick asked if he was talking about just agricultural cooperatives or other types of cooperatives.

Allen Larson said that this bill only addresses cooperatives that are involved in agricultural manufacturing.

Senator Miller asked him to describe why a cooperative is formed.

Allen Larson explained that if a group of farmers get together and form a group, and that group continues to grow they could be hit with an anti-trust suit. By forming a cooperative they are given protection from anti-trust actions. Second, as a cooperative, the farmers have the incentive to work together and get the best benefit. Many times by forming a cooperative you get enough volume to justify the overhead that is associated with the business. He gave the example of cooperative elevators. He added that it is also good for communities because the cooperatives are generally owned by the people around that community and that business isn't going to relocate.

Senator Miller questioned the need for cooperative elevators and other cooperatives in the state to even have any anti-trust problems.

Mr. Allen gave sugar and sugar beets as an example; because Minn-Dak is a cooperative along with American Crystal Sugar, Southern Minnesota Sugar Manufacturing cooperative and United State Sugar we all have the same marketing association. United States Sugar markets all of our sugar. If we did not have protection under the cooperative, we would have to market individually against each other.

Senator Miller asked why they wanted this bill.

Allen Larson said that they were investing in a major expansion in their plant and as they looked through the economic incentives that the state of North Dakota is offering they found that the incentives don't work for a cooperative because of how they are structured. By doing this legislative change it will give an incentive to farmer owned cooperatives to invest in more activities.

Senator Miller asked if their company has other tax advantages.

Allen Larson replied that the other tax advantage they have is that they are referred to as a single level tax payer. Whereas a corporation pays corporate income tax and then they pass dividends onto their owners and the owners pay income tax on their dividends. As a farmer owned cooperative, the cooperative passes the income to the grower directly.

Senator Heckaman asked if this exemption would be more advantage to the cooperative itself in the initial startup or to the members later on.

Allen Larson said that it would give an incentive to both an expansion and new business equally. A new business formed by farmers would get some of their risk paid off by this credit and it would give the farmer paying income tax some tax relief if things go bad. For an expanding business it is the same.

Senator Klein stated that it is positioning the growers to have a better opportunity to recoup their investment for tax purposes and provides them an incentive to invest.

Allen Larson replied that is correct.

Senator Luick referred to SB 2295 and asked him to explain the part where it identifies both agricultural citizens and nonagricultural citizens as being patrons of a cooperative.

Allen Larson said that when you invest in manufacturing agriculture and it improves the return to the farmers for that crop, a farmer that isn't even invested in that cooperative benefits because it raises the price of the commodity as a whole. In addition, the economics of this to the nonfarmer is 100 fulltime construction workers for the next two years. So it is not only the farmer investor that will benefit.

Allen Larson said they need this bill for this project and for future projects. It is a fairness issue for the cooperative members to be given equal footing. He explained the corporate taxation versus cooperative taxation versus partnerships and gave examples of advantages and disadvantages.

Senator Miller asked if all beet share members were actively engaged in farming.

Allen Larson replied yes.

Senator Miller asked if beet shares were rented out.

Allen Larson replied that they are allowed to rent out beet stock on a crop share bases only. This is an IRS guideline.

Allen Larson gave an explanation why the date is December 31, 2012.

Vice Chairman Luick took over as chairman.

Jesse Bateman, Administrator of the North Dakota Ag Coalition, testified in support of SB 2295. **Written testimony #2**

Richard Schlosser, North Dakota Farmers Union, testified in support of SB 2295.

No opposing testimony

Neutral testimony

Matt Peyerl, North Dakota Tax Department, explained the reason for the date to answer Senator Heckaman's previous question. In regard to SB 2295, he said that the sponsors brought the idea to the tax department and they worked with them to draft the legislation to make it function and do what they want it to do. He said that they were comfortable that they could administer it.

Senator Klein asked about the Fiscal Note.

Matt Peyerl said that they can't determine how many will take advantage of it.

Vice Chairman Luick adjourned.

Chairman Miller reopened discussion on SB 2295 at 10:00 AM.

Senator Luick moved to adopt amendment 13.8234.01001.

Senator Klein seconded.

Roll call vote: 5-0-0

Amendment adopted.

Senator Klein spoke in favor of SB 2295.

Senator Miller continues to have questions on the bill.

Senator Luick spoke in support and explained the benefits.

Discussion followed on pros and cons.

Chairman Miller said that he needed more time and adjourned.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2295
February 7, 2013
18491

☐ Conference Committee

Hauge

Minutes:

Information attached

Chairman Miller opened discussion on SB 2295 relating to the passthrough of the new and expanding business exemption and the agricultural business investment tax credit to patrons of farmers' cooperatives; relating to the passthrough of the agricultural business investment tax credit to patrons of farmers' cooperatives.

Matt Peyerl, North Dakota Tax Department, (1:06) presented information to the committee to help explain what this bill does. He said that the bill has two separate exemption or tax incentives. The first one is for a new or expanding business that applies for and gets an exemption. He said the main benefit to a cooperative is that they can zero out or manage their taxable income. They have very little taxable income and that is what this exemption is computed from. So the problem with a cooperative is that if they have zero taxable income they will have zero exemption to be computed. He presented a excel spread sheet to further explain. **Attachment #1**

Discussion followed on how the bill could be changed to make this fairer. There was concern that this gave this type of cooperative too much of an advantage. They talked about some of Mr. Allen Larson's ideas that would make it fairer to all cooperatives. They discussed ways to amend it to make all three examples on the spread sheet the same. The statement was made that there are pro's and con's to being a cooperative.

Senator Klein said that the Ag Committee could be getting into some major tax policy. Also had some concerns for what the impact would be for the state.

(20:00)**Matt Peyerl** explained the second part of the exemption or tax incentives. This relates to the incentive given for investment in the Agricultural Commodity Processing Facility. **Attachment #2**

There was some discussion on double dipping and money not changing hands. There was concern for the exemption or credit of $50,000 per investor that can only be used one year at a time up to $250,000.

Chairman Miller asked the committee if this helped the committee to better understanding tax laws.

Senator Klein asked if the tax department could regulate the bill, if they amended the bill to keep section one and delete section 2.

Matt Peyerl answered that he believed it was administrable.

Chairman Miller closed the discussion.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2295
February 8, 2013
18576

☐ Conference Committee

Hauge

Minutes:

Chairman Miller opened discussion on SB 2295 relating to the passthrough of the new and expanding business exemption and the agricultural business investment tax credit to patrons of farmers' cooperatives; relating to the passthrough of the agricultural business investment tax credit to patrons of farmers' cooperatives.

All committee members were present.

Senator Miller said that he has some amendments being drafted and he asked if any committee members had amendments or would like to further discuss SB 2295.

Senator Larson commented on the attachment that they received from Matt Peyerl.

Discussion followed on the sizable exemption and the impact of going back to 2001 for other exemptions. The impact in dollars is not known although it could be significant to the state.

Senator Klein has concerns the way the bill is now and would welcome Senator Miller's amendments if they would make the bill more palatable.

Senator Miller closed the discussion until amendments are ready.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2295
February 14, 2013
18944

☐ Conference Committee

J. Hauge

Minutes:

Information attached

Chairman Miller opened discussion on SB 2295 relating to the passthrough of the new and expanding business exemption and the agricultural business investment tax credit to patrons of farmers' cooperatives; relating to the passthrough of the agricultural business investment tax credit to patrons of farmers' cooperatives.

All committee members were present.

Senator Luick handed out amendments, 13.8234.01004 and 13.8234.01005.

Matt Peyerl, North Dakota Tax Department, said that he had helped drafted all four amendments. He handed out another sheet that illustrates the intent of 004. The intent of amendment 13.8234.01004 was to make a change in the bill so that all farmers marketing cooperatives would have the same benefits that SB 2295 would provide to the traditional closed cooperatives. It elevated all cooperatives up to how the closed cooperatives would be treated under the bill. It did not affect the partnerships or corporations.

Senator Klein asked what the fiscal impact would be to the state.

Matt Peyerl replied that it broadens the scope so the fiscal impact of this amendment would be greater. The intent of the amendment is that all cooperatives would be treated equally.
Amendment 13.8234.01005 said that it does not change the new business exempt portion but this amendment affects the incentive for investing in ag commodity processing facilities. This credit is a 30% credit to investors for investing capital in a commodity processing facility. This amendment narrows what the cooperative can invest on its own. Instead of paying dividends in cash they will withhold from those dividends and use that money to fund the expansion. Those will be considered qualified investment. There is still not cash changing hands.

Senator Miller asked if a cooperative does a capital call and asked their members to write checks, they would qualify for this right now.

Matt Peyerl said that they would, except for the one provision in the current law about the entity having to be organized after 2000. There are ways around this date. He believes it could be structured to work under existing law.

Discussion followed on the date and whether it should be removed from the bill, left, or continually moved up.

Amendment 13.8234.01003 and 13.8234.01002 were handed out to the committee.

Senator Miller said that 002 and 003 are very similar but one is a little more than the other.

(14:03) **Matt Peyerl** handed out an additional chart to go with amendment 13.8234.01003. This amendment makes two changes. It makes a change to the exemption portion and it strikes out all changes to the ag commodity credit program.
Amendment 13.8234.01002 strikes all of the changes to the ag commodity credit program.

Discussion followed on these two amendments.

Senator Klein would like to keep the concept alive and believes amendment 13.8234.01003 is the most palatable. He asked Allen Larson for comments.

Allen Larson, Business Development Manager for Minn-Dak Farmers' Cooperative, spoke in favor of amendments 004 and 005. He stated that, on their question of amendment 003, it takes away the incentive to cooperatives for their members to invest. .

Senator Klein stated the additional incentives. Your attempt was to add an additional opportunity.

Allen Larson said that if they took just the front part of 003, they could live with that but removing the second part of the bill takes away the incentive for investors. He went on to explain how cooperatives get their capital and the cooperative philosophy. (32:40) He explained what 003 did and how it impacted cooperatives. It does not give the added benefit to the grower for the additional beet payment. "It does give the bill a haircut but that is one haircut I am willing to accept."

Allen Larson explained amendment 13.8234.01005. Current law allows you to include, for that 30% tax credit, to use a cash investment or you are allowed to use land for a transaction. As it is now amended we would not pass any tax credit through to anyone. We are asking for is to modify current law to allow unit retains and allocated patronage to be treated as cash for the calculation of this credit. Gave examples.

Senator Miller asked what it does.

Allen Larson: This would allow us to take the deduction directly from their beet check. Our membership understands that putting money into the plant is a part of the business.

Senator Klein said that he was looking for a hybrid made up of parts that he likes.

Discussion followed on blending parts of 003 with parts of 005. Amendment number 006 could be a part of 003,004,005. There is great concern for the fiscal impact.

Matt Peyerl said that the language exists to put the amendments together. The basic concepts that he had spoken of earlier as far as concerns or the changes to the program, they will all be there.

Senator Heckaman voiced her concern on the fiscal impact and wondered why this isn't going to appropriations. She feels it could be bigger then we think.

Senator Klein said that everyone is for creating incentives but we have to make sure we don't give the farm away. Matt, do you know how to get there?

Matt Peyerl said that you can put limits on things but he is curious on whether a change is needed at all and they still can take advantage of the program under its current provisions. If we purse something like the 005 amendment that says a cooperative can just withhold and we will call that the investment then how does that compare against partnerships or corporations that are in the ag commodity processing business. They don't have the same mechanism so it unlevels the playing field for them as far as raising capital.

We are trying to give an income tax incentive where there is no income tax. The two concepts don't match up very well.

Danita Wald, General Council, Tax Department offered to put together a combination of what Senator Klein requested with the melting of the two amendments. Also do what they call the Christmas tree version so the committee will be able to see what the bill would look like. She said that Matt could put together a chart and illustration. She said that we may be trying to mix two things that really don't mix. There might be other options.

Chairman Miller: Adjoined until 11:00 A.M.

Chairman Miller brought the committee back to order.

Senator Klein: During the break I reviewed amendment 003 and that amendment tweaks the beginning half of the bill and removes the second half. The second half seems to be the onerous issue.

Senator Klein moved to adopt amendment 13.8234.01003.

Senator Heckaman seconded.

Senator Heckaman agrees with Senator Klein and expressed concern about the second part and costs associated with it in the future.

Senator Luick is hoping to keep the bill alive but doesn't like the amendment.

Senator Larsen had some problems with it.

Senator Miller: My opinion is that you are a cooperative for certain reasons, you're a corporation for certain reasons, and you're a partnership for certain reason. I don't think it is right for us to let the cooperative have all the benefits.

Roll call vote: 3-2-0

Amendment 13.8234.01003 was adopted.

Senator Klein move a do pass as amended.

Senator Heckaman seconded.

Roll call vote: 5-0-0

Chairman Miller is the carrier.

Chairman Miller adjourned.

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: SB 2295

1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **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 2295 will allow a farmers' cooperative to elect to pass through to its patrons a new or expanding business income exemption or an agricultural commodity processing facility income tax credit that the cooperative qualifies for but does not benefit from for income tax purposes.

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.*

Section 1 of the bill will allow a farmers' cooperative that qualifies for the new or expanding business income exemption (under N.D.C.C. chapter 40-57.1) but is unable to use the exemption to elect to pass the exemption to its patrons. The patrons, in turn, may claim the exemption on their state income tax returns to offset their share of income received from the cooperative that is attributable to the exempt project. Sections 2, 3, and 4 of the bill will allow a farmers' cooperative to qualify for the agricultural commodity processing facility income tax credit by investing its capital to construct a new agricultural commodity processing facility owned by the cooperative. If the cooperative is unable to use the tax credit, the cooperative may elect to pass the tax credit to its patrons. The patrons, in turn, may claim their share of the tax credit on their state income tax returns to offset their tax liabilities. In addition, current law does not allow the tax credit in the case of an existing agricultural commodity processing facility established before 2001. The bill will remove this restriction, which will make the bill's proposed changes available to facilities established prior to 2001. Available information indicates that there may be qualifying activity that may result in a decrease in state general fund revenue for the 2013-2015 biennium. The amount of that decrease cannot be determined because the number of existing or new cooperatives that may engage in qualifying activity, including the amount of exempt income or investment, is 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.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 01/31/2013

13.8234.01001
Title.

Prepared by the Legislative Council staff for Senator Luick
January 29, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2295

Page 3, line 16, overstrike "incorporated or organized in this state"

Page 3, line 16, after the second overstruck comma insert "a business entity registered to do business in this state with the secretary of state and is in good standing at the time of the application and operates"

Renumber accordingly

13.8234.01003
Title.02000

Prepared by the Legislative Council staff for
Senator Miller
February 8, 2013

2/14/13
TD

PROPOSED AMENDMENTS TO SENATE BILL NO. 2295

Page 1, line 1, remove "and subsection 10 to"

Page 1, line 2, remove "section 57-38.6-03"

Page 1, line 3, remove "and the agricultural business investment tax credit to"

Page 1, remove lines 4 through 6

Page 1, line 7, remove "cooperatives"

Page 1, line 24, remove "and per unit"

Page 2, line 1, remove "retained allocations"

Page 2, line 1, replace "1382(b)" with "1382(b)(1)"

Page 2, remove lines 22 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 28

Page 4, line 29, replace "investments made" with "projects approved"

Renumber accordingly

Date: 2-1-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2295

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.8234.01001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☑ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Luick Seconded By Senator Klein

Senators	Yes	No	Senator	Yes	No
Chariman Joe Miller	✓				
Vice Chairman Larry Luick	✓				
Senator Jerry Klein	✓				
Senator Oley Larsen .	✓				
Senator Joan Heckaman	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment

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

Date: 2-14-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2295

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.8234.01003

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☑ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Klein Seconded By Senator Heckaman

Senators	Yes	No	Senator	Yes	No
Chariman Joe Miller	✓				
Vice Chaiman Larry Luick		✓			
Senator Jerry Klein	✓				
Senator Oley Larsen		✓			
Senator Joan Heckaman	✓				

Total (Yes) 3 No 2

Absent

Floor Assignment

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

Date: 2-14-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2295

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.8234.01003

Action Taken: ☑ Do Pass ☐ Do Not Pass ☑ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Klein Seconded By Senator Heckaman

Senators	Yes	No	Senator	Yes	No
Chariman Joe Miller	✓				
Vice Chairman Larry Luick	✓				
Senator Jerry Klein	✓				
Senator Oley Larsen .	✓				
Senator Joan Heckaman	✓				

Total (Yes) 5 No 0

Absent

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

SB 2295: Agriculture Committee (Sen. Miller, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2295 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "and subsection 10 to"

Page 1, line 2, remove "section 57-38.6-03"

Page 1, line 3, remove "and the agricultural business investment tax credit to"

Page 1, remove lines 4 through 6

Page 1, line 7, remove "cooperatives"

Page 1, line 24, remove "and per unit"

Page 2, line 1, remove "retained allocations"

Page 2, line 1, replace "1382(b)" with "1382(b)(1)"

Page 2, remove lines 22 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 28

Page 4, line 29, replace "investments made" with "projects approved"

Renumber accordingly

2013 HOUSE FINANCE AND TAXATION

SB 2295

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2295
March 13, 2013
Job #19848

☐ Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to the passthrough of the new and expanding business exemption.

Minutes: *Attached testimony #1, 2, 3*

Chairman Belter: Opened hearing on SB 2295.

Senator Luick: Introduced bill. This is to allow passthrough of tax credits to cooperatives' patrons in North Dakota.

Allen Larson, Business Development Manager for Minn-Dak Farmers Cooperative: See attached testimony #1.

Representative Schmidt: In your opinion why was that removed by the senate agriculture committee?

Allen Larson: I believe there was confusion and I don't believe they had enough time to look at it. They were concerned about the fiscal note requirement because Minn-Dak has a project that is in process and if this passed there would be capability of Minn-Dak members to get a credit and without the passage of that they would not get. The numbers were substantial and they were concerned about that. Minn-Dak has gone to the congress department and received insurance that one of our subsidiaries will qualify for the credit and we can use that as a vehicle to get that for our members.

Representative Schmidt: I believe Senator Luick is a member of that senate agriculture committee?

Senator Luick: Yes I am.

Representative Schmidt: Do you concur with that?

Senator Luick: I do. There was confusion.

Representative Drovdal: You talk about an investment to get that five year income tax credit that you have to invest. I recall that when a person does business with a coop you get a kick back but you don't really get that because it sits there for a number of years. Isn't that investment in that coop because they get to use that money so would that qualify?

Allen Larson: What you're referring to is a distributed cooperative which you get when you're 68 ½ years old. A manufacturing cooperative such as Minn-Dak Farmers Cooperative, are referred to as a closed cooperative in that you have to own part of the business to be able to participate. We have a revolving capital plan. Right now we revolve our capital in about a 6 ½ year period. If you put money in today in 6 ½ years you will get your money back. This is the distinction between a closed cooperative manufacturing cooperative which is used typically in an agricultural manufacturing environment and a distributing cooperative like your telephone company or electric company where they really don't have a closed recycling of the capital. The theory is that those who are using it should be paying for it.

Representative Drovdal: On the six and a half year cycle is that considered investment so they get the 30% credit?

Allen Larson: We tried to get that through the senate committee but they didn't understand that. Basically the board of directors sits in a room and decides at the end of the year how much income they are going to get by adjusting the beet payment.

Representative Drovdal: Does that $10 million qualify those farmers for that 30% investment?

Allen Larson: As the law stands today no.

Vice Chairman Headland: What is the credit under 40-57.1?

Allen Larson: The business tax exemption is if you had a new or expanding business you can apply to the state of North Dakota for an exemption for a five year period for income tax. Today we spend $70 million and get the project up and running then we have one year from the date we begin operation to apply to the state for a five year income tax exemption.

Vice Chairman Headland: As a cooperative are you taxable?

Allen Larson: We are taxed but when a cooperative calculates its tax it includes the patronage for that year as income but the money you revolve out from prior years is deducted. Most cooperatives will have a zero or near zero North Dakota tax liability every year.

Vice Chairman Headland: You're trying to pass this exemption that could be granted to a new business over to the owner of the stock and this would apply against his regular income?

Allen Larson: Yes. Let's say before the expansion you as a farmer were making $50,000 in revenue off your activity with Minn-Dak and because of this expansion you're going to have $60,000 in revenue from Minn-Dak for the same amount of inputs. This would give you a portion of that $10,000 incremental income that you would be able to treat as exempt income.

Vice Chairman Headland: I'm trying to determine whether it is patronage related to the cooperative as it could go against all of his income. If I as a farmer own stock and I receive a $20,000 dividend but I have $100,000 of taxable income applied against the $100,000 or the $20,000?

Allen Larson: If Minn-Dak were to have $10 million of exempt income we would apportion that $10 million to each of our shareholders based on upon their participation from us every year. They will get a certificate. They will calculate it on their taxes. They will take the certificate and deduct it from their taxes. Whether you're making $1 million or $60,000 it would be based on your participation in the company.

Chairman Belter: In a case on Minn-Dak you have a shareholder but it may not be a grower so does the shareholder or the grower get the exemption?

Allen Larson: The person who is raising the crop who is the entity who will receive the passthrough. In a cooperative you are required by IRS code require any proceeds you get from an ownership have to be based on the proceeds of crop so you are at risk. Any benefit you get from this law is in direct apportioned to the amount of business you do with us that year; it has nothing to do with how many units of stock you own.

Chairman Belter: So it is the grower that gets it?

Allen Larson: Yes.

Representative Hatlestad: The coop doesn't have a tax liability so you want to take this exemption and pass it on to your members of the coop?

Allen Larson: This is correct.

Chairman Belter: Further testimony in support of 2295?

Jessie Bateman, Administrator of North Dakota Ag Coalition: See attached testimony #2.

Chairman Belter: Further testimony?

Matt Peryel, Office of State Tax Commissioner: See attached testimony #3. The bill you have in front of you deals with the business exemption. Reviewed the bill and handout.

Chairman Belter: I know John Deere and Caterpillar in Fargo have had business expansions so do they qualify for this tax credit?

Matt Peryel: I would call it a deduction because there are other programs that are tax credits that are dollar for dollar off your tax liability but this would be a deduction against your income. Primary sector businesses that apply are entitled to it and most of those in manufacturing can apply. I don't know for sure if those specific businesses have applied and received it but I could obtain that information.

Representative Trottier: In comparing the ND taxable income would there be a difference in the income to the state in going from a private corporation to a cooperative when the $1.6 million is passed on to let's say 100 members where their tax rate would be lower than it would be for a corporation because of the dollar amount.

Matt Peryel: The taxable dollars would be different because tax rates are different.

Representative Marie Strinden: The $2 million that the cooperative pays out to its members, do they pay income tax on that?

Matt Peryel: Yes. If they give a deduction somebody else is claiming it as income and that's exactly what is happening here; the cooperative gets the deduction and the members or farmers have to pay income tax on that full $2 million.

Representative Marie Strinden: Taking into account the members would be paying the tax instead of the cooperative, would this bill make it so that it was equal payment of individual taxes across the board with corporations and cooperatives?

Matt Peryel: That is the main idea of this bill is to allow some sort of equitable treatment that says as a cooperative we have no income and we want our owners to benefit from it much like a passthrough entity would even though we are not technically a passthrough entity for purpose of this incentive could you treat us like one.

Representative Owens: Is it ordinary income or dividends we are talking about here?

Matt Peryel: It's both. As a farmer when you deliver product to a cooperative you're getting dollars exchanged for a product and that's what you call ordinary gross receipts or ordinary income. At the end of the year if you get dividends paid out to you then you'd get a 1099 called dividend incomes so you're getting both types in a scenario like this.

Representative Owens: The passthrough exemption is to the dividends and not to the ordinary income?

Matt Peryel: I would agree with that in that it's trying to tie the exemption to the net income or what otherwise be the net income of the cooperative before it gets this unique deduction for the $2 million. It's adding it back to say that if you didn't get that deduction your income as an entity would have been $2 million so you would have had some value from this exemption so because of that deduction we're going to pass the exemption through where those dividends went.

Representative Owens: It's not a dollar for dollar credit but it's a deduction, correct?

Matt Peryel: That is correct. On the bottom of column 1 the individual patrons will have $2 million of dividend income on their tax return and they would have $400,000 of deductions against that income and pay tax on the $1.6 million in theory.

Representative Owens: So there is no limit on the taxable liability; it doesn't limit it to just taxable liability should something have gone wrong that year and all of a sudden the dividend credit is greater than their entire taxable liability to North Dakota. Does the state of North Dakota owe them a check or is there a carry forward?

Matt Peryel: The exemption can only reduce income to zero; it can't recreate a refund and it can't be carried forward. If a farmer has no income for a certain year then there would be no value to the exemption. If a corporation had a loss in a specific year the exemption has no value in that year but it's a five year exemption so each year stands alone and has its own computation and owned deduction on their return.

Vice Chairman Headland: There's something that is missing on your sheet and that is the taxable liability of the corporation on what is not exempted.

Matt Peryel: The taxable income is $1.6 million and if you apply the 5.15% top tax rate that would be the tax on it. I didn't add another row to show the actual tax liability just because rates might different taxpayer to taxpayer so I stopped at North Dakota taxable income.

Vice Chairman Headland: Essentially there is a tax on the corporate side that would not be applied on the cooperative side.

Matt Peryel: The corporation would pay the tax itself. That's the primary difference of the cooperative is that you can see that the cooperative would pay zero tax on its return but the idea is that it paid its $2 million of profits out and its farmers are paying tax on that so it's trying to shift the exemption to match up with those profits that were paid out.

Vice Chairman Headland: Are we giving a tax advantage to the cooperative structure with this bill?

Matt Peryel: As far as organizing as a cooperative there are pros and cons to any business entity. Passthrough treatment is one structure that's favored because you don't have double taxation so anybody that can be a passthrough entity generally would do so. In organizing as a cooperative you get that unique treatment of getting to deduct your profit that you pay out and that is the biggest pro. Once you organize that way you understand that you're going to have zero taxable income. This bill is saying when the state maybe created this exemption or this tax incentive they didn't think about cooperatives not having a tax liability. So it's saying that we want to incentivize even entities that don't have taxable income.

Chairman Belter: Any further testimony on 2295? If not, we will close the hearing on 2295.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2295
March 18, 2013
Job #20080

☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Minutes:

Representative Dockter: Made a motion for a Do Not Pass.

Vice Chairman Headland: I think I'll wait for the chairman before we take any action on the bill. We are open for discussion.

Representative Dockter: The coops already get a break and want another break so I don't believe they should get another one.

Representative Klein: This only applies to that particular coop, doesn't it?

Vice Chairman Headland: No I believe it may apply to all closed cooperatives where you have to purchase the stock.

Chairman Belter: I've got an email on it that I should present to the committee before we do anything with this.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2295
March 26, 2013
Job #20458

☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Minutes:

Chairman Belter: Any thoughts on this one from committee members?

Representative Klein: Are we opening up a whole new loophole in the system?

Chairman Belter: I don't know.

Representative Klein: It seems to me that this would be another area that isn't covered at this time but instead of the tax being paid at this level it would be lowered back down to the individual and the organization wouldn't have to pay taxes.

Representative Schmidt: In my notes I have that we were giving preferential tax treatment to cooperatives over corporations.

Representative Drovdal: I believe the logic came from if we required them to pay tax on their earnings like corporations they would be able to use the credit themselves.

Chairman Belter: What are your wishes?

Representative Dockter: I agree with Representative Klein and **I make a motion for a Do Not Pass.**

Representative Klein: Seconded.

ROLL CALL VOTE: 7 YES 7 NO 0 ABSENT

MOTION FAILED.

Chairman Belter: Is there another motion?

Representative Marie Strinden: I know I'm a freshman but if it's a 7-7 and we do a do pass and its 7-7 again doesn't it just go without recommendation on the floor?

Chairman Belter: Yes, it could be.

Representative Zaiser: Made a motion for a Do Pass.

Representative Haak: Seconded.

Representative Trottier: I had pretty much the same thing in my notes as Representative Schmidt said in that it seems it makes it unfair between private business and cooperatives.

Vice Chairman Headland: The conversation I had with Matt from the tax department he indicated that he didn't see any problem and that there wasn't any unfair advantages for a cooperative if we allowed this to pass through.

Representative Drovdal: I belonged to a cooperative in Watford and had competition against them while I was in the hardware store. They already have an advantage over private enterprises which is why we see a lot of businesses in rural areas as cooperatives now. We need to change our other tax laws to be the same so we treat our individual businesses the same as our cooperatives then we'd be on a level playing field. This would be another advantage to the cooperatives because by passing that credit on you're lowering the income that's coming in to stay in North Dakota by giving an additional break besides the dividend break on parsonages.

Chairman Belter: This only applies to closed cooperatives. A closed cooperative is where only members can do business with it. I think the only closed cooperative we have is the sugar beet industry.

Representative Froseth: Can you give me an example of a closed cooperative in the state, American Crystal Sugar?

Chairman Belter: Yes. This was Minn-Dak.

ROLL CALL VOTE: 7 YES 7 NO 0 ABSENT
MOTION FAILED.

Chairman Belter: Do you want to vote on this again?

Vice Chairman Headland: Made a motion for a Do Pass.

Representative Marie Strinden: Seconded.

ROLL CALL VOTE: 8 YES 6 NO 0 ABSENT

MOTION CARRIED FOR DO PASS.

Representative Marie Strinden will carry this bill.

FISCAL NOTE
Requested by Legislative Council
02/15/2013

Amendment to: SB 2295

1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **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 2295 will allow a farmers' cooperative that is granted a new or expanding business income exemption to pass the exemption through to its patrons.

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.*

If a farmers' cooperative qualifies for the new or expanding business income exemption under N.D.C.C. chapter 40-57.1, but is unable to make use of it, Engrossed SB 2295 will allow the cooperative to pass the exemption to its patrons. The patrons use their share of the exemption to reduce the income they receive from the cooperative that is attributable to the exempt project. Available information indicates that there may be qualifying activity that would result in a decrease in state general fund revenue for the 2013-2015 biennium. The amount of that decrease cannot be determined because the number of existing or new cooperatives that may engage in qualifying activity and the potential amount of exempt income 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.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 02/19/2013

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: SB 2295

1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **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 2295 will allow a farmers' cooperative to elect to pass through to its patrons a new or expanding business income exemption or an agricultural commodity processing facility income tax credit that the cooperative qualifies for but does not benefit from for income tax purposes.

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.*

Section 1 of the bill will allow a farmers' cooperative that qualifies for the new or expanding business income exemption (under N.D.C.C. chapter 40-57.1) but is unable to use the exemption to elect to pass the exemption to its patrons. The patrons, in turn, may claim the exemption on their state income tax returns to offset their share of income received from the cooperative that is attributable to the exempt project. Sections 2, 3, and 4 of the bill will allow a farmers' cooperative to qualify for the agricultural commodity processing facility income tax credit by investing its capital to construct a new agricultural commodity processing facility owned by the cooperative. If the cooperative is unable to use the tax credit, the cooperative may elect to pass the tax credit to its patrons. The patrons, in turn, may claim their share of the tax credit on their state income tax returns to offset their tax liabilities. In addition, current law does not allow the tax credit in the case of an existing agricultural commodity processing facility established before 2001. The bill will remove this restriction, which will make the bill's proposed changes available to facilities established prior to 2001. Available information indicates that there may be qualifying activity that may result in a decrease in state general fund revenue for the 2013-2015 biennium. The amount of that decrease cannot be determined because the number of existing or new cooperatives that may engage in qualifying activity, including the amount of exempt income or investment, is 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.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 01/31/2013

Date: 3-18-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2295

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

* NOT ACCEPTED

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Dockter Seconded By Rep.

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter			Rep. Scot Kelsh		
Vice Chairman Craig Headland			Rep. Steve Zaiser		
Rep. Matthew Klein			Rep. Jessica Haak		
Rep. David Drovdal			Rep. Marie Strinden		
Rep. Glen Froseth					
Rep. Mark Owens					
Rep. Patrick Hatlestad					
Rep. Wayne Trottier					
Rep. Jason Dockter					
Rep. Jim Schmidt					

Total (Yes) ______________ No ______________

Absent ______________

Floor Assignment ______________

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

Date: 3-26-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2295

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Dockter Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	√	√	Rep. Scot Kelsh		√
Vice Chairman Craig Headland		√	Rep. Steve Zaiser		√
Rep. Matthew Klein	√		Rep. Jessica Haak		√
Rep. David Drovdal	√		Rep. Marie Strinden		√
Rep. Glen Froseth	√				
Rep. Mark Owens		√			
Rep. Patrick Hatlestad		√			
Rep. Wayne Trottier	√				
Rep. Jason Dockter	√				
Rep. Jim Schmidt	√				

Total (Yes) 7 No 7

Absent 0

Floor Assignment ~~Rep.~~

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

MOTION FAILS

Date: 3-26-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2295

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Zaiser Seconded By Rep. Haak

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	✓		Rep. Scot Kelsh	✓	
Vice Chairman Craig Headland		✓	Rep. Steve Zaiser	✓	
Rep. Matthew Klein		✓	Rep. Jessica Haak	✓	
Rep. David Drovdal		✓	Rep. Marie Strinden	✓	
Rep. Glen Froseth		✓			
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier		✓			
Rep. Jason Dockter		✓			
Rep. Jim Schmidt		✓			

Total (Yes) 7 No 7

Absent 0

Floor Assignment ~~Rep~~:

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

Date: 3-26-13
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2295

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Headland Seconded By Rep. Strinden

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	√		Rep. Scot Kelsh	√	
Vice Chairman Craig Headland	√		Rep. Steve Zaiser	√	
Rep. Matthew Klein		√	Rep. Jessica Haak	√	
Rep. David Drovdal		√	Rep. Marie Strinden	√	
Rep. Glen Froseth		√			
Rep. Mark Owens	√				
Rep. Patrick Hatlestad	√				
Rep. Wayne Trottier		√			
Rep. Jason Dockter		√			
Rep. Jim Schmidt		√			

Total (Yes) 8 No 6

Absent 0

Floor Assignment Rep. Strinden

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

REPORT OF STANDING COMMITTEE

SB 2295, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **DO PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2295 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2295

#1

Senate Bill 2295
Hearing Testimony February 1, 2013
North Dakota Senate Agriculture Committee
Allen E Larson

Chairman Miller, Bill Sponsors Luick and Klein, Committee Members:

My name is Allen Larson, I am the Business Development Manager for Minn-Dak Farmers Cooperative, a sugar refiner owned by 500 farmers located by Wahpeton, North Dakota. I have been involved in cooperative accounting and taxes for 32 years.

I was born and raised in Verona ND and have lived in North Dakota all but two years of my life.

First of all I would like to thank the Agriculture Committee for the opportunity to speak on behalf of Senate Bill 2295.

The intent of Senate Bill 2295 is to make technical corrections that would allow North Dakota farmers/taxpayers to benefit from business incentives already in the Century Code.

We have worked with the Legislative Counsel, Commerce Department and the North Dakota State Tax Department to make what we believe is the proper presentation on SB 2295. I would like to express our appreciation for all of these government employees for listening with an open ear and going through the process of why cooperatives feel this bill is necessary. The rules and processes of income taxes for agricultural cooperatives and their members on a state taxation level is not an easy concept to wrap your arms around.

At a 50,000 foot level, MDFC is a cooperative with approximately 500 shareholder/grower/farmers. Cooperatives are special business entities created for two basic reasons.

> One primary reason cooperatives were created was to give farmers the ability to form organizations to market their products or acquire inputs for their farms without the fear of anti-trust laws. This gives individual farmers the ability to have a level playing field with large national and international companies.
>
> Another primary design of cooperative law is that any business they conduct with their members is ultimately only taxed at the farmer level. Income taxes, in principal, flow through to cooperative members much like partnerships, Subchapter S corporations and limited liability companies.
>
> There are additional changes to SB 2295 that I believe would be appropriate.

It has been suggested that we amend our bill by deleting "Is incorporated or organized in this state" and replace with:

a. "Is a business entity registered to do business in this state with the Secretary of State and is in good standing at the time of application;"

I would like to next discuss the two segments of this bill.

Segment 1:

North Dakota has an existing law (Chapter 57-38 of the North Dakota Century Code) that provides an incentive of a 5-year income tax exemption if you invest in a new or expanding business.

The challenge is, if this business activity is run through a cooperative, that income is taxed at the farmer grower level and the income tax exemption for that income becomes imbedded with no place to go on the Cooperative's tax return.

This section allows a cooperative to pass that exemption through to its membership on a patronage (how much business they did with the cooperative) basis.

For a cooperative that expands its business or enters into a new venture, the Century Code has an existing methodology in place to calculate the amount of the allowed income tax exemption.

Segment 2:

Century Code: 57-38.6-02. (3)

The director may not certify more than ten qualified businesses during each calendar year. This limitation does not apply to a qualified business that is seeking recertification during the calendar year.

This existing law gives an income tax credit equal to 30% of the project cost up to a credit of $250,000 per qualified investor.

During calendar 2012, it is my understanding that only one new project was applied for and approved.

This is not a free gift to those who invest; first of all, to use any of the credit you must be paying North Dakota income tax. You may only reduce your income tax liability up to 50% of that liability and only to a maximum amount of $50,000 in any given year. You have up to ten-years (10) to use this credit or you lose it.

This credit benefits those in agriculture who are not directly involved in the project. Higher demand caused by higher returns raises the value of all crops.

I have heard time and time again how people in the state of North Dakota want recipients of these economic incentives to have some "skin in the game." Many farmers will be able to show you the scars reflecting the lost skin in the ventures they have invested in. The people who invest in North Dakota agricultural business ventures are willing to put their "skin in the game", even if they have lost a patch or two, but we need to leave some "meat on the bone" as an incentive for their risk.

The first area of this segment that I support is to remove the date from the original law which is December 31, 2000. While the date may have had meaning when the law first went into effect, I believe it now artificially gives an incentive to one group of investors and arbitrarily not to another group of investors.

The second area of this segment that I strongly support is the ability of a cooperative to allocate the investment transactions down to its members. In our discussions with the State Tax Department, the clarity of the situation came in that a cooperative, when it spends money on a project, is doing so on behalf of its membership. I often describe our ag manufacturing plant as just a big combine that no farmer could afford by themselves, but they joined together and bought one to share.

Agricultural processing/manufacturing has an added level of risk that is often overlooked by those not involved in the activity. When you invest in a manufacturing plant, you size that plant for your expected business activity. Agricultural processing relies upon the size of the crop to reach its economy of scale. When you have crops that are 30% – 50% different in volume, you frequently are not able to efficiently handle the extra volume of a bountiful cycle and are not able to find alternative raw materials when your crop is diminished by various weather related challenges.

Finally, I would like to address the amendment we discussed earlier. The current century code requires the business to be incorporated in the state of North Dakota. Many corporations are initially incorporated in the state of Delaware to provide certain protections in civil business proceedings. By changing this requirement to be a business registered in the state with the Secretary of State and in good standing allows this economic incentive to more fully work for the state of North Dakota and its agricultural and non-agricultural citizens.

The Department of Commerce is willing to review a company's project plans prior to them registering with the Secretary of State. They are willing to commit to them that they qualify for certification once they fulfill all the requirements (including getting registered). They will give them their official certification once that requirement is fulfilled.

Once again I would like to thank the committee for taking the time to address this issue. And will be happy to address any questions.

#2

North Dakota AG Coalition

P.O Box 1091
Bismarck, ND 58502
(701) 355-4458
FAX (701) 223-4645

MEMBERS

- AmeriFlax
- BNSF Railway Company
- Garrison Diversion Conservancy District
- Independent Beef Association of ND
- Landowners Association of ND
- Milk Producers Association of ND
- Minn-Dak Farmers Cooperative
- ND Ag Aviation Association
- ND Ag Consultants
- ND Agricultural Association
- ND Agri-Women
- ND Association of Agricultural Educators
- ND Association of Soil Conservation Districts
- ND Barley Council
- ND Beef Commission
- Corn Growers Association
- Corn Utilization Council
- Crop Improvement and Seed sociation
- ND Dairy Coalition
- ND Department of Agriculture
- ND Dry Bean Council
- ND Dry Edible Bean Seed Growers
- ND Elk Growers
- ND Ethanol Council
- ND Farm Bureau
- ND Farm Credit Council
- ND Farmers Union
- ND Grain Dealers Association
- ND Grain Growers Association
- ND Irrigation Association
- ND Lamb and Wool Producers
- ND Oilseed Council
- ND Pork Producers
- ND Soybean Council
- ND Soybean Growers Association
- ND State Seed Commission
- ND Stockmen's Association
- ND Wheat Commission
- NDSU Agricultural Affairs
- Northern Canola Growers Association
- rthern Food Grade Soybean ociation
- thern Plains Potato Growers ssociation
- orthern Pulse Growers Association
- Red River Valley Sugarbeet Growers

Testimony of Jessie Bateman
Administrator, North Dakota Ag Coalition
In Support of SB 2295
February 1, 2013

Chairman Miller and members of the Senate Ag Committee my name is Jessie Bateman, 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 2295.

The Ag Coalition has provided a unified voice for North Dakota agricultural interests for over 30 years. Today, we represent more than 40 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. The Ag Coalition takes a position on a limited number of issues, brought to us by our members, that have significant impact on North Dakota's agriculture industry.

The North Dakota Ag Coalition is supporting this bill as it provides incentives to invest in value-added agriculture ventures by allowing income tax credits and exemptions to be passed on from a farmers' cooperative to its patrons. This not only benefits North Dakota agriculture but brings increased economic opportunities for North Dakota as well.

We appreciate your past support and would encourage your continued support of SB 2295 and North Dakota's agriculture industry.

#1

Cooperative - New Business Exemption (SB)

"Gross" versus "Net" Issue

Certain Cooperatives

Cooperative's Federal Tax Return (with assumptions)

Sales	$20,000,000
Less: Cost of purchases (PURPIMs)	($11,000,000)
Gross Income	$9,000,000
Less: Other expenses	($7,000,000)
= net income	$2,000,000
Less: Deduction for patronage divs.	($2,000,000)
= Federal taxable income	$0

Computation of Expanding Business Exemption (per bill)

Federal taxable income	$0	
Plus: PURPIMS (per bill)	$11,000,000	**
Plus: Patronage dividends (per bill)	$2,000,000	**
= Total income subject to exemption	$13,000,000	
Assume cooperative's expanding business exemption of 20%	x 20%	
= Exemption to be passed through to patrons	$2,600,000	

Patron's ND Individual Tax Returns

+ Taxable payments for product sold	$11,000,000	(above)
+ Taxable dividends	$2,000,000	(above)
= "Gross" farming income	$13,000,000	
Less: Farming expenses	($10,000,000)	(assumption)
= "Net" federal taxable farm income	$3,000,000	
Less: exemption passed through	($2,600,000)	
= ND taxable income	$400,000	

Effective [illegible]mption %	(2.6 / 3.0)	87%
Total [illegible]xempted		$2,600,000

Most Cooperatives

Cooperative's Federal Tax Return (same assumptions)

Sales	$20,000,000
Less: Cost of purchases	($11,000,000)
Gross Income	$9,000,000
Less: Other expenses	($7,000,000)
= net income	$2,000,000
Less: Deduction for patronage divs.	($2,000,000)
= Federal taxable income	$0

Computation of Expanding Business Exemption

Federal taxable income	$0
Plus: PURPIMS (per bill)	$0
Plus: Patronage dividends (per bill)	$2,000,000
= Total income subject to exemption	$2,000,000
Assume cooperative's expanding business exemption of 20%	x 20%
= Exemption to be passed through to patrons	$400,000

Patron's ND Individual Tax Returns

+ Taxable payments for product sold	$11,000,000	(above)
+ Taxable income passed through	$2,000,000	(above)
= "Gross" farming income	$13,000,000	
Less: Farming expenses	($10,000,000)	
= "Net" federal taxable farm income	$3,000,000	
Less: exemption passed through	($400,000)	
= ND taxable income	$2,600,000	

Effective ex[illegible]ption %	(0.4 / 3.0)	13%
Total Inc[illegible]mpted		$400,000

Partnership

Partnership's Federal Tax Return (same assumptions)

Sales	$20,000,
Less: Cost of purchases	($11,000,
Gross Income	$9,000,
Less: Other expenses	($7,000,
= net income	$2,000,
Less: Deduction for patronage divs.	(not applicabl
= Federal taxable income	$2,000,

All Passed through to partners

Computation of Expanding Business Exemption

Federal taxable income	$2,000
Plus: PURPIMS	(not applicab
Plus: Patronage dividends	(not applicab
= Total income subject to exemption	$2,000
Assume partnership's expanding business exemption of 20%	[illegible]
= Exemption to be passed through to partners	$40(

Partner's ND Individual Tax Returns

+ Taxable payments for product sold	$11,00
+ Taxable income passed through	$2,00
= "Gross" farming income	$13,00
Less: Farming expenses	($10,00
= "Net" federal taxable farm income	$3,00
Less: exemption passed through	($40
= ND taxable income	$2,60

Effective exemption %	(0.4 / 3.0)	
Total Income Exempted		$40

#A

Agricultural Commodity Processing Facility Investment Tax Credit Program

Program provisions

This document reflects changes made through the 2009 North Dakota Legislative Session, and generally applies to tax years, and to businesses certified or recertified, beginning on or after January 1, 2007. It is subject to changes in the law.

For provisions applicable to tax years beginning before January 1, 2007, contact the North Dakota Office of State Tax Commissioner.

Overview of program

Type of program	This program provides a nonrefundable income tax credit for making an investment in a business that is certified as a qualifying agricultural commodity processing facility ("qualified business") by the North Dakota Commerce Department's Division of Economic Development and Finance. See "Qualified business" and "Certification" below.
Purpose	This program provides an incentive to invest cash or real property in a new or existing business operating in North Dakota that either (1) adds value to an agricultural commodity raised in North Dakota or (2) is a livestock feeding, handling, milking, or holding operation that uses a byproduct of a biofuels production facility.
Legislative history	Location in Code: N.D.C.C. Chapter 57-38.6. Created: 2001 (Session Law 2001, chapter 527). Amended: 2005 (S.L. 2005, ch. 568) and 2007 (S.L. 2007, chs. 18 and 527).

Law provision	Description
Qualified business	A "qualified business" is a business that the North Dakota Commerce Department's Division of Economic Development and Finance certifies (see "Certification of business" below) as meeting all of the following conditions: • It is a cooperative, corporation, partnership, or limited liability company. • It is incorporated or organized in North Dakota after December 31, 2000, for the primary purpose of either (1) employing knowledge and labor to add value to an agricultural commodity capable of being raised in North Dakota or (2) operating a livestock feeding, handling, milking, or holding business that utilizes in its operation a byproduct produced by a biofuels production facility. o "Biofuels production facility" means an entity engaged in producing diesel fuel containing at least 5% biodiesel meeting ASTM specifications, producing corn- or cellulose-based ethanol, or crushing soybeans or canola. • It has been certified by the North Dakota Securities Commissioner to be in compliance with North Dakota's securities laws. • It has an agricultural commodity processing facility, or intends to locate one, in North Dakota.

Certification of business

To participate in the program, a business must apply to the North Dakota Commerce Department's Division of Economic Development and Finance for certification as a qualified business. The Division must certify whether a business meets the statutory requirements to be a qualified business. Upon certification, the Division will issue to the qualified business a letter containing (1) the certification effective date and (2) the certification expiration date, which may not be more than 4 years from the certification effective date.

A qualified business may apply to the Division for a one-time recertification under the program. The application must be filed within 90 days before the original certification expiration date. Upon recertification, the Division will issue a recertification letter containing (1) the recertification effective date and (2) the recertification expiration date, which may not be more than 4 years from the recertification effective date.

Questions about certification as a qualified business should be directed to the North Dakota Commerce Department's Division of Economic Development and Finance as follows—

1600 E. Century Ave., Suite 2
P.O. Box 2057
Bismarck, ND 58503
Web site: http://www.business.nd.gov/
Phone: (701) 328-5300
E-mail: plucy@nd.gov

Note: *This certification information applies to businesses certified or recertified on or after January 1, 2007.*

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.

Eligible taxpayer (investor)

The following are eligible taxpayers (investors) for purposes of the tax credit:

- Individual (on Form ND-1)
- Estate or trust (on Form 38)—*see* ***Note 2***
- Partnership (on Form 58)—*see* ***Note 1***
- C corporation (on Form 40)
- S corporation (on Form 60)—*see* ***Note 1***
- Limited liability company—*see* ***Note 3***

Note 1: *If the taxpayer is a partnership, S corporation, or limited liability company (treated like a partnership or S corporation), the credit is determined at the passthrough entity level and passed through to the entity's owners in proportion to their ownership interests.*

Note 2: *An estate or trust may either claim the tax credit or pass it through to its beneficiaries.*

Note 3: *The type of form used by a limited liability company is dependent on how it files for federal income tax purposes—that is, as a partnership, corporation, etc.*

Angel fund: If the taxpayer operates as an angel fund, the credit must be passed through to the investors in the angel fund in proportion to their respective interests in the angel fund. This applies even if the angel fund is an entity subject to North Dakota income tax.

Tax-exempt entity: While a government entity or a tax-exempt organization may invest in a qualified business, it is not eligible for the credit.

Qualified investment	A "qualified investment" is one that satisfies all of the following conditions: • It must be made by an eligible taxpayer—see "Eligible taxpayer" above. • It must be made in cash or a transfer of a fee simple interest in real estate located in North Dakota. In the case of a fee simple interest in real estate, all of the following conditions apply: o Personal property becoming a fixture to the real estate after the transfer is not a qualified investment. o The value of the investment may not exceed the appraised value as established by an appraiser licensed or certified under N.D.C.C. §§ 43-23.3-04 through 43-23.3-12. o The value of the investment must be approved by the governing body of the qualified business using the standards for valuing consideration for shares under N.D.C.C. § 10-19.1-63(3). o The tax credit is allowed in the tax year in which the transfer is recorded with the registrar of deeds as provided under N.D.C.C. ch. 47-19. • It must be made on or after the date of certification and no later than the date the certification expires. • It must be at risk in the qualified business for at least three years after the date of investment. o For a cash investment, the date of investment is the date on which the qualified business receives and is able to use the monies in its operations. o For a fee simple interest in real property, the date of investment is the date the transfer is recorded with the registrar of deeds. o The cash or real property are at risk if they are available for use by the qualified business. Monies placed in escrow are not at risk and do not constitute an eligible investment. Monies placed in escrow become a qualified investment on the date the monies are released from escrow to the qualified business for use in its operations. A transfer of monies from a retirement plan to a qualified business is deemed to be an investment made by the retirement plan participant if a separate account is maintained for the participant, the participant directly controls where the account's assets are invested, and the plan's trustee makes the transfer to the qualified business.
Amount of tax credit	The tax credit is equal to 30% of the total qualified investments made during the tax year by the eligible taxpayer.
Maximum tax credit allowed per taxpayer per tax year	No more than $50,000 of the total credit based on investments made in a tax year may be used in the tax year in which the investments were made or in any tax year to which an unused credit may be carried. ***Note:*** *This annual usage limit does not apply at the passthrough entity level in the case of a partnership, S corporation, or limited liability company treated like a passthrough entity, but applies at the owner level (provided the owner is not another passthrough entity).*
Carryover of unused tax credit by taxpayer	The credit must be claimed first in the tax year in which the date of investment falls. If the total credit allowed cannot be used because it exceeds the lesser of $50,000 (annual usage limit) or the taxpayer's tax liability, the unused portion of the total allowable credit may be carried over and used on subsequent tax years' returns for up to 10 tax years. ***Note:*** *This carryover provision does not apply at the passthrough entity level in the case of a partnership, S corporation, or limited liability company treated like a passthrough entity, but applies at the owner level (provided the owner is not another passthrough entity).*

Cumulative limit on tax credits allowed per taxpayer for all tax years	A taxpayer is allowed no more than $250,000 of tax credits under the Program for qualified investments made in all tax years.
Reporting requirements	For each qualified investment received, a qualified business must do the following: • Within 30 days after receiving the qualified investment, complete an investment reporting form prescribed by the Office of State Tax Commissioner. • Give a copy of the completed investment reporting form to the investor. • Submit a copy of the form to both the North Dakota Office of State Tax Commissioner and the North Dakota Commerce Department's Division of Economic Development and Finance. o For an investment of a fee simple interest in real property, the copy of the investment reporting form filed with the North Dakota Office of State Tax Commissioner must be accompanied by copies of the (1) appraisal, (2) governing body's resolution approving the value of the investment, and (3) statement of full consideration. See "Qualified investment for more details. ***Note:*** *The investment reporting form must not be completed nor filed for an investment that does not qualify for the tax credit—for example, an investment made by a tax exempt entity. See "Qualified investment" above.*
Tax credit recapture	The tax credit is disallowed and must be paid back with applicable penalty and interest by the taxpayer if the business has misrepresented anything in the application for certification, or if either the taxpayer or business fails to satisfy any condition of the law or any conditions consistent with the law set by the Office of State Tax Commissioner. If this applies, the taxpayer must file an amended North Dakota return for each tax year affected, and, in the case of a passthrough entity, amended North Dakota Schedule K-1s must be issued to the owners.

Agricultural Commodity Processing Facility Investment Tax Credit Program

Rates, limitations, and other features of the tax credit by tax year

This document is only intended to be a quick reference tool for taxpayers, tax professionals, and other persons interested in the tax credit rate, limitations, and other selected features applicable to investments made in a particular tax year. The tax year is that of the taxpayer making the investment (not the qualified business's tax year). For complete details or assistance with respect to a tax year, contact the North Dakota Office of State Tax Commissioner.

How to use this chart: Go to the column for the tax year in which the qualified investment was made. Then look down that column to see the rate, limitations, and other features that apply to that investment and related tax credit.

Provision	Tax year in which investment was made									
	2001	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Eligible taxpayer[1, 2]	Individual, estate, or trust				Individual, estate, trust, partnership, corporation ("C" or "S"), or LLC					
Qualified investment[3]	Cash	Cash	Cash	Cash	Cash Real estate	Cash Real estate	Cash Real estate	Cash Real estate	Cash Real estate	Cash Real estate
Credit rate	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%
Number of carryover years for unused credit[4] *(Last tax year in which an unused credit carryover may be used is shown in parentheses)*	15 (2016)	15 (2017)	15 (2018)	15 (2019)	5 (2010)	5 (2011)	10 (2017)	10 (2018)	10 (2019)	10 (2020)
Maximum investment[5]	$20,000	$20,000	$20,000	$20,000	$166,667	$166,667				
Maximum allowable credit [6]	$6,000	$6,000	$6,000	$6,000	$50,000	$50,000				
Limit on amount of allowable credit that may be used in any tax year[6, 7]	50%	50%	50%	50%	50%	50%				
Limit on amount of allowable credit that may be used in any tax year[8]							$50,000	$50,000	$50,000	$50,000
Limit on amount of allowable credit that may be used in any tax year based on tax liability (before credits)[9]	50%	50%	50%	50%	50%	50%				
Cumulative limit on total tax credits allowed under Program to a taxpayer for all tax years[10]					$250,000	$250,000	$250,000	$250,000	$250,000	$250,000

Notes

1 For tax years beginning before January 1, 2005, an eligible taxpayer was limited to an individual, estate, or trust. Other types of entities, such as a corporation, could make an investment in the business but the investment was not a qualified investment and no credit was allowed.

2 For tax years beginning on or after January 1, 2005, an eligible taxpayer included all entity types except governmental and tax-exempt entities. In the case of a passthrough entity—partnership, S corporation, or limited liability company treated like a passthrough entity—the credit is calculated at the passthrough entity level and passed through to the owners based on their respective ownership interests.

3 For tax years beginning on or after January 1, 2007, a qualified investment included the transfer of a fee simple interest in North Dakota real estate, subject to a number of conditions and reporting requirements.

4 The unused credit carryover provision does not apply at the passthrough entity level, but applies at the owner level, provided the owner is not another passthrough entity.

5 No credit is allowed in any tax year for the amount of investment made during the tax year in excess of the maximum investment amount shown in table. Applied per investor; in the case of married individuals filing jointly, applied per spouse.

6 For investments made in tax years beginning before January 1, 2007, the allowable credit equals the total qualified investments made during the tax year multiplied by the credit rate, not to exceed the maximum allowable credit shown in the table.

7 For investments made in tax years beginning before January 1, 2007, multiply the allowable credit on investments made during the tax year by 50 percent. The result is the limit on the amount of the allowable credit that may be used in the year of investment or in any carryover year. For example, if $10,000 is invested in the 2006 tax year, the allowable credit is $3,000 ($10,000 x 30%), of which no more than $1,500 ($3,000 x 50%) may be used in 2006 or any of the five carryover years. This limitation does not apply at the passthrough entity level but applies at the owner level, provided the owner is not another passthrough entity.

8 For investments made in tax years beginning on or after January 1, 2007, the allowable credit equals the total qualified investments made during the tax year multiplied by the credit rate. There is no limit on the allowable credit for qualified investments made in a tax year; however, no more than $50,000 of the allowable credit may be used in the investment year or any carryover year. This limitation does not apply at the passthrough entity level but applies at the owner level, provided the owner is not another passthrough entity.

9 For investments made in tax years beginning before January 1, 2007, the portion of the allowable credit that may be used in a tax year may not offset more than 50 percent of the taxpayer's tax liability (before credits). For example, if $20,000 is invested in the 2006 tax year, the allowable credit is $6,000 ($20,000 x 30%), of which no more than $3,000 may be used in any tax year. If the taxpayer's tax liability (before credits) is $2,000, only $1,000 of the total allowable credit may be used to reduce the tax liability. The unused credit of $5,000 ($6,000 - $1,000) may be carried over for up to five tax years.

10 This limitation does not apply at the passthrough entity level but applies at the owner level, provided the owner is not another passthrough entity. For example, if an individual is an owner in a partnership, S corporation, or limited liability company, the individual is limited to $250,000 of total tax credits under the Program, even though the individual and the passthrough entity each invest enough to generate $250,000 of credits (for a total of $500,000).

#1

13.8234.01004
Title.

Prepared by the Legislative Council staff for
Senator Miller
February 8, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2295

Page 2, line 1, replace "retained allocations" with "retains paid-in money"

Page 2, line 2, after the underscored ending bracket insert "and other patronage purchases"

Renumber accordingly

Cooperative - New Business Exemption (SB 22[illegible] [illegible]ndment #3

"Gross" versus "Net" Issue

1

Certain Cooperatives

Cooperative's Federal Tax Return (with assumptions)

Sales	$20,000,000	
Less: Cost of purchases (PURPIMs)	($11,000,000)	
Less: Cost of purchases from patrons	$0	
Gross Income	$9,000,000	
Less: Other expenses	($7,000,000)	
= net income	$2,000,000	
Less: Deduction for patronage divs.	($2,000,000)	
= Federal taxable income	$0	

Computation of Expanding Business Exemption (per bill)

Federal taxable income	$0	
Plus: PURPIMS (per bill)	$11,000,000	**
Plus: Purchases from patrons (per bill)	$0	**
Plus: Patronage dividends (per bill)	$2,000,000	**
= Total income subject to exemption	$13,000,000	
Assume cooperative's expanding business exemption of 20%	x 20%	
= Exemption to be passed through to patrons	$2,600,000	

Patron's ND Individual Tax Returns

+ Taxable payments for product sold	$11,000,000	(above)
+ Taxable dividends	$2,000,000	(above)
= "Gross" farming income	$13,000,000	
Less: Farming expenses	($10,000,000)	(assumption)
= "Net" federal taxable farm income	$3,000,000	
Less: exemption passed through	($2,600,000)	
= ND taxable income	$400,000	

Total Income Exempted	($2,600,000)
Est. Val[illegible]emption (@ 2.75%)	($71,500)

2

Most Cooperatives

Cooperative's Federal Tax Return (same assumptions)

Sales	$20,000,000
Less: Cost of purchases (PURPIMS)	$0
Less: Cost of purchases from patrons	($11,000,000)
Gross Income	$9,000,000
Less: Other expenses	($7,000,000)
= net income	$2,000,000
Less: Deduction for patronage divs.	($2,000,000)
= Federal taxable income	$0

Computation of Expanding Business Exemption

Federal taxable income	$0
Plus: PURPIMS (per bill)	$0
Plus: Purchases from patrons (per bill)	$11,000,000
Plus: Patronage dividends (per bill)	$2,000,000
= Total income subject to exemption	$13,000,000
Assume cooperative's expanding business exemption of 20%	x 20%
= Exemption to be passed through to patrons	$2,600,000

Patron's ND Individual Tax Returns

+ Taxable payments for product sold	$11,000,000	(above)
+ Taxable income passed through	$2,000,000	(above)
= "Gross" farming income	$13,000,000	
Less: Farming expenses	($10,000,000)	
= "Net" federal taxable farm income	$3,000,000	
Less: exemption passed through	($2,600,000)	
= ND taxable income	$400,000	

Total Income Exempted	($2,600,000)
Est. Value of E[illegible]n (@ 2.75%)	($71,500)

3

Partnership

Partnership's Federal Tax Return (same assumptions)

Sales	$20,000,000
Less: Cost of purchases	($11,000,000)
Less: Cost of purchases from patrons	$0
Gross Income	$9,000,000
Less: Other expenses	($7,000,000)
= net income	$2,000,000
Less: Deduction for patronage divs.	(not applicable)
= Federal taxable income	$2,000,000

All Passed through to partners

Computation of Expanding Business Exemption

Federal taxable income	$2,000,000
Plus: PURPIMS	(not applicable)
Plus: Purchases from patrons	(not applicable)
Plus: Patronage dividends	(not applicable)
= Total income subject to exemption	$2,000,000
Assume partnership's expanding business exemption of 20%	x 20%
= Exemption to be passed through to partners	$400,000

Net Result of Exemption (business entity only)

Income passed through to partners	$2,000,000
Less: Exemption passed through	($400,000)
= ND taxable income	$1,600,000

Total Income Exempted	($400,000)
Est. Value of Exemption (@ 2.75[illegible]	($11,000)

#2

13.8234.01005
Title.

Prepared by the Legislative Council staff for
Senator Miller
February 8, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2295

Page 1, line 1, remove "and subsection 10 to"

Page 1, line 2, remove "section 57-38.6-03"

Page 1, line 4, remove "subdivision c of subsection 7 of section"

Page 1, line 5, remove "57-38-30.3 and"

Page 2, remove lines 22 through 25

Page 3, line 28, remove "capital investment"

Page 3, line 29, replace "in the certified qualified business" with "per unit retained allocations described in section 1388(f) of the Internal Revenue Code [26 U.S.C. 1382(f)] and retained patronage earnings described in section 1388(j)(4) of the Internal Revenue Code [26 U.S.C. 1388(j)(4)] up to the amount of the cooperative's capital investment in the certified qualified business, and will be determined based on the date issued"

Page 4, remove lines 1 through 28

Renumber accordingly

#3

13.8234.01003
Title.

Prepared by the Legislative Council staff for
Senator Miller
February 8, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2295

Page 1, line 1, remove "and subsection 10 to"

Page 1, line 2, remove "section 57-38.6-03"

Page 1, line 3, remove "and the agricultural business investment tax credit to"

Page 1, remove lines 4 through 6

Page 1, line 7, remove "cooperatives"

Page 1, line 24, remove "and per unit"

Page 2, line 1, remove "retained allocations"

Page 2, line 1, replace "1382(b)" with "1382(b)(1)"

Page 2, remove lines 22 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 28

Page 4, line 29, replace "investments made" with "projects approved"

Renumber accordingly

#3

Cooperative - New Business Exemption (SB 229[illegible] [illegible]ndment ~~#1~~ ~~#2~~ 3

#3

"Gross" versus "Net" Issue

1

Certain Cooperatives

Cooperative's Federal Tax Return (with assumptions)

Sales	$20,000,000	
Less: Cost of purchases (PURPIMs)	($11,000,000)	
Gross Income	$9,000,000	
Less: Other expenses	($7,000,000)	
= net income	$2,000,000	
Less: Deduction for patronage divs.	($2,000,000)	
= Federal taxable income	$0	

Computation of Expanding Business Exemption (per bill)

Federal taxable income	$0	
~~Plus: PURPIMS (per bill)~~	~~$11,000,000~~	**
Plus: Patronage dividends (per bill)	$2,000,000	**
= Total income subject to exemption	$2,000,000	
Assume cooperative's expanding business exemption of 20%	x 20%	
= Exemption to be passed through to patrons	$400,000	

Patron's ND Individual Tax Returns

+ Taxable payments for product sold	$11,000,000	(above)
+ Taxable dividends	$2,000,000	(above)
= "Gross" farming income	$13,000,000	
Less: Farming expenses	($10,000,000)	(assumption)
= "Net" federal taxable farm income	$3,000,000	
Less: exemption passed through	($400,000)	
= ND taxable income	$2,600,000	

Total In[illegible]empted	($400,000)
Est. Val[illegible]mption (@ 2.75%)	($11,000)

2

Most Cooperatives

Cooperative's Federal Tax Return (same assumptions)

Sales	$20,000,000	
Less: Cost of purchases	($11,000,000)	
Gross Income	$9,000,000	
Less: Other expenses	($7,000,000)	
= net income	$2,000,000	
Less: Deduction for patronage divs.	($2,000,000)	
= Federal taxable income	$0	

Computation of Expanding Business Exemption

Federal taxable income	$0
~~Plus: PURPIMS (per bill)~~	~~$0~~
Plus: Patronage dividends (per bill)	$2,000,000
= Total income subject to exemption	$2,000,000
Assume cooperative's expanding business exemption of 20%	x 20%
= Exemption to be passed through to patrons	$400,000

Patron's ND Individual Tax Returns

+ Taxable payments for product sold	$11,000,000	(above)
+ Taxable income passed through	$2,000,000	(above)
= "Gross" farming income	$13,000,000	
Less: Farming expenses	($10,000,000)	
= "Net" federal taxable farm income	$3,000,000	
Less: exemption passed through	($400,000)	
= ND taxable income	$2,600,000	

Total Income E[illegible]d	($400,000)
Est. Value of E[illegible]n (@ 2.75%)	($11,000)

3

Partnership

Partnership's Federal Tax Return (same assumptions)

Sales	$20,000,000
Less: Cost of purchases	($11,000,000)
Gross Income	$9,000,000
Less: Other expenses	($7,000,000)
= net income	$2,000,000
Less: Deduction for patronage divs.	(not applicable)
= Federal taxable income	$2,000,000

All Passed through to partners

Computation of Expanding Business Exemption

Federal taxable income	$2,000,000
~~Plus: PURPIMS~~	~~(not applicable)~~
Plus: Patronage dividends	(not applicable)
= Total income subject to exemption	$2,000,000
Assume partnership's expanding business exemption of 20%	x 20%
= Exemption to be passed through to partners	$400,000

Net Result of Exemption (business entity only)

Income passed through to partners	$2,000,000
Less: Exemption passed through	($400,000)
= ND taxable income	$1,600,000

Total Income Exempted	($400,000)
Est. Value of Exemption (@ 2.75[illegible]	($11,000)

#4

13.8234.01002
Title.

Prepared by the Legislative Council staff for
Senator Miller
February 8, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2295

Page 1, line 1, remove "and subsection 10 to"

Page 1, line 2, remove "section 57-38.6-03"

Page 1, line 3, remove "and the agricultural business investment tax credit to"

Page 1, remove lines 4 through 6

Page 1, line 7, remove "cooperatives"

Page 2, remove lines 22 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 28

Page 4, line 29, replace "investments made" with "projects approved"

Renumber accordingly

#/

Senate Bill 2295
Hearing Testimony March 13, 2013
North Dakota House Finance and Taxation Committee
Allen E Larson

Chairman Belter, Committee Members:

My name is Allen Larson, I am the Business Development Manager for Minn-Dak Farmers Cooperative, a sugar refiner owned by 500 farmers located by Wahpeton, North Dakota. I have been involved in cooperative accounting and taxes for 32 years.

I was born and raised in Verona ND and have lived in North Dakota all but two years of my life.

First of all I would like to thank the Finance and Taxation Committee for the opportunity to speak on behalf of Senate Bill 2295.

The intent of Senate Bill 2295 is to make technical corrections that would allow North Dakota farmers/taxpayers to benefit from business incentives already in the Century Code.

At a 50,000 foot level, MDFC is a cooperative with approximately 500 shareholder/grower/farmers. Cooperatives are special business entities created for two basic reasons.

> One primary reason cooperatives were created was to give farmers the ability to form organizations to market their products or acquire inputs for their farms without the fear of anti-trust laws. This gives individual farmers the ability to have a level playing field with large national and international companies.
>
> Another primary design of cooperative law is that any business they conduct with their members is ultimately only taxed at the farmer level. Income taxes, in principal, flow through to cooperative members much like partnerships, Subchapter S corporations and limited liability companies.

I would like to next discuss the two segments of this bill.

Segment 1:

North Dakota has an existing law (Chapter 57-38 of the North Dakota Century Code) that provides an incentive of a 5-year income tax exemption if you invest in a new or expanding business.

The challenge is, if this business activity is run through a cooperative, that income is taxed at the farmer grower level and the income tax exemption for that income

#1 p.2

becomes imbedded with no place to go on the Cooperative's tax return. Partnerships, LLC's and Sub-S Corporations have the ability to pass this through.

This section will allow a cooperative to pass that exemption through to its membership on a patronage (how much business they did with the cooperative) basis.

For a cooperative that expands its business or enters into a new venture, the Century Code has an existing methodology in place to calculate the amount of the allowed income tax exemption.

Segment 2 of the original bill was removed by the Senate Ag Committee, however we would respectfully suggest this should again be considered.

Century Code: 57-38.6-02. (3)
This is referred to as The North Dakota Ag Manufacturing Credit. The Director of Commerce may not certify more than ten qualified businesses during each calendar year. This limitation does not apply to a qualified business that is seeking recertification during the calendar year.

The proposed change of this Century Code that I support is to remove the requirement to be incorporated or organized in North Dakota and the date of incorporation or organization which is currently December 31, 2000. While the date may have had meaning when the law first went into effect, I believe it now artificially gives an incentive to one group of investors and arbitrarily not to another group of investors.

This existing law gives an income tax credit equal to 30% of the project cost up to a lifetime credit of $250,000 per qualified investor.

During calendar 2012, it is my understanding that only one new project was applied for and approved.

This is not a free gift to those who invest; first of all, to use any of the credit you must be have a North Dakota income tax liability. You may only reduce your income tax liability up to a maximum amount of $50,000 in any given year. You have up to ten-years (10) to use this credit or you lose it.

This credit also benefits others in agriculture who are not directly involved in the project. Higher demand caused by higher returns raises the value of all crops.

Once again I would like to thank the committee for taking the time to address this issue. And will be happy to address any questions.

#2

North Dakota AG COALITION

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MEMBERS

- AmeriFlax
- BNSF Railway Company
- Garrison Diversion Conservancy District
- Independent Beef Association of ND
- Landowners Association of ND
- Milk Producers Association of ND
- Minn-Dak Farmers Cooperative
- ND Ag Aviation Association
- ND Ag Consultants
- ND Agricultural Association
- ND Agri-Women
- ND Association of Agricultural Educators
- ND Association of Soil Conservation Districts
- ND Barley Council
- ND Beef Commission
- ND Corn Growers Association
- ND Corn Utilization Council
- ND Crop Improvement and Seed Association
- ND Dairy Coalition
- ND Department of Agriculture
- ND Dry Bean Council
- ND Dry Edible Bean Seed Growers
- ND Elk Growers
- ND Ethanol Council
- ND Farm Bureau
- ND Farm Credit Council
- ND Farmers Union
- ND Grain Dealers Association
- ND Grain Growers Association
- ND Irrigation Association
- ND Lamb and Wool Producers
- ND Oilseed Council
- ND Pork Producers
- ND Soybean Council
- ND Soybean Growers Association
- ND State Seed Commission
- ND Stockmen's Association
- ND Wheat Commission
- NDSU Agricultural Affairs
- Northern Canola Growers Association
- Northern Food Grade Soybean Association
- Northern Plains Potato Growers Association
- Northern Pulse Growers Association
- Red River Valley Sugarbeet Growers

Testimony of Jessie Bateman
Administrator, North Dakota Ag Coalition
In Support of SB 2295
March 13, 2013

Chairman Belter and members of the House Finance and Taxation Committee:

My name is Jessie Bateman, 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 2295.

The Ag Coalition has provided a unified voice for North Dakota agricultural interests for over 30 years. Today, we represent more than 40 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. The Ag Coalition takes a position on a limited number of issues, brought to us by our members, that have significant impact on North Dakota's agriculture industry.

The North Dakota Ag Coalition is supporting this bill as it provides incentives to invest in value-added agriculture ventures by allowing income tax exemptions to be passed on from a farmers' cooperative to its patrons. This not only benefits North Dakota agriculture but brings increased economic opportunities for North Dakota as well.

We appreciate your past support of North Dakota's agriculture industry and encourage your favorable consideration of SB 2295.

Cooperative - Pass Through New Business Exemption (SL [illegible]) (For House Finance & Taxation Committee)

#3

1 Cooperative

Cooperative's Federal Tax Return (with assumptions)

Sales	$20,000,000
Less: Cost of purchases from patrons	($11,000,000)
Gross Income	$9,000,000
Less: Other expenses	($7,000,000)
= net income	$2,000,000
Less: Deduction for patronage divs.	($2,000,000)
= Federal taxable income	$0

Computation of Expanding Business Exemption (per bill)

Federal taxable income	$0
Plus: Patronage dividends (per bill)	$2,000,000
= Total income subject to exemption	$2,000,000
Assume cooperative's expanding business exemption of 20%	x 20%
= Exemption to be passed through to patrons	$400,000

Patron's ND Individual Tax Returns

Taxable patronage dividends	$2,000,000
Less: exemption passed through	($400,000)
= ND taxable income	$1,600,000

2 Partnership (& S corporation)

Partnership's Federal Tax Return (same assumptions)

Sales	$20,000,000
Less: Cost of purchases	($11,000,000)
Gross Income	$9,000,000
Less: Other expenses	($7,000,000)
= net income	$2,000,000
Less: Deduction for patronage divs.	(not applicable)
= Federal taxable income	$2,000,000

All Passed through to partners

Computation of Expanding Business Exemption

Federal taxable income	$2,000,000
Plus: Patronage dividends	(not applicable)
= Total income subject to exemption	$2,000,000
Assume partnership's expanding business exemption of 20%	x 20%
= Exemption to be passed through to partners	$400,000

Net Result of Exemption

ND taxable income passed through to partners	$2,000,000
Less: Exemption passed through	($400,000)
= ND taxable income	$1,600,000

3 Corporation

Corporation's Federal Tax Return (same assumptions)

Sales	$20,000,000
Less: Cost of purchases	($11,000,000)
Gross Income	$9,000,000
Less: Other expenses	($7,000,000)
= net income	$2,000,000
Less: Deduction for patronage divs.	(not applicable)
= Federal taxable income	$2,000,000

Computation of Expanding Business Exemption

Federal taxable income	$2,000,000
Plus: Patronage dividends	(not applicable)
= Total income subject to exemption	$2,000,000
Assume corporation's expanding business exemption of 20%	x 20%
= Exemption (deduction to be claimed on corporate income tax return)	$400,000

Net Result of Exemption

ND taxable income before exemption	$2,000,000
Less: Exemption deduction on return	($400,000)
= ND taxable income	$1,600,000

Prepared by:
Matt Peyerl, Associate Director, Tax Administration, ND Office of State Tax Commissioner, 328-2706
13-Mar-13