

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2081

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact subsection 3 of section 57-38.6-01 and sections
2 57-38.6-02 and 57-38.6-03 of the North Dakota Century Code, relating to the definition and
3 certification of a qualified business and calculation of the agricultural business investment tax
4 credit; and to provide an effective date.

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

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

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

20 **SECTION 2. AMENDMENT.** Section 57-38.6-02 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **57-38.6-02. Certification - Investment reporting by qualified businesses.** The
23 ~~director shall certify whether a business that has requested to become a qualified business~~
24 ~~meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the~~

1 ~~necessary forms and procedures for certifying qualified businesses. The director is not~~
2 ~~required to recertify a business as a qualified business under this chapter if the business was~~
3 ~~previously certified by the director as a qualified business under chapter 57-38.5.~~

4 1. The director shall certify whether a business that has requested to become a
5 qualified business meets the requirements of subsection 3 of section 57-38.6-01.

6 The director shall establish the necessary forms and procedures for certifying
7 qualified businesses.

8 2. A qualified business may apply to the director for a recertification. Only one
9 recertification is available to a qualified business. The application for recertification
10 must be filed with the director within ninety days before the original certification
11 expiry date. The recertification issued by the director must comply with the
12 provisions of subsection 3.

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

16 4. A certification letter must be issued by the director to the qualified business. The
17 certification letter must include:

18 a. The certification effective date.

19 b. The certification expiry date. The expiry date may not be more than four
20 years from the certification effective date.

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

23 **57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a
24 qualified investment in a qualified business, the taxpayer is entitled to a credit against state
25 income tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3. ~~The~~
26 ~~amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by~~
27 ~~the taxpayer in qualified businesses during the taxable year, subject to the following:~~

28 ~~1. The maximum annual credit a taxpayer may obtain under this section is fifty~~
29 ~~thousand dollars and no taxpayer may obtain more than two hundred fifty~~
30 ~~thousand dollars in credits under this section over any combination of taxable~~
31 ~~years. This subsection may not be interpreted to limit additional investment by a~~

- 1 ~~taxpayer for which that taxpayer is not applying for a credit. The amount of the~~
2 ~~credit to which a taxpayer is entitled is thirty percent of the amount invested by the~~
3 ~~taxpayer in qualified businesses during the taxable year.~~
- 4 2. ~~In any taxable year, a taxpayer may claim no more than fifty percent of the credit~~
5 ~~under this section which is attributable to qualified investments in a single taxable~~
6 ~~year. The amount of the credit allowed under this section for any taxable year may~~
7 ~~not exceed fifty percent of the taxpayer's tax liability as otherwise determined~~
8 ~~under chapter 57-38. The maximum annual credit a taxpayer may obtain under~~
9 ~~this section is fifty thousand dollars and no taxpayer may obtain more than two~~
10 ~~hundred fifty thousand dollars in credits under this section over any combination of~~
11 ~~taxable years. This subsection may not be interpreted to limit additional~~
12 ~~investment by a taxpayer for which that taxpayer is not applying for a credit.~~
- 13 3. ~~Any amount of The credit under this section not allowed because of the limitations~~
14 ~~in this section may not exceed the liability for tax under chapter 57-38. If the~~
15 ~~amount of credit under this section exceeds the liability for tax, the excess may be~~
16 ~~carried forward for up to five ten taxable years after the taxable year in which the~~
17 ~~investment was made.~~
- 18 4. A partnership, subchapter S corporation, limited liability company that for tax
19 purposes is treated like a partnership, or any other passthrough entity that invests
20 in a qualified business must be considered to be the taxpayer for purposes of the
21 investment limitations in this section and, except for the tax liability limitation under
22 subsection 2, the amount of the credit allowed with respect to the passthrough
23 entity's investment in a qualified business must be determined at the passthrough
24 entity level. The amount of the total credit determined at the passthrough entity
25 level must be allowed to the passthrough entity's owners, in proportion to their
26 respective ownership interests in the passthrough entity.
- 27 5. ~~An investment made in a qualified business from the assets of a retirement plan is~~
28 ~~deemed to be the retirement plan participant's investment for the purposes of this~~
29 ~~chapter if a separate account is maintained for the plan participant and the~~
30 ~~participant directly controls where the account assets are invested.~~

1 6. The investment must be made on or after the certification effective date and must
2 be at risk in the business to be eligible for the tax credit under this section. A
3 qualified investment must be in the form of a purchase of ownership interests or
4 the right to receive payment of dividends from the business. An investment for
5 which a credit is received under this section must remain in the business for at
6 least three years. An investment placed in escrow does not qualify for the credit.

7 ~~6.~~ 7. The entire amount of an investment for which a credit is claimed under this section
8 must be expended by the qualified business for plant, equipment, research and
9 development, marketing and sales activity, or working capital for the qualified
10 business.

11 ~~7.~~ 8. The tax commissioner may disallow any credit otherwise allowed under this
12 section if any representation by a business in the application for certification as a
13 qualified business proves to be false or if the taxpayer or qualified business fails to
14 satisfy any conditions under this section or any conditions consistent with this
15 section otherwise determined by the tax commissioner. The amount of any credit
16 disallowed by the tax commissioner that reduced the taxpayer's income tax liability
17 for any or all applicable tax years, plus penalty and interest provided under section
18 57-38-45, must be paid by the taxpayer.

19 **SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
20 December 31, 2006, and for qualified businesses certified or recertified after December 31,
21 2006.