

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1168

Introduced by

Representatives Steiner, Dockter, Hatlestad, Lefor, Porter, Rohr, Satrom, Swiontek, Wagner

Senators Rummel, Sickler

1 A BILL for an Act to create and enact a new section to chapter 57-38 and a new subdivision to
2 subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to the provision
3 of an income tax credit for purchases of manufacturing and animal agricultural machinery and
4 equipment to automate a manufacturing or animal agricultural process; and to provide an
5 effective date.

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

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

9 **Twenty-first century manufacturing and animal agricultural workforce incentive.**

- 10 1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against
11 the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of qualifying
12 machinery and equipment in this state to improve job quality or increase productivity.
13 The amount of the credit under this section is twenty percent of the cost of the
14 qualifying machinery and equipment purchased in the taxable year. Qualified
15 expenditures under this section may not be used in the calculation of any other income
16 tax deduction or credit allowed under this chapter.
- 17 2. For purposes of this section:
- 18 a. "Animal agricultural machinery and equipment" means new or used
19 automation and robotic equipment used to upgrade or advance an animal
20 agricultural process. The term does not include replacement automation and
21 robotic equipment that does not upgrade or advance an animal agricultural
22 process.
- 23 b. "Animal agricultural process" means the breeding, raising, harvesting, or
24 processing of animals for producing meat, dairy, or eggs, or meat, dairy, or

- 1 egg products. For purposes of this subdivision, "animal" means beef or dairy
2 cattle, swine, sheep, goats, bison, farmed elk, or poultry.
- 3 c. "Improved job quality" means a five percent increase in average wages or a five
4 percent improvement in workplace safety as documented through participation in
5 workforce safety and insurance safety incentive programs.
- 6 d. "Increased productivity" means no less than a five percent increase in output or a
7 five percent increase in the number of units produced per automated line per time
8 period.
- 9 e. "Manufacturing machinery and equipment" means new or used automation and
10 robotic equipment used to upgrade or advance a manufacturing process. The
11 term does not include replacement automation and robotic equipment that does
12 not upgrade or advance a manufacturing process.
- 13 f. "Primary sector business" has the meaning provided in section 1-01-49.
- 14 g. "Purchase" includes qualifying machinery and equipment acquired under a
15 capital lease only for the taxable year in which the lease is executed. A capital
16 lease is a lease which meets generally accepted accounting principles. The
17 qualifying costs of the equipment acquired under a capital lease is the fair market
18 value of the equipment at the inception of the lease.
- 19 h. "Qualifying machinery and equipment" means animal agricultural machinery and
20 equipment and manufacturing machinery and equipment for the purpose of
21 automating manufacturing or animal agricultural processes.
- 22 3. The taxpayer shall claim the total credit amount for the taxable year in which the
23 qualifying machinery and equipment are purchased. The credit under this section may
24 not exceed the taxpayer's liability as determined under this chapter for any taxable
25 year.
- 26 4. If the amount of the credit determined under this section exceeds the liability for tax
27 under this chapter, the excess may be carried forward to each of the next five
28 succeeding taxable years.
- 29 5. The aggregate amount of credits allowed each calendar year under this section may
30 not exceed ~~two~~one million five hundred thousand dollars. However, if the maximum
31 amount of allowed credits are not claimed in any calendar year, any remaining

1 unclaimed credits may be carried forward and made available in the next succeeding
2 calendar year. If the aggregate amount of credits claimed under this section exceeds
3 the amount available in a calendar year, the tax commissioner shall prorate the credits
4 among the claimants.

5 6. If a taxpayer entitled to the credit provided by this section is a member of a group of
6 corporations filing a North Dakota consolidated tax return using the combined
7 reporting method, the credit may be claimed against the aggregate North Dakota tax
8 liability of all the corporations included in the North Dakota consolidated return.

9 7. A passthrough entity entitled to the credit under this section must be considered to be
10 the taxpayer for purposes of calculating the credit. The amount of the allowable credit
11 must be determined at the passthrough entity level. The total credit determined at the
12 entity level must be passed through to the partners, shareholders, or members in
13 proportion to their respective interests in the passthrough entity. An individual taxpayer
14 may take the credit passed through under this subsection against the individual's state
15 income tax liability under section 57-38-30.3.

16 8. The department of commerce shall provide the tax commissioner the name, address,
17 and federal identification number or social security number of the taxpayer approved
18 as qualifying for the credit under this section, and a list of those items approved as a
19 qualified expenditure by the department. The taxpayer claiming the credit shall file with
20 the taxpayer's return, on forms prescribed by the tax commissioner, the following
21 information:

22 a. The name, address, and federal identification number or social security number
23 of the taxpayer that made the purchase; and

24 b. An itemization of:

25 (1) Each item of machinery or equipment purchased for automation, including a
26 description of the equipment or system being upgraded or advanced, and
27 an explanation of how the upgrade or advancement will improve job quality
28 or increase productivity;

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. Within one year after claiming a tax credit under this section, a taxpayer shall file with
3 the tax commissioner a report that documents the improved job quality or increased
4 productivity required under this section and any other information the tax
5 commissioner determines is necessary for administration of this section. Failure to
6 document the improved job quality or increased productivity requirements is cause to
7 disallow the credit attributable to the noncompliance. The tax commissioner shall
8 provide notice of the disallowed credit to the taxpayer. Within ninety days after the
9 date of the notice, the taxpayer shall file an amended return for each taxable year in
10 which the disallowed credit reduced the taxpayer's tax liability and pay the amount
11 due. If an amended return is not filed timely, the tax commissioner shall disallow the
12 credit and assess any tax due. An assessment of tax made under this subsection is
13 final and irrevocably fixed.

14 10. Notwithstanding the time limitations contained in section 57-38-38, this section does
15 not prohibit the tax commissioner from conducting an examination of the credit
16 claimed and assessing additional tax due under section 57-38-38.

17 **SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota
18 Century Code is created and enacted as follows:

19 Twenty-first century manufacturing and animal agricultural workforce incentive
20 under section 1 of this Act.

21 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
22 December 31, 2022.