

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 54-60 and a new section to
2 chapter 54-60.1 of the North Dakota Century Code, relating to tax expenditure reports and
3 business incentive expenditure reports; to amend and reenact sections 57-38.5-05 and
4 57-39.2-04.3 of the North Dakota Century Code, relating to the seed capital investment tax
5 credit and tax exemptions for tourism equipment and wireless service provider equipment; to
6 repeal sections 57-38-71, 57-38-72, 57-38-73, and 57-38-74 of the North Dakota Century Code,
7 relating to the beginning entrepreneur income tax deduction; to provide for a legislative council
8 study; and to provide an effective date.

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

10 **SECTION 1.** A new section to chapter 54-60 of the North Dakota Century Code is
11 created and enacted as follows:

12 **Tax expenditure report.**

13 1. Before the tenth legislative day of each regular session of the legislative assembly,
14 the commissioner of commerce shall submit to the president of the senate and the
15 speaker of the house a tax expenditure report. This report must be based upon
16 information available to the tax commissioner and information available to the
17 department of commerce, and must include:

18 a. Data that expressly identifies all tax expenditures for the previous two tax
19 years.

20 b. An analysis of all tax expenditures which includes a description of the annual
21 state revenue losses and benefits and a cyclical analysis of these losses and
22 benefits.

23 2. The tax commissioner shall compile tax expenditure data and provide this data to
24 the department of commerce. Notwithstanding section 57-38-57, or other

- 1 confidentiality statutes, the tax commissioner shall provide the department of
2 commerce the information necessary to accomplish and effectuate the intent of this
3 section. The tax commissioner may request the assistance of the office of
4 management and budget as necessary to compile this tax expenditure data.
- 5 3. The tax commissioner may adopt rules setting forth the procedure by which the tax
6 commissioner will compile the tax expenditure data and the format in which the tax
7 commissioner will provide this data to the department of commerce. The
8 department of commerce may adopt rules setting forth the manner in which the tax
9 expenditure data will be analyzed, organized, and presented in the report.
- 10 4. For purposes of this section, the term tax expenditure means a provision in the
11 state tax laws, including an exclusion, a deduction, a tax preference, a credit, and a
12 deferral designed to encourage certain activities or to aid a taxpayer in special
13 circumstances.

14 **SECTION 2.** A new section to chapter 54-60.1 of the North Dakota Century Code is
15 created and enacted as follows:

16 **State business incentive expenditure report.**

- 17 1. Before the tenth legislative day of each regular session of the legislative assembly,
18 the commissioner of commerce shall submit to the president of the senate and the
19 speaker of the house a state business incentive expenditure report. This report
20 must be based upon information available to the department and must include:
- 21 a. Data that expressly identifies all state business incentive expenditures for the
22 previous two years.
- 23 b. An analysis of all state business incentive expenditures which includes a
24 description of the annual state revenue losses and benefits and a cyclical
25 analysis of these losses and benefits.
- 26 2. The administering agency for each state business incentive shall compile state
27 business incentive expenditure data and provide this data to the department. The
28 department shall determine the data appropriate to measure the losses and
29 benefits for each state business incentive and shall inform the administering
30 agency of the specific data required and the format in which the administering
31 agency shall provide this data to the department.

1 3. The department may adopt rules as necessary to implement this section.

2 4. For purposes of this section, the term business incentive does not include a tax
3 expenditure as defined under section 1 of this Act.

4 **SECTION 3. AMENDMENT.** Section 57-38.5-05 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-38.5-05. Seed capital investment tax credit limits.** The aggregate amount of
7 seed capital investment tax credit allowed for investments under this chapter is limited to ~~two~~
8 five million five hundred thousand dollars for each calendar year. If investments in qualified
9 businesses reported to the commissioner under section 57-38.5-07 exceed the limits on tax
10 credits for investments imposed by this section, the credit must be allowed to taxpayers in the
11 chronological order of their investments in qualified businesses as determined from the forms
12 filed under section 57-38.5-07.

13 **SECTION 4. AMENDMENT.** Section 57-39.2-04.3 of the North Dakota Century Code
14 is amended and reenacted as follows:

15 **57-39.2-04.3. Sales tax exemption for manufacturing or recycling machinery and**
16 **equipment, tourism equipment, wireless service provider equipment, and primary sector**
17 **business computer and telecommunications equipment.**

18 1. Gross receipts from sales of machinery or equipment used directly in
19 manufacturing of tangible personal property for wholesale, retail, or lease are
20 exempt from taxes under this chapter. To be exempt, the machinery or equipment
21 must be used in a new manufacturing plant or in a physical or economic expansion
22 of an existing manufacturing plant. Purchase of replacement machinery or
23 equipment is not exempt unless it results in a physical or economic expansion of
24 the plant.

25 2. Gross receipts from sales of machinery or equipment used directly in recycling of
26 tangible personal property are exempt from taxes under this chapter. To be
27 exempt, the machinery or equipment must be used in a new recycling facility or in
28 physical or economic expansion of an existing recycling facility. Purchase of
29 replacement machinery or equipment is not exempt unless it results in a physical
30 or economic expansion of the facility.

- 1 3. Gross receipts from sales of computer and telecommunications equipment that is
2 an integral part of a new primary sector business or a physical or economic
3 expansion of a primary sector business are exempt from taxes under this chapter.
4 Purchase of replacement equipment is not exempt under this subsection.
- 5 4. Gross receipts from sales of equipment that is an integral part of a new tourism
6 business or a physical or economic expansion of a tourism business are exempt
7 from taxes under this chapter. Purchase of replacement equipment is not exempt
8 under this subsection unless it results in a physical or economic expansion of the
9 tourism business.
- 10 5. Gross receipts from sales of equipment that is an integral part of a new or
11 expanding wireless service provider are exempt from taxes under this chapter.
12 Purchase of replacement equipment is not exempt under this subsection.
- 13 6. To qualify for exemption at the time of purchase, the manufacturer, recycler,
14 tourism business, wireless service provider, or primary sector business must
15 receive from the commissioner a certificate stating that the machinery or
16 equipment qualifies for the exemption. If a certificate is not received before the
17 purchase, the manufacturer, recycler, or primary sector business must pay the tax
18 and apply to the commissioner for a refund.
- 19 ~~5.~~ 7. If the machinery or equipment is purchased or installed by a contractor subject to
20 tax under this chapter, the manufacturer, recycler, or primary sector business must
21 apply for a refund of the amount remitted by the contractor.
- 22 ~~6.~~ 8. For purposes of this section, the following definitions apply:
- 23 a. "Economic expansion" means an increase in production volume, employment,
24 or the types of products that can be manufactured or recycled.
- 25 b. "Equipment":
- 26 (1) For purposes of a manufacturer or recycler, means any tangible
27 personal property other than machinery used directly in the
28 manufacturing or recycling process; ~~and~~
- 29 (2) For purposes of a primary sector business other than manufacturing or
30 recycling, means telecommunications equipment and computer

- 1 equipment, printers, and software that are an integral part of the
2 operations of the primary sector business;
- 3 (3) For purposes of a tourism business, means any tangible personal
4 property used directly in the activities of the tourism business. The term
5 does not include an item used directly in the lodging activities of a
6 tourism business unless the business is a unique lodging tourism
7 business; and
- 8 (4) For purposes of a wireless service provider, means any tangible
9 personal property; telecommunications equipment; and computer
10 equipment, printers, and software that are an integral part of the
11 operations of the wireless service provider.
- 12 c. "Machinery" means mechanical devices purchased or constructed by the
13 manufacturer or recycler, or its agent, and used directly in manufacturing or
14 recycling operations at any time from the initial stage where the raw material
15 is first received at the plant site through the completion of the product,
16 including packaging and all processes prior to transportation of the product
17 from the site. The term includes electrical, mechanical, and electronic
18 components that are part of machinery and necessary for a machine to
19 produce its effect or result and environmental control equipment required to
20 maintain certain levels of humidity or temperature in a special and limited area
21 of the manufacturing facility where the regulation is essential for production to
22 occur. The term includes computer equipment that controls or monitors the
23 functions of machinery used directly in the manufacturing operations.
- 24 d. "Machinery" and "equipment":
- 25 (1) For purposes of a manufacturer or recycler, do not include handtools,
26 buildings, or transportation equipment not used directly in
27 manufacturing or recycling; machines and equipment used primarily in
28 administrative, accounting, sales, or other nonmanufacturing segments
29 of the business; any property that becomes a part of the manufactured
30 or recycled product; or any other equipment or machinery not used
31 directly in manufacturing or recycling; and

- 1 (2) For purposes of a primary sector business other than manufacturing or
2 recycling, do not include equipment that is not an integral part of the
3 operations of the primary sector business;
- 4 (3) For purposes of a tourism business, do not include equipment that is
5 not an integral part of the operations of the tourism business; and
- 6 (4) For purposes of a wireless service provider, do not include equipment
7 that is not an integral part of the operations of the wireless service
8 provider.
- 9 e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the
10 processing of agricultural products, including registered and certified seed, but
11 does not include mining, refining, extracting oil and gas, or the generation of
12 electricity.
- 13 f. "Primarily" means more than fifty percent of the time the machinery or
14 equipment is used.
- 15 g. "Primary sector business" means an individual, corporation, limited liability
16 company, partnership, or association that through the employment of
17 knowledge or labor adds value to a product, process, or service which results
18 in the creation of new wealth and which has been certified by the department
19 of commerce division of economic development and finance to be qualified
20 under this subdivision.
- 21 h. "Recycling" means collecting or recovering material that would otherwise be
22 solid waste and performing all or part of the process in which the material
23 becomes a raw material for manufacturing or becomes a product for sale at
24 retail or wholesale.
- 25 i. "Tourism" includes all tourism-related businesses and activities, such as
26 recreation, historical and cultural interpretation, events, guide services, and
27 unique lodging and food services that serve as destination attractions.
- 28 j. "Used directly" with respect to manufacturing means used primarily in the
29 actual production, processing, fabrication, or assembly of raw materials, or
30 partially finished materials, into the form in which the product is finalized,
31 packaged, and ready for market. The term also means:

- 1 (1) To effect a direct physical change upon the tangible personal property.
- 2 (2) To guide or measure a direct physical change upon the property when
- 3 the function is an integral and essential part of tuning, verifying, or
- 4 aligning the component parts of the tangible personal property.
- 5 (3) To test or measure the property on the production line or at a site in the
- 6 location of production.
- 7 (4) To transport, convey, or handle the tangible personal property during
- 8 the manufacturing.
- 9 (5) To package the product for sale and shipment.
- 10 (6) To conduct research and development and design activities related to
- 11 the manufacturing process of the plant.

12 "Used directly" with respect to recycling means used solely in processing,
13 compacting, altering, transporting, or otherwise affecting material as a part of
14 the recycling process.

15 k. "Wireless service provider" means any entity authorized by the federal
16 communications commission to provide wireless service within this state.

17 **SECTION 5. LEGISLATIVE COUNCIL STUDY - WIRELESS SERVICE PROVIDERS.**

18 During the 2007-08 interim, the legislative council shall consider studying issues relating to
19 wireless service providers in the state and how wireless service impacts the business climate in
20 the state. The legislative council shall report its findings and recommendations, together with
21 any legislation required to implement the recommendations, to the sixty-first legislative
22 assembly.

23 **SECTION 6. REPEAL.** Sections 57-38-71, 57-38-72, 57-38-73, and 57-38-74 of the
24 North Dakota Century Code are repealed.

25 **SECTION 7. EFFECTIVE DATE.** Sections 3 and 6 of this Act are effective for taxable
26 years beginning after December 31, 2006. However, rentals under a lease entered before
27 January 1, 2007, and eligible for the exemption under section 57-38-73 when the lease was
28 entered continue to be eligible for the exemption for taxable years after 2006, on the same
29 terms and conditions, for the duration of the lease. Section 4 of this Act is effective for taxable
30 events occurring after June 30, 2007.