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FIRST ENGROSSMENT with Senate Amendments

Fifty-seventh Legislative Assembly of North Dakota

ENGROSSED HOUSE BILL NO. 1413

Introduced by

Representatives Berg, B. Thoreson, Wald, Weiler

Senators Grindberg, Wardner

A BILL for an Act to create and enact a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to credits allowed on the short-form income tax return; to amend and reenact subsection 4 of section 57-38.5-01 and sections 57-38.5-02, 57-38.5-03, and 57-38.5-05 of the North Dakota Century Code, relating to the seed capital investment tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the credit provided under section 57-38.5-03.

SECTION 2. AMENDMENT. Subsection 4 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Qualified business" means ~~a~~

a. A primary sector business that:

~~a.~~ (1) Is incorporated or its satellite operation is incorporated as a for-profit corporation or is a partnership, limited partnership, limited liability company, limited liability partnership, or joint venture;

~~b.~~ (2) Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;

~~c.~~ (3) Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation; and

~~d.~~ (4) Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has or is projected to have more than

~~twenty-five~~ ten employees or ~~two~~ one hundred fifty thousand dollars of sales annually; ~~and~~

~~c.~~ ~~Has a majority of its ownership interests owned by one or more individuals for whom operation of the business is their full-time professional activity~~ or

b. An organization that:

(1) Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state; and

(2) Attracts investments to build and own a value-added agricultural processing facility that it leases with an option to purchase to a primary sector business that qualifies under subdivision a.

SECTION 3. AMENDMENT. Section 57-38.5-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-02. Certification - Investment reporting by qualified businesses. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 4 of section 57-38.5-01 and the certification must include the period of time the certification covers. The director shall establish the necessary forms and procedures for certifying qualified businesses.

SECTION 4. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-03. Seed capital investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-29 or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The aggregate annual investment for which a taxpayer may obtain a tax credit under this section is not less than five thousand dollars and not more than fifty thousand dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.

2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit under this section which is attributable to investments in a single taxable year. ~~The amount of the credit allowed under this section for any taxable year may not~~

~~exceed fifty percent of the taxpayer's tax liability as otherwise determined under this chapter.~~

3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to ~~fifteen~~ four taxable years after the taxable year in which the investment was made.

4. A partnership that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a partnership's investment in a qualified business must be determined at the partnership level. The amount of the total credit determined at the partnership level must be allowed to the partners, limited to individuals, estates, and trusts, in proportion to their respective interests in the partnership.

5. The investment must be at risk in the business. An investment for which a credit is received under this section must remain in the business for at least three years.

6. Tax credits for investments in one qualified business may not exceed ~~the least of the following amounts:~~

   ~~a.~~ ~~Thirty percent of the total amount of investments in the qualified business during the taxable year.~~

   ~~b.~~ ~~Gross receipts from out-of-state sales of the business during the taxable year.~~

   ~~c.~~ ~~Two~~ two hundred fifty thousand dollars.

7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.

8. A taxpayer who owns a controlling interest in the qualified business or whose full-time professional activity is the operation of the business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.

9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

SECTION 5. AMENDMENT. Section 57-38.5-05 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-05. Seed capital investment tax credit limits. The aggregate amount of seed capital investment tax credit allowed for investments under this chapter ~~in any taxable~~ through calendar year 2002 is limited to one million dollars, through calendar year 2003 is limited to two million five hundred ~~fifty~~ thousand dollars, and after calendar year 2003 is limited to five million dollars. If investments in qualified businesses reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in qualified businesses as determined from the forms filed under section 57-38.5-07.

SECTION 6. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2001.