

**Sixtieth Legislative Assembly of North Dakota  
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1403  
(Representatives Onstad, DeKrey, D. Johnson, Weisz)  
(Senators Klein, Taylor)

AN ACT to create and enact a new section to chapter 57-38 and a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to an individual and corporate income tax credit for operation of a microbusiness; and to provide an effective date.

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

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

**Microbusiness income tax credit.**

1. For purposes of this section:

- a. "Actively engaged" in the operation of a microbusiness means involvement on a continuous basis in the daily management and operation of the business.
- b. "Director" means the director of the department of commerce division of economic development and finance.
- c. "Economically viable small community" means a community with a population of at least one hundred but fewer than two thousand, which has one or more of the following:
  - (1) An active community economic development organization;
  - (2) An ongoing relationship with a regional or urban economic development organization; or
  - (3) An existing city sales tax, all or part of the revenue from which is dedicated to economic development.
- d. "Microbusiness" means a business employing five or fewer employees inside an economically viable small community.
- e. "New employment" means the amount by which the total compensation paid during the taxable year to North Dakota resident employees exceeds the total compensation paid to North Dakota resident employees in the taxable year before the application. For the purposes of calculating the increase in new employment, the employer may not include merit or equity based salary increases, cost of living adjustments, or any other increase in compensation not directly related to the hiring of new employees during the taxable year.
- f. "New investment" means the increase in the applicant's purchases of microbusiness buildings and depreciable personal property located in this state, not including vehicles required to be registered for operation on the roads and highways of this state, during the taxable year as compared with the previous taxable year. If the buildings or depreciable personal property is leased, the amount of new investment is the increase in average net annual rents multiplied by the number of years of the lease for which the taxpayer is bound, not exceeding ten years. For the purposes of calculating the increase in new investment, the employer may not include any

increases in rents for property leased before the current taxable year. Only rents for leases completed in the current taxable year may be included.

2. The director shall accept an application for qualification as a microbusiness under this section from a taxpayer that is actively engaged in the operation of a microbusiness or that will establish a microbusiness in which the taxpayer will be actively engaged in or operating within the current or subsequent taxable year. The application must be on a form provided by the director and must contain:
  - a. A description of the microbusiness;
  - b. The projected income and expenditures of the microbusiness;
  - c. The market to be served by the microbusiness and the way the expansion addressed the market;
  - d. The amount of projected new investment or employment increases;
  - e. The projected improvement in income or creation of new self-employment or jobs in the area in which the microbusiness is located;
  - f. The nature of the applicant's engagement in the operation of the microbusiness; and
  - g. Any other document, plan, or specification required by the director.
3. A business may be certified by the director as a microbusiness if:
  - a. The applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation of the microbusiness upon its establishment;
  - b. The applicant will make new investment or employment in the microbusiness;
  - c. The new investment or employment will create new income or jobs in the area in which the business is located;
  - d. The new business will not directly compete with any established business located within fifteen miles of the proposed new business;
  - e. The new business will be located in an area determined by the director to be an economically viable small community located at least fifteen miles from the city limits of a city with a population of two thousand or more; and
  - f. The applicant is not closing or reducing its business operation in one area of the state and relocating substantially the same business operation in another area.
4. If the applicant meets the requirements of subsection 3, the director shall issue a certification letter to the microbusiness. The certification letter must include the certification effective date.
5. The director may not certify more than two hundred qualified businesses as a microbusiness.
6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3 equal to twenty percent of the taxpayer's new investment and new employment in the microbusiness during the taxable year. A taxpayer may not obtain more than ten thousand dollars in credits under this section over any combination of taxable years.

7. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year. Each year's unused credit amount may be carried forward for up to five taxable years.
8. The taxpayer only may claim the tax credit under this section by filing a form provided by the tax commissioner and attaching the microbusiness certification letter.
9. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
10. The tax commissioner shall prepare a report for the director identifying the following aggregate amounts for the previous calendar year:
  - a. The actual amount of new investment and new employment in the previous calendar year which was reported by taxpayers certified as a microbusiness under this section; and
  - b. The tax credit claimed during the previous calendar year.
11. The report required by subsection 10 must be issued by January 1, 2009, and each January fifteenth thereafter. Information may not be included in the report which is protected by the state or federal confidentiality laws.

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

A taxpayer filing a return under this section is entitled to the microbusiness income tax credit provided under section 1 of this Act.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

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Speaker of the House

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President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1403.

House Vote:      Yeas    80      Nays    10      Absent    4

Senate Vote:    Yeas    46      Nays    1      Absent    0

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2007,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State