



North Dakota Legislative Council

Prepared for the Tax Reform and
Relief Advisory Committee
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ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - FERTILIZER OR CHEMICAL PROCESSING FACILITY SALES TAX EXEMPTION

Pursuant to North Dakota Century Code Section 54-35-26, created by Senate Bill No. 2057 (2015), a variety of economic development tax incentives must be reviewed by a Legislative Management interim committee during each 6-year review period. The purpose of the review is to ensure economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum is provided to assist in the review of the fertilizer or chemical processing facility sales tax exemption and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

EXPLANATION OF THE FERTILIZER OR CHEMICAL PROCESSING FACILITY SALES TAX EXEMPTION

Sections 57-39.2-04.15 and 57-40.2-03.3 provide a sales and use tax exemption for materials used to construct a fertilizer or chemical processing facility. For purposes of the exemption, a fertilizer or chemical processing facility is a processing plant that produces for retail or wholesale a fertilizer, chemical, or chemical derivative from natural gas, natural gas liquids, or crude oil components. The sales tax exemption applies to sales of personal property used to construct a fertilizer or chemical processing facility or any component integral to the facility. A component integral to the facility may be owned directly or indirectly by the facility or an unrelated third party and must be located at the site of the facility and integral to the facility's processing of fertilizers or chemicals. To qualify for the exemption, the owner of a fertilizer or chemical processing plant must receive from the Department of Environmental Quality an air quality permit, or notice that the air quality permit is complete, and provide the documentation to the Tax Department.

To receive the exemption at the time of purchase, the facility owner must receive a certificate from the Tax Commissioner verifying the tangible personal property the facility owner intends to purchase qualifies for the exemption. If a certificate of exemption is not received before the purchase, the facility owner may apply to the Tax Commissioner for a refund of the applicable amount of tax paid. If a contractor purchases or installs tangible personal property, the facility owner may apply for a refund of the amount of sales tax paid by the contractor on qualifying items. To qualify for the exemption, the tangible personal property must be incorporated in the facility or used in the construction process to the point of having no residual economic value.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE FERTILIZER OR CHEMICAL PROCESSING FACILITY SALES TAX EXEMPTION

The sales and use tax exemption for materials used to construct a fertilizer or chemical processing facility was enacted in 2015 with the passage of Senate Bill No. 2035. Upon a review of the legislative history for the bill, the perceived goal of the Legislative Assembly in creating the exemption was to encourage economic diversification by incentivizing new industries. Various items were discussed in support of the exemption, including the state's need to compete with other states to attract and develop new industries, the benefits of converting natural gas to fertilizer to reduce flaring and provide a local fertilizer market for farmers, the opportunity to add value to existing energy resources by converting ethane gas into polyethylene, and the creation of new jobs and an expanded tax base. The incentive also

was viewed as a tool to lessen the impact of other barriers to doing business in this state, such as the cold climate, limited workforce, and rural infrastructure and transportation issues. The fiscal impact of the exemption could not be determined during the 2015 legislative session, but the Tax Department noted there was at least one \$3 billion plant under consideration that would qualify for the exemption, though it was unknown what share of the \$3 billion cost would be subject to the exemption.

The exemption has been amended twice since its enactment. House Bill No. 1205 (2019) changed a reference to the State Department of Health to the Department of Environmental Quality and extended from June 30, 2019, to June 30, 2023, the deadline by which the owner of a fertilizer or chemical processing plant must receive an air quality permit or notice that an air quality permit application is complete. Senate Bill No. 2334 (2023) eliminated the deadline by which the owner of a fertilizer or chemical processing plant must receive an air quality permit or notice that an air quality permit application is complete. Testimony in support of Senate Bill No. 2334 indicated the reason for eliminating the deadline was to extend the incentive to new industry participants, including a large value-added energy industry project.

DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE FERTILIZER OR CHEMICAL PROCESSING FACILITY SALES TAX EXEMPTION

To effectively analyze the incentive, the committee may wish to collect data pertaining to:

1. The number of claimants;
2. The fiscal impact of the incentive;
3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive;
4. Negative impacts created as a result of the incentive; and
5. Benefits that flow to out-of-state concerns resulting from the incentive.

The committee also may wish to solicit testimony from:

1. The Department of Commerce;
2. The Tax Department;
3. The Economic Development Association of North Dakota; and
4. Representatives of agriculture and energy groups.