

Introduced by

1 A BILL for an Act to amend and reenact sections 57-38.5-01, 57-38.5-02, 57-38.5-03, and  
2 57-38.5-05 of the North Dakota Century Code, relating to eligibility and qualifications for seed  
3 capital investment tax credits; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38.5-01 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **57-38.5-01. Definitions.** As used in this chapter, unless the context otherwise  
8 requires:

- 9 1. "Director" means the director of the department of commerce division of economic  
10 development and finance.
- 11 2. "New wealth" means revenues to a North Dakota business which are generated by  
12 sales of products or services to customers outside of the state. "New wealth" also  
13 includes revenues to a qualified business the customers of which previously were  
14 unable to acquire, or had limited availability of, the product or service from a North  
15 Dakota provider.
- 16 3. "Passthrough entity" means a corporation that for the applicable tax year is treated  
17 as an S corporation or a general partnership, limited partnership, limited liability  
18 partnership, trust, or limited liability company that for the applicable tax year is not  
19 taxed as a corporation under chapter 57-38.
- 20 4. "Primary sector business" means a qualified business that through the employment  
21 of knowledge or labor adds value to a product, process, or service and which  
22 results in the creation of new wealth.
- 23 ~~4.~~ 5. "Qualified business" means:  
24 a. A primary sector business that:

- 1                   (1) Is incorporated or its satellite operation is incorporated as a for-profit  
2                   corporation or is a partnership, limited partnership, limited liability  
3                   company, limited liability partnership, or joint venture;  
4                   (2) Is in compliance with the requirements for filings with the securities  
5                   commissioner under the securities laws of this state;  
6                   (3) Has North Dakota residents as a majority of its employees in the North  
7                   Dakota principal office or the North Dakota satellite operation; and  
8                   (4) Has its principal office in this state and has the majority of its business  
9                   activity performed in this state, except sales activity, or has a significant  
10                  operation in North Dakota that has or is projected to have more than ten  
11                  employees or one hundred fifty thousand dollars of sales annually; or  
12                  b. An organization that:  
13                   (1) Is in compliance with the requirements for filings with the securities  
14                   commissioner under the securities laws of this state; and  
15                   (2) Attracts investments to build and own a value-added agricultural  
16                   processing facility that it leases with an option to purchase to a primary  
17                   sector business that qualifies under subdivision a.  
18                  ~~5.~~ 6. "Taxpayer" means an individual, estate, or trust or a corporation or passthrough  
19                  entity.

20                  **SECTION 2. AMENDMENT.** Section 57-38.5-02 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22                  **57-38.5-02. Certification - Investment reporting by qualified businesses.** The  
23 director shall certify whether a business that has requested to become a qualified business  
24 meets the requirements of subsection ~~4~~ 5 of section 57-38.5-01 and the certification must  
25 include the period of time the certification covers. The director shall establish the necessary  
26 forms and procedures for certifying qualified businesses. The maximum aggregate amount of  
27 qualified investments a qualified business may receive is limited to five million dollars under this  
28 chapter. The limitation on investments under this section may not be interpreted to limit  
29 additional investment by a taxpayer for which that taxpayer is not applying for a credit.

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

- 1           **57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified  
2 investment in a qualified business, the taxpayer is entitled to a credit against state income tax  
3 liability under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a  
4 taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified  
5 businesses during the taxable year, subject to the following:
- 6           1. The aggregate annual investment for which a taxpayer may obtain a tax credit  
7           under this section is not less than five thousand dollars and not more than ~~two~~  
8           seven hundred fifty thousand dollars. This subsection may not be interpreted to  
9           limit additional investment by a taxpayer for which that taxpayer is not applying for  
10          a credit.
  - 11          2. In any taxable year, a taxpayer may claim no more than one-third of the credit  
12          under this section which is attributable to investments in a single taxable year.
  - 13          3. Any amount of credit under this section not allowed because of the limitations in  
14          this section or section 57-38.5-05 may be carried forward for up to four taxable  
15          years after the taxable year in which the investment was made or four taxable  
16          years beginning with the first taxable year the taxpayer is not barred from claiming  
17          the credit because of the limitations in this section or section 57-38.5-05.
  - 18          4. A ~~partnership~~ passthrough entity that invests in a qualified business must be  
19          considered to be the taxpayer for purposes of the investment limitations in this  
20          section and the amount of the credit allowed with respect to a ~~partnership's~~  
21          passthrough entity's investment in a qualified business must be determined at the  
22          ~~partnership~~ passthrough entity level. The amount of the total credit determined at  
23          the ~~partnership~~ passthrough entity level must be allowed to the ~~partners, limited to~~  
24          ~~individuals, estates, and trusts,~~ members in proportion to their respective interests  
25          in the ~~partnership~~ passthrough entity.
  - 26          5. The investment must be at risk in the business. An investment for which a credit is  
27          received under this section must remain in the business for at least three years.
  - 28          6. The entire amount of an investment for which a credit is claimed under this section  
29          must be expended by the qualified business for plant, equipment, research and  
30          development, marketing and sales activity, or working capital for the qualified  
31          business.

- 1           7. A taxpayer who owns a controlling interest in the qualified business ~~or whose~~  
2           ~~full time professional activity is the operation of the business~~ is not entitled to a  
3           credit under this section. A member of the immediate family of a taxpayer  
4           disqualified by this subsection is not entitled to the credit under this section. For  
5           purposes of this subsection, "immediate family" means the taxpayer's spouse,  
6           parent, sibling, or child or the spouse of any such person.
- 7           8. The tax commissioner may disallow any credit otherwise allowed under this section  
8           if any representation by a business in the application for certification as a qualified  
9           business proves to be false or if the taxpayer or qualified business fails to satisfy  
10          any conditions under this section or any conditions consistent with this section  
11          otherwise determined by the tax commissioner. The amount of any credit  
12          disallowed by the tax commissioner that reduced the taxpayer's income tax liability  
13          for any or all applicable tax years, plus penalty and interest as provided under  
14          section 57-38-45, must be paid by the taxpayer.

15           **SECTION 4. AMENDMENT.** Section 57-38.5-05 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17           **57-38.5-05. Seed capital investment tax credit limits.** The aggregate amount of  
18 seed capital investment tax credit allowed for investments under this chapter ~~through calendar~~  
19 ~~year 2002 is limited to one million dollars and after calendar year 2002 is limited to two five~~  
20 million ~~five hundred thousand~~ dollars for each calendar year. If investments in qualified  
21 businesses reported to the commissioner under section 57-38.5-07 exceed the limits on tax  
22 credits for investments imposed by this section, the credit must be allowed to taxpayers in the  
23 chronological order of their investments in qualified businesses as determined from the forms  
24 filed under section 57-38.5-07 and any taxpayer qualified for a credit under this chapter except  
25 for the limitation under this section is entitled to carry that credit forward as provided in section  
26 57-38.5-03 and is entitled to priority over credits claimed for investments made later in time.

27           **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
28 December 31, 2004.