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Sixty-eighth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT
with Conference Committee Amendments
REENGROSSED HOUSE BILL NO. 1168

Introduced by

Representatives Steiner, Dockter, Hatlestad, Lefor, Porter, Rohr, Satrom, Swiontek, Wagner

Senators Rummel, Sickler

A BILL for an Act to create and enact a new section to chapter 57-38 and a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to the provision of an income tax credit for purchases of manufacturing and animal agricultural machinery and equipment to automate a manufacturing or animal agricultural process; to amend and reenact subdivision j of subsection 3 of section 54-35-26 of the North Dakota Century Code, relating to evaluation of economic development tax incentives; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision j of subsection 3 of section 54-35-26 of the North Dakota Century Code is amended and reenacted as follows:

j. ~~Manufacturing automation equipment credit~~Twenty-first century manufacturing and animal agricultural workforce incentive.

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

Twenty-first century manufacturing and animal agricultural workforce incentive.

1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of qualifying machinery and equipment in this state to improve job quality or increase productivity. The amount of the credit under this section is fifteen percent of the cost of the qualifying machinery and equipment purchased in the taxable year. Qualified expenditures under this section may not be used in the calculation of any other income tax deduction or credit allowed under this chapter.

2. For purposes of this section:

   a. "Animal agricultural machinery and equipment" means new or used automation and robotic equipment used to upgrade or advance an animal agricultural process. The term does not include replacement automation and robotic equipment that does not upgrade or advance an animal agricultural process.

b. "Animal agricultural process" means the breeding, raising, harvesting, or processing of animals for producing meat, dairy, or eggs, or meat, dairy, or egg products. For purposes of this subdivision, "animal" means beef or dairy cattle, swine, sheep, goats, bison, farmed elk, or poultry.

c. "First-time claimant" means a taxpayer that has not previously claimed a credit against the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of animal agricultural machinery and equipment or manufacturing machinery and equipment for the purpose of automating manufacturing or animal agricultural processes.

d. "Improved job quality" means a five percent increase in average wages or a five percent improvement in workplace safety as documented through participation in workforce safety and insurance safety incentive programs.

e. "Increased productivity" means no less than a five percent increase in output or a five percent increase in the number of units produced per automated line per time period.

f. "Manufacturing machinery and equipment" means new or used automation and robotic equipment used to upgrade or advance a manufacturing process. The term does not include replacement automation and robotic equipment that does not upgrade or advance a manufacturing process.

g. "Primary sector business" has the meaning provided in section 1-01-49.

h. "Purchase" includes qualifying machinery and equipment acquired under a capital lease only for the taxable year in which the lease is executed. A capital lease is a lease which meets generally accepted accounting principles. The qualifying costs of the equipment acquired under a capital lease is the fair market value of the equipment at the inception of the lease.

i. "Qualifying machinery and equipment" means animal agricultural machinery and equipment and manufacturing machinery and equipment for the purpose of automating manufacturing or animal agricultural processes.

3. The taxpayer shall claim the total credit amount for the taxable year in which the qualifying machinery and equipment are purchased. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.

4. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the next five succeeding taxable years.

5. a. The aggregate amount of credits allowed each calendar year under this section may not exceed three million dollars.

    (1) From the aggregate credit limit in this subdivision, the tax commissioner shall designate:

        (a) Five hundred thousand dollars for credits claimed by first-time claimants for animal agricultural machinery and equipment for the purpose of automating animal agricultural processes; and

        (b) Five hundred thousand dollars for credits claimed by first-time claimants for manufacturing machinery and equipment for the purpose of automating manufacturing processes.

    (2) If the portion of the aggregate limit which is designated for first-time claimants in paragraph 1 is greater than the amount of credits claimed by the corresponding first-time claimants, the remaining portion of the aggregate limit which is designated for the first-time claimants in paragraph 1 must be included in the amount available to claimants that are not first-time claimants.

    (3) If the portion of the aggregate limit which is not designated for first-time claimants in paragraph 1 is greater than the amount of credits claimed by claimants that are not first-time claimants, the remaining portion of the aggregate limit which is not designated for first-time claimants in paragraph 1 must be included in the amount available to first-time claimants to the extent necessary to satisfy all first-time claims.

    (4) If the sum of the portion of the aggregate limit which is designated for the corresponding first-time claimants in paragraph 1 and any amount available

to the first-time claimants under paragraph 3 is less than the amount of credits claimed by the first-time claimants, the tax commissioner shall prorate the credits among the first-time claimants.

b. If the maximum amount of allowed credits are not claimed in any calendar year, any remaining unclaimed credits may be carried forward and made available in the next succeeding calendar year.

c. After determining the credits claimed by the first-time claimants as provided in subdivision a, if the aggregate amount of credits claimed under this section by claimants that are not first-time claimants exceeds the amount available to claimants that are not first-time claimants in a calendar year, the tax commissioner shall prorate the credits among the claimants that are not first-time claimants.

6. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return.

7. A 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. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.

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

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

b. An itemization of:

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

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

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

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

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

SECTION 3. A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Twenty-first century manufacturing and animal agricultural workforce incentive under section 2 of this Act.

SECTION 4. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective for taxable years beginning after December 31, 2022.