

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2329**

Introduced by

Senators Cook, Grindberg, J. Lee

Representatives R. Kelsch, Porter

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 an individual
3 and corporate income tax credit for targeted retail businesses; to provide an effective date; and
4 to provide an expiration 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 **Targeted retail business credit.**

9 Upon application by the owner of a new or expanding retail business or the owner of a new
10 or expanding retail business location, a credit against tax liability determined under section
11 57-38-30 or 57-38-30.3 may be granted by the department of commerce to that applicant as
12 provided in this section.

- 13 1. Grants of credits by the department of commerce may be made on the basis of
14 applications submitted and may be awarded until the credits available for the calendar
15 year are fully utilized.
- 16 2. A grant application must identify the name of the owner of the retail business or the
17 owner of the retail business location and the location of the retail business or retail
18 business location of the applicant. The retail business or retail business location that is
19 the subject of the application must be located in a city with a population of fewer than
20 thirty thousand which imposes a city sales tax at a rate of at least one percent and
21 ranks below the state average of city sales tax collections per capita at one percent
22 equivalents as computed by the tax department for the most recent full calendar year.
- 23 3. The department of commerce shall score the applications for credits by assigning
24 points within selected categories determined by the department which relate to the

1 establishment of new retail businesses and the expansion of existing retail businesses
2 in cities with a population of fewer than thirty thousand and below-average city sales
3 tax collections per capita. Among the categories that must be used by the department
4 to score applicants are:

5 a. The city sales tax collections per capita at one percent equivalents as computed
6 by the tax department for the most recent full calendar year for the city where the
7 property is located, with greater scoring points awarded for a lower collections
8 per capita ranking;

9 b. The expected additional annual retail sales tax collections for the business or the
10 businesses that are expected to occupy the new or expanding retail location must
11 be reviewed by the department of commerce, with consideration of the estimates
12 provided by the owner, with greater scoring points awarded for greater expected
13 collections;

14 c. The ratio of the credit applied for to the amount of private investment from all
15 sources in the business, with greater scoring points awarded as the percentage
16 declines;

17 d. The existence of a strategic plan for retail business development, implemented
18 by the city in which the business is located, with greater scoring points awarded
19 based on the department's judgment of the viability of the plan; and

20 e. If the retail sector in which the business will operate is underrepresented in the
21 city, as evidenced by information provided by the applicant or by a retail gap
22 analysis performed by the city, greater scoring points must be awarded for lower
23 representation of that retail sector in the city.

24 4. To be eligible for a credit, an applicant must score at least seventy-five percent of
25 points available under subsection 3 and the applicant may not be closing or reducing
26 its business operations in one area of the state and relocating substantially the same
27 business operations to another area. An applicant business may not be awarded a
28 credit under this section if that business would offer essentially the same goods and
29 services to the public which are offered by an existing business located within the
30 same city.

- 1 5. The aggregate amount of credits that may be awarded under this section is limited to
2 not more than one million two hundred fifty thousand dollars in each calendar year.
3 The credit awarded to an applicant is limited to not more than forty percent of the initial
4 or estimated investment in the business or the retail business location, which may be
5 awarded:
- 6 a. In a single installment;
7 b. In an amount equal to twenty percent per year for five years; or
8 c. In annual installments for a period not to exceed five years, in an amount to be
9 determined by the department of commerce contingent on the applicant meeting
10 the annual performance goals as set forth in the original grant application.
- 11 6. The department of commerce shall notify the tax commissioner of the credit amount
12 awarded to each applicant.
- 13 7. For purposes of the determination of the credit, qualifying initial investments are
14 material investments in the business, including the purchase of land, equipment,
15 inventory, building materials, and payments for construction contracts and franchise
16 fees. The applicant must notify the department of commerce of any material changes
17 to, or withdrawal of, an application. If an approved application is withdrawn by the
18 applicant before the credit being awarded, the credit amount allocated to the
19 withdrawn application must be added back into the aggregate amount of credits that
20 may be awarded during the calendar year. The department of commerce shall place
21 conditions on the credit award including circumstances that will trigger a clawback and
22 the amount of the credit that may be recouped if those circumstances occur. The
23 department of commerce shall notify the tax commissioner of the amount of credit to
24 be recouped.
- 25 8. All or part of the credit received by an applicant may be transferred by the applicant to
26 the owner of the property in which the business is located, upon compliance with any
27 conditions and reporting required by the tax commissioner. Any credit awarded to an
28 applicant or transferred to a property owner may be carried forward for up to five
29 taxable years.

- 1 9. The owner of an expanding existing business or the owner of an expanding retail
2 location may apply for and receive a credit subject to the same provisions provided for
3 a new business or a new business location under this section except:
- 4 a. The expansion must be estimated by the department of commerce, with
5 consideration of the estimates provided by the applicant, to result in an increase
6 in taxable sales of the business or of the businesses that are expected to occupy
7 the expanding retail location of twenty-five percent or more within three years;
8 b. If the expansion is of a retail location, the investment in the expansion must be an
9 amount equal to or in excess of twenty-five percent of the current true and full
10 value of the commercial portion of the existing structure; and
11 c. The credit for an expanding existing business or existing retail location is limited
12 to not more than forty percent of the initial or estimated investment in the
13 expansion.
- 14 10. Upon certification by the department of commerce that the credit or any portion of the
15 credit is revoked, the amount certified becomes a tax obligation of the taxpayer that
16 claimed the credit, to be assessed and collected as provided under this chapter,
17 notwithstanding the time limitations in section 57-38-38.
- 18 11. A partnership, subchapter S corporation, limited partnership, limited liability company,
19 or any other passthrough entity entitled to the credit under this section must be
20 considered to be the taxpayer for purposes of this section, and the amount of the
21 credit allowed must be determined at the passthrough entity level. The amount of the
22 total credit determined at the entity level must be passed through to the partners,
23 shareholders, or members in proportion to their respective interests in the passthrough
24 entity.

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

27 Targeted retail business credit under section 1 of this Act.

28 **SECTION 3. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for the first two
29 taxable years beginning after December 31, 2010, and is thereafter ineffective.