

**SENATE BILL NO. 2236**

Introduced by

Senator Miller

1 A BILL for an Act to amend and reenact subdivision a of subsection 1 of section 57-35.3-02,  
2 subsections 1 and 3 of section 57-38-01.3, sections 57-38-01.24, 57-38-01.25, and  
3 57-38-01.26, subsection 6 of section 57-38-01.27, sections 57-38-01.31, 57-38-01.32,  
4 57-38-01.33, 57-38-30, and 57-38-30.5, subsections 3 and 4 of section 57-38-40, section  
5 57-38.1-16, subsection 6 of section 57-38.5-01, and sections 57-38.5-03 and 57-38.6-03 of the  
6 North Dakota Century Code, relating to corporate income tax rates, deductions, and credits;  
7 and to provide an effective date.

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

9 **SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 57-35.3-02 of the  
10 North Dakota Century Code is amended and reenacted as follows:

11 a. The adjustments provided by subdivisions ~~c, d,~~ and g of subsection 1 of section  
12 57-38-01.3;

13 **SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 57-38-01.3 of the North Dakota  
14 Century Code are amended and reenacted as follows:

15 1. The taxable income of a corporation as computed pursuant to the provisions of the  
16 Internal Revenue Code of 1954, as amended, must be:

17 a. Reduced by any interest received from obligations of the United States that is  
18 included in taxable income or in the computation thereof on the federal return.

19 b. Reduced by any other income included in the taxable income, or in the  
20 computation thereof, on the federal return which is exempt from taxation by this  
21 state because of the provisions of the Constitution of North Dakota or the  
22 Constitution of the United States.

- 1           c. ~~Increased by the amount of any income taxes, including income taxes of foreign-~~  
2           ~~countries, or franchise or privilege taxes measured by income, to the extent that~~  
3           ~~such taxes were deducted to determine federal taxable income.~~
- 4           d. Increased by the amount of any interest and dividends from foreign securities  
5           and from securities of state and their political subdivisions exempt from federal  
6           income tax, provided that interest upon obligations of the state of North Dakota or  
7           any of its political subdivisions may not be included.
- 8           e.d. Reduced by the amount of net income not allocated and apportioned to this state  
9           under the provisions of chapter 57-38.1, but only to the extent that the amount of  
10          net income not allocated and apportioned to this state under the provisions of  
11          that chapter is not included in any adjustment made pursuant to the preceding  
12          subdivisions.
- 13          f. ~~Repealed by S.L. 2003, ch. 529, § 3.~~
- 14          g.e. Increased by the amount of any special deductions and net operating loss  
15          deductions to the extent that these items were deducted in determining federal  
16          taxable income.
- 17          h.f. Reduced by dividends paid, as defined in section 561 of the Internal Revenue  
18          Code of 1986, as amended, by a regulated investment company or a fund of a  
19          regulated investment company as defined in section 851(a) or 851(g) of the  
20          Internal Revenue Code of 1986, as amended, except that the deduction for  
21          dividends paid is not allowed with respect to dividends attributable to any income  
22          that is not subject to taxation under this chapter when earned by the regulated  
23          investment company. Sections 852(b)(7) and 855 of the Internal Revenue Code  
24          of 1986, as amended, apply for computing the deduction for dividends paid. A  
25          regulated investment company is not allowed a deduction for dividends received  
26          as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as  
27          amended.
- 28          i.g. Except for a cooperative described in this subsection, increased by the amount of  
29          the deduction allowable under section 199 of the Internal Revenue Code  
30          [26 U.S.C. 199], but only to the extent of the deduction taken to determine federal  
31          taxable income. For a cooperative that has elected to pass the deduction through

1 to its patrons under section 199(d)(3), of the Internal Revenue Code [26 U.S.C.  
2 199(d)(3)], the increase under this subsection does not include the amount  
3 passed through to its patrons.

4 ~~j.~~ For taxable years 2005 and 2006, increased by the amount of extraterritorial  
5 income as defined in section 114 of the Internal Revenue Code [26 U.S.C. 114],  
6 that is excluded under sections 101(d), 101(e), and 101(f) of Pub. L. 108-357  
7 [118 Stat. 1418], but only to the extent the income was excluded in determining  
8 federal taxable income.

9 ~~k.~~h. Reduced, for an interest charge domestic international sales corporation without  
10 economic substance owned by individuals or passthrough entities, by the amount  
11 of actual or deemed distributions of the interest charge domestic international  
12 sales corporation to its owners. For purposes of this subsection, "without  
13 economic substance" means, in the case of an interest charge domestic  
14 international sales corporation subject to Internal Revenue Code section 992,  
15 that the interest charge domestic international sales corporation has elected to  
16 use intercompany pricing rules of Internal Revenue Code section 994, rather than  
17 the Internal Revenue Code section 482 method. For purposes of this subsection,  
18 a passthrough entity means an entity that for the applicable tax year is treated as  
19 an S corporation under this chapter or a cooperative, general partnership, limited  
20 partnership, limited liability partnership, trust, or limited liability company that for  
21 the applicable tax year is not taxed as a corporation under this chapter.

22 ~~l.~~i. Increased by the amount of the dividends paid deduction otherwise allowed  
23 under section 857 of the Internal Revenue Code of 1986, as amended, if the real  
24 estate investment trust is a captive real estate investment trust.

25 (1) For purposes of this subdivision:

26 (a) "Captive real estate trust" means a real estate investment trust the  
27 shares or beneficial interests of which are not regularly traded on an  
28 established securities market, and more than fifty percent of the voting  
29 power or value of the beneficial interests or shares of the real estate  
30 investment trust are owned or controlled, directly, indirectly, or  
31 constructively, by a single entity that is:

- 1 [1] Treated as an association taxable as a corporation under the  
2 Internal Revenue Code of 1986, as amended; and
- 3 [2] Not exempt from federal income taxation under section 501(a) of  
4 the Internal Revenue Code of 1986, as amended.
- 5 (b) "Listed Australian property trust" means an Australian unit trust  
6 registered as a managed investment scheme under the Australian  
7 Corporations Act in which the principal class of units is listed on a  
8 recognized stock exchange in Australia, and is regularly traded on an  
9 established securities market, or an entity organized as a trust,  
10 provided that a listed Australian property trust owns or controls,  
11 directly or indirectly, seventy-five percent or more of the voting power  
12 or value of the beneficial interests or shares of such trust.
- 13 (c) "Qualified foreign entity" means a corporation, trust, association, or  
14 partnership organized outside the laws of the United States, and  
15 which satisfies all of the following criteria:
- 16 [1] At least seventy-five percent of the entity's total asset value at  
17 the close of its taxable year is represented by real estate assets  
18 as defined in section 856(c)(5)(B) of the Internal Revenue Code  
19 of 1986, as amended, including shares or certificates of  
20 beneficial interest in any real estate investment trust, cash and  
21 cash equivalents, and United States government securities;
- 22 [2] The entity is not subject to tax on amounts distributed to its  
23 beneficial owners or is exempt from entity level taxation;
- 24 [3] The entity distributes at least eighty-five percent of its taxable  
25 income, as computed in the jurisdiction in which it is organized,  
26 to the holders of its shares or certificates of beneficial interest on  
27 an annual basis;
- 28 [4] Not more than ten percent of the voting power or value in the  
29 entity is held directly or indirectly or constructively by a single  
30 entity or individual, or the shares or beneficial interests of such



1 amended, and has elected to be treated as a real estate investment trust  
2 under section 856(c)(1) of the Internal Revenue Code of 1986, as amended.

3 (5) For purposes of this subdivision, the constructive ownership rules of  
4 section 318(a) of the Internal Revenue Code of 1986, as amended, as  
5 modified by section 856(d)(5) of the Internal Revenue Code of 1986, as  
6 amended, apply in determining the ownership of stock, assets, or net profits  
7 of any person.

8 Provided, however, that each adjustment in the above subdivisions authorized under  
9 law is allowed only to the extent that the adjustment is allocated and apportioned to  
10 North Dakota income.

11 3. The sum calculated pursuant to subsection 1 must be reduced by the amount of any  
12 net operating loss that is attributable to North Dakota sources. If the net operating loss  
13 that is attributable to North Dakota sources exceeds the sum calculated pursuant to  
14 subsection 1, the excess may be carried back or carried forward for the same time  
15 period that an identical federal net operating loss may be carried back or carried  
16 forward. If a corporation uses an apportionment formula to determine the amount of  
17 income that is attributable to North Dakota, the corporation must use the same formula  
18 to determine the amount of net operating loss that is attributable to North Dakota. In  
19 addition, no deduction may be taken for a carryback or carryforward when determining  
20 the amount of net operating loss that is attributable to North Dakota sources.

21 **SECTION 3. AMENDMENT.** Section 57-38-01.24 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **57-38-01.24. Internship employment tax credit.**

24 1. A taxpayer that is an employer within this state is entitled to a credit as determined  
25 under this section against state income tax liability under section ~~57-38-30 or~~  
26 57-38-30.3 for qualified compensation paid to an intern employed in this state by the  
27 taxpayer. To qualify for the credit under this section, the internship program must meet  
28 the following qualifications:

29 a. The intern must be an enrolled student in an institution of higher education or  
30 vocational technical education program who is seeking a degree or a certification

- 1 of completion in a major field of study closely related to the work experience  
2 performed for the taxpayer;
- 3 b. The internship must be taken for academic credit or count toward the completion  
4 of a vocational technical education program;
- 5 c. The intern must be supervised and evaluated by the taxpayer; and  
6 d. The internship position must be located in this state.
- 7 2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend or  
8 salary paid to a college intern employed by the taxpayer. A taxpayer may not receive  
9 more than three thousand dollars in total credits under this section for all taxable years  
10 combined.
- 11 a. The tax credit under this section applies to a stipend or salary for not more than  
12 five interns employed at the same time.
- 13 b. A partnership, subchapter S corporation, or limited liability company that for tax  
14 purposes is treated like a partnership that is entitled to the credit under this  
15 section must be considered to be the taxpayer for purposes of calculating the  
16 credit. The amount of the allowable credit must be determined at the passthrough  
17 entity level. The total credit determined at the entity level must be passed through  
18 to the partners, shareholders, or members in proportion to their respective  
19 interests in the passthrough entity.

20 **SECTION 4. AMENDMENT.** Section 57-38-01.25 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **57-38-01.25. Workforce recruitment credit for hard-to-fill employment positions.**

23 A taxpayer that is an employer in this state is entitled to a credit as determined under this  
24 section against state income tax liability under section ~~57-38-30~~ or 57-38-30.3 for costs the  
25 taxpayer incurred during the tax year to recruit and hire employees for hard-to-fill employment  
26 positions within this state for which the annual salary for the position meets or exceeds the state  
27 average wage.

- 28 1. The amount of the credit to which a taxpayer is entitled is five percent of the salary  
29 paid for the first twelve consecutive months to the employee hired for the hard-to-fill  
30 employment position. To qualify for the credit under this section, the employee must be

- 1 employed by the taxpayer in the hard-to-fill employment position for twelve  
2 consecutive months.
- 3 2. For purposes of this section:
- 4 a. "Extraordinary recruitment methods" means using all of the following:
- 5 (1) A person with the exclusive business purpose of recruiting employees and  
6 for which a fee is charged by that recruiter.
- 7 (2) An advertisement in a professional trade journal, magazine, or other  
8 publication, the main emphasis of which is providing information to a  
9 particular trade or profession.
- 10 (3) A website, the sole purpose of which is to recruit employees and for which a  
11 fee is charged by the website.
- 12 (4) Payment of a signing bonus, moving expenses, or nontypical fringe benefits.
- 13 b. "Hard-to-fill employment position" means a job that requires the employer to use  
14 extraordinary recruitment methods and for which the employer's recruitment  
15 efforts for the specific position have been unsuccessful for six consecutive  
16 calendar months.
- 17 c. "State average wage" means one hundred twenty-five percent of the state  
18 average wage published annually by job service North Dakota and which is in  
19 effect at the time the employee is hired.
- 20 3. The taxpayer may claim the credit in the first tax year beginning after the employee  
21 hired for the hard-to-fill position has completed the employee's first twelve consecutive  
22 months of employment in the hard-to-fill position with the taxpayer.
- 23 4. The credit under this section may not exceed a taxpayer's liability for the taxable year  
24 as determined under this chapter. Any amount of unused credit may be carried forward  
25 for up to four taxable years after the taxable year in which the credit could initially be  
26 claimed.
- 27 5. A partnership, subchapter S corporation, or limited liability company that for tax  
28 purposes is treated like a partnership that is entitled to the credit under this section  
29 must be considered to be the taxpayer for purposes of this section and the amount of  
30 the credit allowed must be determined at the passthrough entity level. The amount of

1           the total credit determined at the passthrough entity level must be allowed to the  
2           members in proportion to their respective interests in the passthrough entity.

3           **SECTION 5. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is  
4           amended and reenacted as follows:

5           **57-38-01.26. Angel fund investment tax credit.**

- 6           1. A taxpayer is entitled to a credit against state income tax liability under section  
7           ~~57-38-30~~ or 57-38-30.3 for an investment made in an angel fund that is a domestic  
8           organization created under the laws of this state. The amount of the credit to which a  
9           taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to an  
10          angel fund during the taxable year. The aggregate annual credit for which a taxpayer  
11          may obtain a tax credit is not more than forty-five thousand dollars. The aggregate  
12          lifetime credits under this section that may be obtained by an individual, married  
13          couple, passthrough entity and its affiliates, or other taxpayer is one hundred fifty  
14          thousand dollars. The investment used to calculate the credit under this section may  
15          not be used to calculate any other income tax deduction or credit allowed by law.
- 16          2. To be eligible for the credit, the investment must be at risk in the angel fund for at least  
17          three years. Investments placed in escrow do not qualify for the credit. The credit must  
18          be claimed in the taxable year in which the investment in the angel fund was received  
19          by the angel fund. The credit allowed may not exceed the liability for tax under this  
20          chapter. If the amount of credit determined under this section exceeds the liability for  
21          tax under this chapter, the excess may be carried forward to each of the seven  
22          succeeding taxable years. A taxpayer claiming a credit under this section may not  
23          claim any credit available to the taxpayer as a result of an investment made by the  
24          angel fund in a qualified business under chapter 57-38.5 or 57-38.6.
- 25          3. An angel fund must:
- 26           a. Be a partnership, limited partnership, corporation, limited liability company, limited  
27           liability partnership, trust, or estate organized on a for-profit basis which is  
28           headquartered in this state.
- 29           b. Be organized for the purpose of investing in a portfolio of at least three primary  
30           sector companies that are early-stage and mid-stage private, nonpublicly traded  
31           enterprises with strong growth potential. For purposes of this section, an

- 1           early-stage entity means an entity with annual revenues of up to two million  
2           dollars and a mid-stage entity means an entity with annual revenues over two  
3           million dollars not to exceed ten million dollars. Early-stage and mid-stage entities  
4           do not include those that have more than twenty-five percent of their revenue  
5           from income-producing real estate.
- 6           c.   Consist of at least six accredited investors as defined by securities and exchange  
7           commission regulation D, rule 501.
- 8           d.   Not have more than twenty-five percent of its capitalized investment assets  
9           owned by an individual investor.
- 10          e.   Have at least five hundred thousand dollars in commitments from accredited  
11          investors and that capital must be subject to call to be invested over an  
12          unspecified number of years to build a portfolio of investments in enterprises.
- 13          f.   Be member-managed or a manager-managed limited liability company and the  
14          investor members or a designated board that includes investor members must  
15          make decisions as a group on which enterprises are worthy of investments.
- 16          g.   Be certified as an angel fund that meets the requirements of this section by the  
17          department of commerce.
- 18          h.   Be in compliance with the securities laws of this state.
- 19          i.   Within thirty days after the date on which an investment in an angel fund is made,  
20          the angel fund shall file with the tax commissioner and provide to the investor  
21          completed forms prescribed by the tax commissioner which show as to each  
22          investment in the angel fund the following:
- 23               (1)   The name, address, and social security number or federal employer  
24               identification number of the taxpayer or passthrough entity that made the  
25               investment;
- 26               (2)   The dollar amount remitted by the taxpayer or passthrough entity; and  
27               (3)   The date the payment was received by the angel fund for the investment.
- 28          j.   Within thirty days after the end of a calendar year, the angel fund shall file with  
29          the tax commissioner a report showing the name and principal place of business  
30          of each enterprise in which the angel fund has an investment.

- 1           4.   The tax commissioner may disclose to the legislative management the reported  
2           information described under paragraphs 2 and 3 of subdivision i of subsection 3 and  
3           the reported information described under subdivision j of subsection 3.
- 4           5.   Angel fund investors may be actively involved in the enterprises in which the angel  
5           fund invests but the angel fund may not invest in any enterprise if any one angel fund  
6           investor owns directly or indirectly more than forty-nine percent of the ownership  
7           interests in the enterprise. The angel fund may not invest in an enterprise if any one  
8           partner, shareholder, or member of a passthrough entity that directly or indirectly owns  
9           more than forty-nine percent of the ownership interests in the enterprise.
- 10          6.   Investors in one angel fund may not receive more than five million dollars in aggregate  
11          credits under this section during the life of the angel fund but this provision may not be  
12          interpreted to limit additional investments in that angel fund.
- 13          7.   a.   A partnership, subchapter S corporation, limited partnership, limited liability  
14          company, or any other passthrough entity entitled to the credit under this section  
15          must be considered to be the taxpayer for purposes of this section, and the  
16          amount of the credit allowed must be determined at the passthrough entity level.
- 17          b.   For the first two taxable years beginning after December 31, 2010, if a  
18          passthrough entity does not elect to sell, transfer, or assign the credit as provided  
19          under this subsection and subsection 8, the amount of the total credit determined  
20          at the entity level must be passed through to the partners, shareholders, or  
21          members in proportion to their respective interests in the passthrough entity.
- 22          c.   For the first two taxable years beginning after December 31, 2010, if a  
23          passthrough entity elects to sell, transfer, or assign a credit as provided under  
24          this subsection and subsection 8, the passthrough entity shall make an  
25          irrevocable election to sell, transfer, or assign the credit on the return filed by the  
26          entity for the taxable year in which the credit was earned. A passthrough entity  
27          that makes a valid election to sell, transfer, or assign a credit shall sell one  
28          hundred percent of the credit earned, may sell the credit to only one purchaser,  
29          and shall comply with the requirements of this subsection and subsection 8.
- 30          8.   For the first two taxable years beginning after December 31, 2010, a taxpayer may  
31          elect to sell, transfer, or assign all of the earned or excess tax credit earned under this

1 section for investment in an angel fund established after July 31, 2011, subject to the  
2 following:

3 a. A taxpayer's total credit sale, transfer, or assignment under this section may not  
4 exceed one hundred thousand dollars over any combination of taxable years.

5 The cumulative credits transferred by all investors in an angel fund may not  
6 exceed fifty percent of the aggregate credits under this section during the life of  
7 the angel fund under subsection 6.

8 b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the  
9 tax credit transferor and the tax credit purchaser jointly shall file with the tax  
10 commissioner a copy of the purchase agreement and a statement containing the  
11 names, addresses, and taxpayer identification numbers of the parties to the  
12 transfer, the amount of the credit being transferred, the gross proceeds received  
13 by the transferor, and the taxable year or years for which the credit may be  
14 claimed. The taxpayer and the purchaser also shall file a document allowing the  
15 tax commissioner to disclose tax information to either party for the purpose of  
16 verifying the correctness of the transferred tax credit. The purchase agreement,  
17 supporting statement, and waiver must be filed within thirty days after the date  
18 the purchase agreement is fully executed.

19 c. The purchaser of the tax credit shall claim the credit beginning with the taxable  
20 year in which the credit purchase agreement was fully executed by the parties. A  
21 purchaser of a tax credit under this section has only such rights to claim and use  
22 the credit under the terms that would have applied to the tax credit transferor.

23 This subsection does not limit the ability of the tax credit purchaser to reduce the  
24 tax liability of the purchaser, regardless of the actual tax liability of the tax credit  
25 transferor.

26 d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and  
27 the purchaser of the tax credit may not sell, assign, or otherwise transfer the  
28 credit.

29 e. If the amount of the credit available under this section is changed as a result of  
30 an amended return filed by the transferor, or as the result of an audit conducted  
31 by the internal revenue service or the tax commissioner, the transferor shall

1 report to the purchaser the adjusted credit amount within thirty days of the  
2 amended return or within thirty days of the final determination made by the  
3 internal revenue service or the tax commissioner. The tax credit purchaser shall  
4 file amended returns reporting the additional tax due or claiming a refund as  
5 provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit  
6 these returns and assess or issue refunds, even though other time periods  
7 prescribed in these sections may have expired for the purchaser.

- 8 f. Gross proceeds received by the tax credit transferor must be assigned to North  
9 Dakota. The amount assigned under this subsection cannot be reduced by the  
10 taxpayer's income apportioned to North Dakota or any North Dakota net  
11 operating loss of the taxpayer.
- 12 g. The tax commissioner has four years after the date of the credit assignment to  
13 audit the returns of the credit transferor and the purchaser to verify the  
14 correctness of the amount of the transferred credit and if necessary assess the  
15 credit purchaser if additional tax is found due. This subdivision does not limit or  
16 restrict any other time period prescribed in this chapter for the assessment of tax.
- 17 h. The tax commissioner may adopt rules to establish necessary administrative  
18 provisions for the credit under this section, including provisions to permit  
19 verification of the validity and timeliness of the transferred tax credit.

20 **SECTION 6. AMENDMENT.** Subsection 6 of section 57-38-01.27 of the North Dakota  
21 Century Code is amended and reenacted as follows:

- 22 6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax  
23 liability as determined under section ~~57-38-30~~ or 57-38-30.3 equal to twenty percent of  
24 the taxpayer's new investment and new employment in the microbusiness during the  
25 taxable year. A taxpayer may not obtain more than ten thousand dollars in credits  
26 under this section over any combination of taxable years.

27 **SECTION 7. AMENDMENT.** Section 57-38-01.31 of the North Dakota Century Code is  
28 amended and reenacted as follows:

1           **57-38-01.31. Employer tax credit for salary and related retirement plan contributions**  
2 **for mobilized employees.**

3           1. A taxpayer who is an employer in this state is entitled to a credit against tax liability as  
4 determined under ~~sections 57-38-30 and~~section 57-38-30.3 equal to twenty-five  
5 percent of the reduction in compensation that the taxpayer continues to pay during the  
6 taxable year to, or on behalf of, each employee of the taxpayer during the period that  
7 the employee is mobilized under title 10 of the United States Code as a member of a  
8 reserve or national guard component of the armed forces of the United States. The  
9 maximum credit allowed for each eligible employee is one thousand dollars. The  
10 amount of the tax credit may not exceed the amount of the taxpayer's state tax liability  
11 for the tax year and an excess credit may be carried forward for up to five taxable  
12 years. For the purposes of this subsection:

13           a. "Reduction in compensation" means the amount by which the pay received  
14 during the taxable year by the employee for service under title 10 of the United  
15 States Code is less than the total amount of salary and related retirement plan  
16 contributions that would have been paid by the taxpayer to the employee for the  
17 same time period had the employee not been mobilized.

18           b. "Related retirement plan contributions" means the portion of voluntary or  
19 matching contributions paid by the taxpayer into a defined contribution plan  
20 maintained by the taxpayer for the employee.

21           2. A partnership, subchapter S corporation, limited liability company treated like a  
22 passthrough entity, or any other similar passthrough entity that is an employer in this  
23 state must be considered to be a taxpayer for purposes of this section. The amount of  
24 the credit determined at the passthrough entity level must be passed through to the  
25 partners, shareholders, or members in proportion to their respective interests in the  
26 passthrough entity.

27           **SECTION 8. AMENDMENT.** Section 57-38-01.32 of the North Dakota Century Code is  
28 amended and reenacted as follows:

1           **57-38-01.32. (Effective for the first ~~two~~four taxable years beginning after December**  
2 **31, 2010) Housing incentive fund tax credit.**

- 3           1. A taxpayer is entitled to a credit as determined under this section against state income  
4 tax liability under section ~~57-38-30~~ or 57-38-30.3 for contributing to the housing  
5 incentive fund under section 54-17-40. The amount of the credit is equal to the amount  
6 contributed to the fund during the taxable year.
- 7           2. North Dakota taxable income must be increased by the amount of the contribution  
8 upon which the credit under this section is computed but only to the extent the  
9 contribution reduced federal taxable income.
- 10          3. The contribution amount used to calculate the credit under this section may not be  
11 used to calculate any other state income tax deduction or credit allowed by law.
- 12          4. If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the  
13 excess may be carried forward to each of the ten succeeding taxable years.
- 14          5. The aggregate amount of tax credits allowed to all eligible contributors is limited to  
15 fifteen million dollars per biennium. This limitation applies to all contributions for which  
16 tax credits are claimed under section 57-35.3-05 and this section.
- 17          6. Within thirty days after the date on which a taxpayer makes a contribution to the  
18 housing incentive fund, the housing finance agency shall file with each contributing  
19 taxpayer, and a copy with the tax commissioner, completed forms that show as to  
20 each contribution to the fund by that taxpayer the following:
- 21           a. The name, address, and social security number or federal employer identification  
22 number of the taxpayer that made the contribution.
- 23           b. The dollar amount paid for the contribution by the taxpayer.
- 24           c. The date the payment was received by the fund.
- 25          7. To receive the tax credit provided under this section, a taxpayer shall claim the credit  
26 on the taxpayer's state income or financial institutions tax return in the manner  
27 prescribed by the tax commissioner and file with the return a copy of the form issued  
28 by the housing finance agency under subsection 6.
- 29          8. Notwithstanding the time limitations contained in section 57-38-38, this section does  
30 not prohibit the tax commissioner from conducting an examination of the credit  
31 claimed and assessing additional tax due under section 57-38-38.

- 1           9. A partnership, subchapter S corporation, limited partnership, limited liability company,  
2           or any other passthrough entity making a contribution to the housing incentive fund  
3           under this section is considered to be the taxpayer for purposes of this section, and  
4           the amount of the credit allowed must be determined at the passthrough entity level.  
5           The amount of the total credit determined at the entity level must be passed through to  
6           the partners, shareholders, or members in proportion to their respective interests in  
7           the passthrough entity.

8           **SECTION 9. AMENDMENT.** Section 57-38-01.33 of the North Dakota Century Code is  
9           amended and reenacted as follows:

10           **57-38-01.33. (Effective for the first three taxable years beginning after December 31,**  
11           **2012) Income tax credit for purchases of manufacturing machinery and equipment for**  
12           **the purpose of automating manufacturing processes.**

- 13           1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against  
14           the tax imposed under section ~~57-38-30~~ or 57-38-30.3 for purchases of manufacturing  
15           machinery and equipment for the purpose of automating manufacturing processes in  
16           this state. The amount of the credit under this section is twenty percent of the costs  
17           incurred in the taxable year to purchase manufacturing machinery and equipment for  
18           the purpose of automating manufacturing processes. Qualified expenditures under this  
19           section may not be used in the calculation of any other income tax deduction or credit  
20           allowed by law.
- 21           2. For purposes of this section:
- 22           a. "Manufacturing machinery and equipment for the purpose of automating  
23           manufacturing processes" means new or used automation and robotic  
24           equipment.
- 25           b. "Primary sector business" means a business certified by the department of  
26           commerce which, through the employment of knowledge or labor, adds value to a  
27           product, process, or service that results in the creation of new wealth.
- 28           3. The taxpayer shall claim the total credit amount for the taxable year in which the  
29           manufacturing machinery and equipment are purchased. The credit under this section  
30           may not exceed the taxpayer's liability as determined under this chapter for any  
31           taxable year.

- 1       4. If the amount of the credit determined under this section exceeds the liability for tax  
2           under this chapter, the excess may be carried forward to each of the next five  
3           succeeding taxable years.
- 4       5. The aggregate amount of credits allowed under this section may not exceed two  
5           million dollars in any calendar year. Credits subject to this limitation must be  
6           determined based upon the date of the qualified purchase.
- 7       6. If a taxpayer entitled to the credit provided by this section is a member of a group of  
8           corporations filing a North Dakota consolidated tax return using the combined  
9           reporting method, the credit may be claimed against the aggregate North Dakota tax  
10          liability of all the corporations included in the North Dakota consolidated return.
- 11      7. A partnership, subchapter S corporation, limited partnership, limited liability company,  
12          or any other passthrough entity entitled to the credit under this section must be  
13          considered to be the taxpayer for purposes of calculating the credit. The amount of the  
14          allowable credit must be determined at the passthrough entity level. The total credit  
15          determined at the entity level must be passed through to the partners, shareholders, or  
16          members in proportion to their respective interests in the passthrough entity. An  
17          individual taxpayer may take the credit passed through under this subsection against  
18          the individual's state income tax liability under section 57-38-30.3.
- 19      8. The department of commerce shall provide the tax commissioner the name, address,  
20          and federal identification number or social security number of the taxpayer approved  
21          as qualifying for the credit under this section, and a list of those items that were  
22          approved as a qualified expenditure by the department. The taxpayer claiming the  
23          credit shall file with the taxpayer's return, on forms prescribed by the tax  
24          commissioner, the following information:
  - 25          a. The name, address, and federal identification number or social security number  
26             of the taxpayer who made the purchase; and
  - 27          b. An itemization of:
    - 28             (1) Each item of machinery or equipment purchased for automation;
    - 29             (2) The amount paid for each item of machinery or equipment if the amount  
30                paid for the machinery or equipment is being used as a basis for calculating  
31                the credit; and

1                   (3) The date on which payment for the purchase was made.

2           9. Notwithstanding the time limitations contained in section 57-38-38, this section does  
3           not prohibit the tax commissioner from conducting an examination of the credit  
4           claimed and assessing additional tax due under section 57-38-38.

5           **SECTION 10. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is  
6           amended and reenacted as follows:

7           **57-38-30. Imposition and rate of tax on corporations.**

8           A tax is hereby imposed at the rate of four and sixty-seven hundredths percent upon the  
9           taxable income of every domestic and foreign corporation which must be levied, collected, and  
10          paid annually as provided in this chapter ~~provided~~:

11          1. ~~For the first twenty-five thousand dollars of taxable income, at the rate of one and~~  
12             ~~sixty-eight hundredths percent.~~

13          2. ~~On all taxable income exceeding twenty-five thousand dollars and not exceeding fifty-~~  
14             ~~thousand dollars, at the rate of four and twenty-three hundredths percent.~~

15          3. ~~On all taxable income exceeding fifty thousand dollars, at the rate of five and fifteen-~~  
16             ~~hundredths percent.~~

17          **SECTION 11. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is  
18          amended and reenacted as follows:

19          **57-38-30.5. Income tax credit for research and experimental expenditures.**

20          A taxpayer is allowed a credit against the tax imposed under section ~~57-38-30~~ or 57-38-30.3  
21          for conducting qualified research in this state.

22          1. The amount of the credit for taxpayers that earned or claimed a credit under this  
23             section in taxable years beginning before January 1, 2007, is calculated as follows:

24           a. For the first taxable year beginning after December 31, 2006, the credit is equal  
25             to twenty-five percent of the first one hundred thousand dollars of the qualified  
26             research expenses for the taxable year in excess of the base amount and equal  
27             to seven and one-half percent of all qualified research expenses for the taxable  
28             year more than one hundred thousand dollars in excess of the base amount.

29           b. For the second taxable year beginning after December 31, 2006, the credit is  
30             equal to twenty-five percent of the first one hundred thousand dollars of the  
31             qualified research expenses for the taxable year in excess of the base amount

- 1                   and equal to eleven percent of all qualified research expenses for the taxable  
2                   year more than one hundred thousand dollars in excess of the base amount.
- 3           c.   For the third taxable year beginning after December 31, 2006, the credit is equal  
4                   to twenty-five percent of the first one hundred thousand dollars of the qualified  
5                   research expenses for the taxable year in excess of the base amount and equal  
6                   to fourteen and one-half percent of all qualified research expenses for the taxable  
7                   year more than one hundred thousand dollars in excess of the base amount.
- 8           d.   For the fourth through the tenth taxable years beginning after December 31,  
9                   2006, the credit is equal to twenty-five percent of the first one hundred thousand  
10                  dollars of the qualified research expenses for the taxable year in excess of the  
11                  base amount and equal to eighteen percent of all qualified research expenses for  
12                  the taxable year more than one hundred thousand dollars in excess of the base  
13                  amount.
- 14           e.   For the eleventh taxable year beginning after December 31, 2006, and for each  
15                  subsequent taxable year in which the taxpayer conducts qualified research in this  
16                  state, the credit is equal to twenty-five percent of the first one hundred thousand  
17                  dollars of the qualified research expenses for the taxable year in excess of the  
18                  base amount and equal to eight percent of all qualified research expenses for the  
19                  taxable year more than one hundred thousand dollars in excess of the base  
20                  amount.
- 21           f.   The maximum annual credit a taxpayer may obtain under this subsection is two  
22                  million dollars. Any credit amount earned in the taxable year in excess of two  
23                  million dollars may not be carried back or forward as provided in subsection 7.
- 24           2.   For taxpayers that have not earned or claimed a credit under this section in taxable  
25                  years beginning before January 1, 2007, and which begin conducting qualified  
26                  research in North Dakota in any of the first four taxable years beginning after  
27                  December 31, 2006, the amount of the credit is equal to twenty-five percent of the first  
28                  one hundred thousand dollars of the qualified research expenses for the taxable year  
29                  in excess of the base amount and equal to twenty percent of all qualified research  
30                  expenses for the taxable year more than one hundred thousand dollars in excess of  
31                  the base amount.

- 1           a. This rate applies through the tenth taxable year beginning after December 31,  
2           2006.
- 3           b. For the eleventh taxable year beginning after December 31, 2006, and for each  
4           subsequent taxable year in which the taxpayer conducts qualified research in this  
5           state, the credit is equal to twenty-five percent of the first one hundred thousand  
6           dollars of the qualified research expenses for the taxable year in excess of the  
7           base amount and equal to eight percent of all qualified research expenses for the  
8           taxable year more than one hundred thousand dollars in excess of the base  
9           amount.
- 10          3. For taxpayers that have not earned or claimed a credit under this section in taxable  
11          years beginning before January 1, 2007, and which begin conducting qualified  
12          research in North Dakota in any taxable year following the fourth taxable year  
13          beginning after December 31, 2006, the amount of the credit is equal to twenty-five  
14          percent of the first one hundred thousand dollars of the qualified research expenses  
15          for the taxable year in excess of the base amount and equal to eight percent of all  
16          qualified research expenses for the taxable year more than one hundred thousand  
17          dollars in excess of the base amount.
- 18          4. For purposes of this section:
- 19           a. "Base amount" means base amount as defined in section 41(c) of the Internal  
20           Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted  
21           outside the state of North Dakota.
- 22           b. "Director" means the director of the department of commerce division of  
23           economic development and finance.
- 24           c. "Primary sector business" means a qualified business that through the  
25           employment of knowledge or labor adds value to a product, process, or service.
- 26           d. "Qualified research" means qualified research as defined in section 41(d) of the  
27           Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research  
28           conducted outside the state of North Dakota.
- 29           e. "Qualified research and development company" means a taxpayer that is a  
30           primary sector business with annual gross revenues of less than seven hundred

1                    fifty thousand dollars and which has not conducted new research and  
2                    development in North Dakota.

3                    f. "Qualified research expenses" means qualified research expenses as defined in  
4                    section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not  
5                    include expenses incurred for basic research conducted outside the state of  
6                    North Dakota.

7                    5. The credit allowed under this section for the taxable year may not exceed the liability  
8                    for tax under this chapter.

9                    6. In the case of a taxpayer that is a partner in a partnership or a member in a limited  
10                    liability company, the credit allowed for the taxable year may not exceed an amount  
11                    separately computed with respect to the taxpayer's interest in the trade, business, or  
12                    entity equal to the amount of tax attributable to that portion of the taxpayer's taxable  
13                    income which is allocable or apportionable to the taxpayer's interest in the trade,  
14                    business, or entity.

15                    7. Except as provided in subsection 1, if the amount of the credit determined under this  
16                    section for any taxable year exceeds the limitation under subsection 5, the excess  
17                    may be used as a research credit carryback to each of the three preceding taxable  
18                    years and a research credit carryover to each of the fifteen succeeding taxable years.  
19                    The entire amount of the excess unused credit for the taxable year must be carried  
20                    first to the earliest of the taxable years to which the credit may be carried and then to  
21                    each successive year to which the credit may be carried and the amount of the  
22                    unused credit which may be added under this subsection may not exceed the  
23                    taxpayer's liability for tax less the research credit for the taxable year. A claim to carry  
24                    back the credit under this section must be filed within three years of the due date or  
25                    extended due date of the return for the taxable year in which the credit was earned.

26                    8. A taxpayer that is certified as a qualified research and development company by the  
27                    director may elect to sell, transfer, or assign all or part of the unused tax credit earned  
28                    under this section. The director shall certify whether a taxpayer that has requested to  
29                    become a qualified research and development company meets the requirements of  
30                    subsection 4. The director shall establish the necessary forms and procedures for  
31                    certifying qualifying research and development companies. The director shall issue a

1 certification letter to the taxpayer and the tax commissioner. A tax credit can be sold,  
2 transferred, or assigned subject to the following:

- 3 a. A taxpayer's total credit assignment under this section may not exceed one  
4 hundred thousand dollars over any combination of taxable years.
- 5 b. If the taxpayer elects to assign or transfer an excess credit under this subsection,  
6 the tax credit transferor and the tax credit purchaser jointly shall file with the tax  
7 commissioner a copy of the purchase agreement and a statement containing the  
8 names, addresses, and taxpayer identification numbers of the parties to the  
9 transfer, the amount of the credit being transferred, the gross proceeds received  
10 by the transferor, and the taxable year or years for which the credit may be  
11 claimed. The taxpayer and the purchaser also shall file a document allowing the  
12 tax commissioner to disclose tax information to either party for the purpose of  
13 verifying the correctness of the transferred tax credit. The purchase agreement,  
14 supporting statement, and waiver must be filed within thirty days after the date  
15 the purchase agreement is fully executed.
- 16 c. The purchaser of the tax credit shall claim the credit beginning with the taxable  
17 year in which the credit purchase agreement was fully executed by the parties. A  
18 purchaser of a tax credit under this section has only such rights to claim and use  
19 the credit under the terms that would have applied to the tax credit transferor,  
20 except the credit purchaser may not carry back the credit as otherwise provided  
21 in this section. This subsection does not limit the ability of the tax credit purchaser  
22 to reduce the tax liability of the purchaser, regardless of the actual tax liability of  
23 the tax credit transferor.
- 24 d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer  
25 the credit purchased under this section.
- 26 e. If the amount of the credit available under this section is changed as a result of  
27 an amended return filed by the transferor, or as the result of an audit conducted  
28 by the internal revenue service or the tax commissioner, the transferor shall  
29 report to the purchaser the adjusted credit amount within thirty days of the  
30 amended return or within thirty days of the final determination made by the  
31 internal revenue service or the tax commissioner. The tax credit purchaser shall

- 1 file amended returns reporting the additional tax due or claiming a refund as  
2 provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit  
3 these returns and assess or issue refunds, even though other time periods  
4 prescribed in these sections may have expired for the purchaser.
- 5 f. Gross proceeds received by the tax credit transferor must be assigned to North  
6 Dakota. The amount assigned under this subsection cannot be reduced by the  
7 taxpayer's income apportioned to North Dakota or any North Dakota net  
8 operating loss of the taxpayer.
- 9 g. The tax commissioner has four years after the date of the credit assignment to  
10 audit the returns of the credit transferor and the purchaser to verify the  
11 correctness of the amount of the transferred credit and if necessary assess the  
12 credit purchaser if additional tax is found due. This subdivision does not limit or  
13 restrict any other time period prescribed in this chapter for the assessment of tax.
- 14 h. The tax commissioner may adopt rules to permit verification of the validity and  
15 timeliness of the transferred tax credit.
- 16 9. If a taxpayer acquires or disposes of the major portion of a trade or business or the  
17 major portion of a separate unit of a trade or business in a transaction with another  
18 taxpayer, the taxpayer's qualified research expenses and base period must be  
19 adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code  
20 [26 U.S.C. 41(f)(3)].
- 21 10. If a taxpayer entitled to the credit provided by this section is a member of a group of  
22 corporations filing a North Dakota consolidated tax return using the combined  
23 reporting method, the credit may be claimed against the aggregate North Dakota tax  
24 liability of all the corporations included in the North Dakota consolidated return. This  
25 section does not apply to tax credits received or purchased under subsection 8.
- 26 11. An individual, estate, or trust that purchases a credit under this section is entitled to  
27 claim the credit against state income tax liability under section 57-38-30.3.
- 28 12. A partnership, subchapter S corporation, limited partnership, limited liability company,  
29 or any other passthrough entity entitled to the credit under this section must be  
30 considered to be the taxpayer for purposes of calculating the credit. The amount of the  
31 allowable credit must be determined at the passthrough entity level. The total credit

1           determined at the entity level must be passed through to the partners, shareholders, or  
2           members in proportion to their respective interests in the passthrough entity. An  
3           individual taxpayer may take the credit passed through under this subsection against  
4           the individual's state income tax liability under section 57-38-30.3.

5           **SECTION 12. AMENDMENT.** Subsections 3 and 4 of section 57-38-40 of the North Dakota  
6 Century Code are amended and reenacted as follows:

- 7           3. A corporation may file a claim for credit or refund of an overpayment of tax resulting  
8           from the carryback of a net operating loss under subsection 3 of section 57-38-01.3, or  
9           resulting from a federal capital loss carryback, within three years after the prescribed  
10          due date for filing the return, including extensions, for the tax year in which the loss  
11          was incurred. ~~The provisions of this subsection applicable to net operating losses are~~  
12          ~~ineffective for loss years beginning after December 31, 2002.~~
- 13          4. A person ~~other than a corporation~~ may file a claim for credit or refund of an  
14          overpayment of tax resulting from the carryback of a net operating loss within three  
15          years after the prescribed due date for filing the return, including extensions, for the  
16          tax year in which the loss was incurred. ~~The provisions of this subsection are effective~~  
17          ~~for loss years beginning after December 31, 1986.~~

18          **SECTION 13. AMENDMENT.** Section 57-38.1-16 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20          **57-38.1-16. Local tangible personal property sales.**

21          Sales of tangible personal property are in this state if: the

- 22          1. ~~The property is delivered or shipped to a purchaser, other than the United States~~  
23          ~~government, within this state regardless of the f.o.b. point or other conditions of the~~  
24          ~~sale; or~~
- 25          2. ~~The property is shipped from an office, store, warehouse, factory, or other place of~~  
26          ~~storage in this state and:~~
- 27                  a. ~~The purchaser is the United States government; or~~
- 28                  b. ~~The taxpayer is not taxable in the state of the purchaser.~~

29          **SECTION 14. AMENDMENT.** Subsection 6 of section 57-38.5-01 of the North Dakota  
30 Century Code is amended and reenacted as follows:

1           6. "Taxpayer" means an individual, estate, ~~or trust or a corporation~~, passthrough entity, or  
2           an angel fund. The term does not include a real estate investment trust.

3           **SECTION 15. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **57-38.5-03. Seed capital investment tax credit.**

6           If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to  
7 a credit against state income tax liability under section ~~57-38-30~~ or 57-38-30.3.

- 8           1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the  
9           amount invested by the taxpayer in qualified businesses during the taxable year.
- 10          2. The maximum annual credit a taxpayer may claim under this section is not more than  
11          one hundred twelve thousand five hundred dollars. This subsection may not be  
12          interpreted to limit additional investment by a taxpayer for which that taxpayer is not  
13          applying for a credit.
- 14          3. Any amount of credit under subsection 1 not allowed because of the limitation in  
15          subsection 2 may be carried forward for up to four taxable years after the taxable year  
16          in which the investment was made.
- 17          4. A passthrough entity that invests in a qualified business must be considered to be the  
18          taxpayer for purposes of the investment limitations in this section and the amount of  
19          the credit allowed with respect to a passthrough entity's investment in a qualified  
20          business must be determined at the passthrough entity level. The amount of the total  
21          credit determined at the passthrough entity level must be allowed to the members in  
22          proportion to their respective interests in the passthrough entity.
- 23          5. An investment made in a qualified business from the assets of a retirement plan is  
24          deemed to be the retirement plan participant's investment for the purpose of this  
25          chapter if a separate account is maintained for the plan participant and the participant  
26          directly controls where the account assets are invested.
- 27          6. The investment must be made on or after the certification effective date and must be  
28          at risk in the business to be eligible for the tax credit under this section. An investment  
29          for which a credit is received under this section must remain in the business for at  
30          least three years. Investments placed in escrow do not qualify for the credit.

- 1           7. The entire amount of an investment for which a credit is claimed under this section  
2           must be expended by the qualified business for plant, equipment, research and  
3           development, marketing and sales activity, or working capital for the qualified  
4           business.
- 5           8. A taxpayer who owns a controlling interest in the qualified business or who receives  
6           more than fifty percent of the taxpayer's gross annual income from the qualified  
7           business is not entitled to a credit under this section. A member of the immediate  
8           family of a taxpayer disqualified by this subsection is not entitled to the credit under  
9           this section. For purposes of this subsection, "immediate family" means the taxpayer's  
10          spouse, parent, sibling, or child or the spouse of any such person.
- 11          9. The tax commissioner may disallow any credit otherwise allowed under this section if  
12          any representation by a business in the application for certification as a qualified  
13          business proves to be false or if the taxpayer or qualified business fails to satisfy any  
14          conditions under this section or any conditions consistent with this section otherwise  
15          determined by the tax commissioner. The commissioner has four years after the due  
16          date of the return or after the return was filed, whichever period expires later, to audit  
17          the credit and assess additional tax that may be found due to failure to comply with the  
18          provisions of this chapter. The amount of any credit disallowed by the tax  
19          commissioner that reduced the taxpayer's income tax liability for any or all applicable  
20          tax years, plus penalty and interest as provided under section 57-38-45, must be paid  
21          by the taxpayer.
- 22          10. An angel fund that invests in a qualified business must be considered to be the  
23          taxpayer for purposes of the investment limitations in this section. The amount of the  
24          credit allowed with respect to an angel fund's investment in a qualified business must  
25          be determined at the angel fund level. The amount of the total credit determined at the  
26          angel fund level must be allowed to the investors in the angel fund in proportion to the  
27          investor's respective interests in the fund. An angel fund that is subject to the tax  
28          imposed under chapter 57-38 is not eligible for the investment tax credit under this  
29          chapter.

30           **SECTION 16. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is  
31    amended and reenacted as follows:

1           **57-38.6-03. Agricultural business investment tax credit.**

2           If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to  
3 a credit against state income tax liability as determined under section ~~57-38-30~~ or 57-38-30.3.

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

1 received under this section must remain in the business for at least three years. An  
2 investment placed in escrow does not qualify for the credit.

3 7. The entire amount of an investment for which a credit is claimed under this section  
4 must be expended by the qualified business for plant, equipment, research and  
5 development, marketing and sales activity, or working capital for the qualified  
6 business. Real property that qualifies as an investment must be used in, and be an  
7 integral part of, the qualified business's North Dakota business operations.

8 8. If the investment is a contribution of real property:

9 a. The value of the contribution may not exceed the appraised value as established  
10 by a licensed or certified appraiser licensed or certified under the requirements of  
11 sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07,  
12 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.

13 b. The value of the contribution must be approved by the governing body of the  
14 qualified business applying the valuation standards set forth in subsection 3 of  
15 section 10-19.1-63.

16 c. The qualified business receiving the contribution of real property shall provide to  
17 the tax commissioner a copy of the appraised valuation, a copy of the governing  
18 body's resolution approving the value of the contribution, and a copy of the  
19 statement of full consideration within thirty days after the instrument transferring  
20 title to the real property is recorded with the recorder as provided in chapter  
21 47-19.

22 d. A taxpayer making a contribution of real property is entitled to the tax credit in the  
23 taxable year in which the instrument transferring title to the real property is  
24 recorded with the recorder as provided in chapter 47-19.

25 9. The tax commissioner may disallow any credit otherwise allowed under this section if  
26 any representation by a business in the application for certification as a qualified  
27 business proves to be false or if the taxpayer or qualified business fails to satisfy any  
28 conditions under this section or any conditions consistent with this section otherwise  
29 determined by the tax commissioner. The amount of any credit disallowed by the tax  
30 commissioner that reduced the taxpayer's income tax liability for any or all applicable

1 tax years, plus penalty and interest provided under section 57-38-45, must be paid by  
2 the taxpayer.

3 **SECTION 17. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
4 December 31, 2012.