

ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - CERTIFIED NONPROFIT DEVELOPMENT CORPORATION INVESTMENT CREDIT

Pursuant to North Dakota Century Code Section 54-35-26, created by 2015 Senate Bill No. 2057, a variety of economic development tax incentives are to be reviewed by a Legislative Management interim committee over the ensuing six-year period. The study is aimed at ensuring that economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum has been provided to assist in the review of the certified nonprofit development corporation investment credit and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating or altering the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

EXPLANATION OF THE CERTIFIED NONPROFIT DEVELOPMENT CORPORATION INVESTMENT CREDIT

Sections 10-33-124 and 57-38-01.17 provide for a certified nonprofit development corporation investment credit. The income tax credit is available to corporate income taxpayers in an amount equal to 25 percent of the amount paid for dues, membership fees, or contributions to a certified nonprofit development corporation. A taxpayer may claim no more than \$2,000 in credits over any combination of taxable years and may carry forward any unused credits for up to seven taxable years. The credit is not available to subchapter S corporations.

To become certified as a nonprofit development corporation, a corporation must apply to the Secretary of State, invest the majority of its funds in a primary sector business, and may not distribute any part of its income to its members, directors, or officers. For purposes of the credit, a primary sector business is a business that adds value to a product produced for resale through a process employing knowledge and labor. A certified nonprofit development corporation must file a form with the Tax Commissioner identifying each contributing taxpayer and the amount remitted within 30 days of receiving taxpayer funds. The certified nonprofit development corporation must also file two copies of this form with the contributing taxpayer. The contributing taxpayer is then required to attach one copy of this form to the taxpayer's income tax return in order to claim the credit.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE CERTIFIED NONPROFIT DEVELOPMENT CORPORATION INVESTMENT CREDIT

The certified nonprofit development corporation investment credit was first enacted through the passage of 1989 House Bill No. 1558. The provisions contained in the bill were substantially similar to the provisions found in current law. The only notable difference between the law as it currently reads and the law as originally enacted was the scope of application. In its original form, the credit could be claimed by individuals, estates, and trusts filing the optional long-form tax return and taxpayers filing corporate income tax returns. In its current form, the credit can only be claimed by corporate income taxpayers. Upon a review of the legislative history pertaining to the bill, the perceived goal of the Legislative Assembly in creating this credit was to provide an incentive for taxpayers to pool their resources and invest in economic development within their communities. The estimated fiscal effect of the certified nonprofit development corporation investment credit could not be determined during the 1989 legislative session.

The only other changes to the credit occurred in during the 1997 and 2009 legislative sessions. The passage of 1997 Senate Bill No. 2210 served primarily as the means to rewrite an updated version of the Nonprofit Corporations Act within the newly created Chapter 10-33. The bill also added various reporting requirements to the certified nonprofit development corporation investment credit and eliminated the ability of a subchapter S corporation to claim the credit. The most recent changes to the credit occurred as a result of 2009 House Bill No. 1324, which eliminated the optional long-form filing method (Form ND-2), which was the only method the credit could be claimed by individuals.

Information provided to the Political Subdivision Taxation Committee by the Tax Department on July 29, 2015, and later amended on August 12, 2015, indicates the credit was not claimed on any corporate income tax returns in tax years 2006 through 2014.

DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE CERTIFIED NONPROFIT DEVELOPMENT CORPORATION INVESTMENT CREDIT

Data pertaining to the following items will need to be collected to effectively analyze the incentive:

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;
5. Benefits that flow to out-of-state concerns resulting from the incentive; and
6. The use of this type of incentive in other states.

Testimony will need to be solicited from the following parties to effectively analyze the incentive:

1. The Department of Commerce;
2. The Tax Department; and
3. The North Dakota Economic Development Foundation.