

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 and which for the applicable tax year
19 is not 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 -**

23 **Maximum investments in qualified businesses.** The director shall certify whether a business

24 that has requested to become a qualified business meets the requirements of subsection ~~4~~ 5 of

25 section 57-38.5-01 and the certification must include the period of time the certification covers.

26 The director shall establish the necessary forms and procedures for certifying qualified

27 businesses. The maximum aggregate amount of qualified investments a qualified business

28 may receive is limited to two million five hundred thousand dollars under this chapter. The

29 limitation on investments under this section may not be interpreted to limit additional investment

30 by a taxpayer for which that taxpayer is not applying for a credit.

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

3 **57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified
4 investment in a qualified business, the taxpayer is entitled to a credit against state income tax
5 liability under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a
6 taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified
7 businesses during the taxable year, subject to the following:

- 8 1. The aggregate annual investment for which a taxpayer may obtain a tax credit
9 under this section is not ~~less than five thousand dollars and not~~ more than two
10 hundred fifty thousand dollars. This subsection may not be interpreted to limit
11 additional investment by a taxpayer for which that taxpayer is not applying for a
12 credit.
- 13 2. In any taxable year, a taxpayer may claim no more than one-third of the credit
14 under this section which is attributable to investments in a single taxable year.
- 15 3. Any amount of credit under this section not allowed because of the limitations in
16 this section may be carried forward for up to four taxable years after the taxable
17 year in which the investment was made.
- 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 million~~
20 ~~five hundred thousand~~ dollars for each calendar year. If investments in qualified businesses
21 reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for
22 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.

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