

**FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED HOUSE BILL NO. 1040**

Introduced by

Legislative Management

(Taxation Committee)

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 machinery and equipment to automate
4 manufacturing processes; and to provide an effective date.

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

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

8 **Twenty-first century manufacturing workforce incentive.**

- 9 1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against
10 the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of manufacturing
11 machinery and equipment for the purpose of automating manufacturing processes in
12 this state to improve job quality or increase productivity. The amount of the credit
13 under this section is twenty percent of the cost of the manufacturing machinery and
14 equipment purchased in the taxable year. Qualified expenditures under this section
15 may not be used in the calculation of any other income tax deduction or credit allowed
16 under this chapter.
- 17 2. For purposes of this section:
- 18 a. "Improved job quality" means a five percent increase in average wages or a five
19 percent improvement in workplace safety as documented through participation in
20 workforce safety and insurance safety incentive programs.
- 21 b. "Increased productivity" means no less than a five percent increase in output or a
22 five percent increase in the number of units produced per automated line per time
23 period.

- 1 c. "Manufacturing machinery and equipment for the purpose of automating
2 manufacturing processes" means new or used automation and robotic equipment
3 used to upgrade or advance a manufacturing process. The term does not include
4 replacement automation and robotic equipment that does not upgrade or
5 advance a manufacturing process.
- 6 d. "Primary sector business" has the meaning provided in section 1-01-49.
- 7 e. "Purchase" includes manufacturing machinery and equipment acquired under a
8 capital lease only for the taxable year in which the lease is executed. A capital
9 lease is a lease which meets generally accepted accounting principles. The
10 qualifying costs of the equipment acquired under a capital lease is the fair market
11 value of the equipment at the inception of the lease.
- 12 3. The taxpayer shall claim the total credit amount for the taxable year in which the
13 manufacturing machinery and equipment are purchased. The credit under this section
14 may not exceed the taxpayer's liability as determined under this chapter for any
15 taxable year.
- 16 4. If the amount of the credit determined under this section exceeds the liability for tax
17 under this chapter, the excess may be carried forward to each of the next five
18 succeeding taxable years.
- 19 5. The aggregate amount of credits allowed each calendar year under this section may
20 not exceed two million dollars. However, if the maximum amount of allowed credits are
21 not claimed in any calendar year, any remaining unclaimed credits may be carried
22 forward and made available in the next succeeding calendar year. If the aggregate
23 amount of credits claimed under this section exceeds the amount available in a
24 calendar year, the tax commissioner shall prorate the credits among the claimants.
- 25 6. If a taxpayer entitled to the credit provided by this section is a member of a group of
26 corporations filing a North Dakota consolidated tax return using the combined
27 reporting method, the credit may be claimed against the aggregate North Dakota tax
28 liability of all the corporations included in the North Dakota consolidated return.
- 29 7. A passthrough entity entitled to the credit under this section must be considered to be
30 the taxpayer for purposes of calculating the credit. The amount of the allowable credit
31 must be determined at the passthrough entity level. The total credit determined at the

1 entity level must be passed through to the partners, shareholders, or members in
2 proportion to their respective interests in the passthrough entity. An individual taxpayer
3 may take the credit passed through under this subsection against the individual's state
4 income tax liability under section 57-38-30.3.

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

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

13 b. An itemization of:

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

18 (2) The amount paid for each item of machinery or equipment if the amount
19 paid for the machinery or equipment is being used as a basis for calculating
20 the credit; and

21 (3) The date on which payment for the purchase was made.

22 9. Within one year after claiming a tax credit under this section, a taxpayer shall file with
23 the tax commissioner a report that documents the improved job quality or increased
24 productivity required under this section and any other information the tax
25 commissioner determines is necessary for administration of this section. Failure to
26 document the improved job quality or increased productivity requirements is cause to
27 disallow the credit attributable to the noncompliance. The tax commissioner shall
28 provide notice of the disallowed credit to the taxpayer. Within ninety days after the
29 date of the notice, the taxpayer shall file an amended return for each taxable year in
30 which the disallowed credit reduced the taxpayer's tax liability and pay the amount
31 due. If an amended return is not filed timely, the tax commissioner shall disallow the

1 credit and assess any tax due. An assessment of tax made under this subsection is
2 final and irrevocably fixed.

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

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

8 Twenty-first century manufacturing workforce incentive under section 1 of this
9 Act.

10 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
11 December 31, 2018.