

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2217
(Senators Klein, Grindberg, Taylor)
(Representatives DeKrey, Mueller, Pollert)

AN ACT to create and enact chapter 6-09.17, two new sections to chapter 57-38, a new subsection to section 57-38-30.3, and a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a biodiesel partnership in assisting community expansion program, corporate and individual income tax credits, and a sales tax exemption for blending of biodiesel fuel and purchase of biodiesel production equipment; to amend and reenact section 7 of chapter 531 of the 2003 Session Laws, relating to extending the time special fuels tax reductions are available for biodiesel fuel; to provide an appropriation; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 6-09.17 of the North Dakota Century Code is created and enacted as follows:

6-09.17-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Biodiesel partnership in assisting community expansion fund" or "fund" means a fund established to buy down the interest rate on loans to biodiesel production facilities as provided under this chapter.
2. "Biodiesel production facility" means a corporation, limited liability company, partnership, individual, or association involved in production of diesel fuel containing at least five percent biodiesel meeting the specifications adopted by the American society for testing and materials.
3. "Community" means the city or county in which an eligible biodiesel production facility is located, or a local development corporation, community organization, or any other group whose interest is in the economic growth of the area.

6-09.17-02. Biodiesel partnership in assisting community expansion fund - Continuing appropriation - Administration. A biodiesel partnership in assisting community expansion fund is hereby established. All moneys transferred into the fund, interest on fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is subject to section 54-44.1-11 and any unexpended and unobligated balance in the fund at the end of the biennium must be transferred to the state general fund. The Bank of North Dakota shall administer the fund.

6-09.17-03. Fund - Purpose - Interest rate buydown. Moneys in the biodiesel partnership in assisting community expansion fund must be used for the purpose of buying down the interest rate on loans made by a lead financial institution in participation with the Bank of North Dakota. The Bank of North Dakota's participation may not exceed eighty percent nor be less than fifty percent of the total loans. If the loan is approved by the lenders and there is evidence of the community's commitment and ability to fund its portion of the buydown, the fund's participation in the buydown must automatically be approved.

6-09.17-04. Fund moneys - Eligible uses.

1. a. The fund moneys may be used to participate in an interest rate buydown on a loan to a biodiesel production facility for the following eligible uses:

- (1) Purchase of real property and equipment.
 - (2) Expansion of facilities.
 - (3) Working capital.
 - (4) Inventory.
- b. The loan funds cannot be used to refinance any existing debt or for the relocation of the business within North Dakota.
2. The community shall determine the amount of the interest rate buydown and apply to the Bank of North Dakota for participation from the biodiesel partnership in assisting community expansion fund. The funds for the community's portion of the buydown may come from a local development corporation, contributions, community funds, future dedicated tax programs, or any other community source. Any community funds provided for a buydown under chapter 6-09.14 for a biodiesel production facility may be considered as funds for the community's portion of the buydown under this chapter for that facility.
 3. The fund participation portion in the buydown must be determined by the Bank of North Dakota based on economic conditions in the city or county in which the business is located.
 4. The maximum amount from the fund in the interest rate buydown may not exceed four hundred thousand dollars per loan and not more than one loan may be provided to any single biodiesel production facility under this chapter. However, if the partnership in assisting community expansion fund does not have adequate funds on hand for an interest rate buydown for a biodiesel production facility, the maximum amount from the fund under this subsection is increased to six hundred thousand dollars per loan. The community funds required for participation in the interest rate buydown are limited to the amount required when the fund provides two hundred fifty thousand dollars per loan. The fund participation must be limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.
 5. The Bank of North Dakota shall adopt rules to implement this chapter.

SECTION 2. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Income tax credit for blending of biodiesel fuel. A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against tax liability determined under section 57-38-29, 57-38-30, or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

SECTION 3. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Income tax credit for biodiesel sales equipment costs. A seller of biodiesel fuel is entitled to a credit against tax liability determined under section 57-38-29, 57-38-30, or 57-38-30.3 in the

amount of ten percent per year for five years of the biodiesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel fuel begin.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

SECTION 4. 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 credits provided under sections 2 and 3 of this Act.

SECTION 5. A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale of equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this subsection, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials.

SECTION 6. AMENDMENT. Section 7 of chapter 531 of the 2003 Session Laws is amended and reenacted as follows:

SECTION 7. EXPIRATION DATE. Sections 1, 3, 4, and 5 of this Act are effective for taxable events occurring from the effective date of this Act through June 30, ~~2005~~ 2007, and are thereafter ineffective.

SECTION 7. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the Bank of North Dakota for deposit in the biodiesel partnership in assisting community expansion fund for use as provided in chapter 6-09.17, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 8. EFFECTIVE DATE. Sections 2, 3, and 4 of this Act are effective for taxable years beginning after December 31, 2004. Section 5 of this Act is effective for taxable events occurring after June 30, 2005.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2217.

Senate Vote: Yeas 40 Nays 4 Absent 3

House Vote: Yeas 90 Nays 1 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State