

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2295

Introduced by

Senators Luick, Klein, Wanzek

Representatives Brandenburg, Wall, Williams

1 A BILL for an Act to create and enact a new section to chapter 57-38 of the North Dakota
2 Century Code, relating to the passthrough of the new and expanding business exemption; and
3 to provide an effective date.

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

5 **SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created
6 and enacted as follows:

7 **New and expanding business exemption - Farmers' cooperative.**

- 8 1. A farmers' cooperative as described in section 199(d)(3)(F) of the Internal Revenue
9 Code [26 U.S.C. 199(d)(3)(F)] that receives an income tax exemption for a new or
10 expanding business under chapter 40-57.1 may elect to pass the exemption through
11 to its patrons. The patrons may be allowed to exclude the income attributable to the
12 project as otherwise provided by this chapter. If an election is made by the cooperative
13 to pass the exemption through to the cooperative's patrons, the election:
- 14 a. Is irrevocable and must be made on the cooperative's timely filed income tax
15 return for the tax year in which the income tax exemption began; and
- 16 b. Applies to the entire duration of the exemption granted under chapter 40-57.1.
- 17 2. If the cooperative elects to pass the exemption through to its patrons:
- 18 a. The amount of income eligible to be exempted for a tax year is equal to the
19 amount of the cooperative's income apportioned to this state under the provisions
20 of this chapter and chapter 57-38.1, plus the patronage dividends described in
21 section 1382(b)(1) of the Internal Revenue Code [26 U.S.C. 1382(b)] deducted in
22 determining federal taxable income, that is attributable to the exempt project.
- 23 b. The amount of exemption passed through to each patron for each tax year shall
24 be determined based on the proportionate share of patronage activity as

1 reflected by the written notices of allocation issued by the cooperative for that tax
2 year.

3 c. The written notices of allocation issued by the cooperative must identify each
4 patron's allocation of project income separately from the allocation of nonproject
5 income.

6 3. Within thirty days of the cooperative issuing the written notice of allocation, the
7 cooperative shall transmit to the tax commissioner, in an electronic format approved by
8 the commissioner, a list of patrons and the allocation of the exemption to each patron.
9 The list must include the patron's name, address, federal identification number, and
10 the amount of exemption allocated to each patron, and any other information that may
11 be required by the tax commissioner.

12 4. The patron shall be entitled to claim the exemption in the patron's tax year in which the
13 written notice of allocation in subsection 3 is issued.

14 5. Nothing in this section precludes the tax commissioner from auditing the cooperative's
15 computation of the income tax exemption or the patron's income exemption claimed
16 on its tax return.

17 **SECTION 2. EFFECTIVE DATE.** This Act is effective for projects approved after
18 December 31, 2012.