

**FIRST ENGROSSMENT  
with House Amendments  
ENGROSSED SENATE BILL NO. 2340**

Introduced by

Senators Campbell, Robinson, Sorvaag

Representatives Keiser, Mock, Steiner

1 A BILL for an Act to create and enact a new subdivision to subsection 3 of section 1 of Senate  
2 Bill No. 2057, as approved by the sixty-fourth legislative assembly, relating to regular evaluation  
3 of economic development tax incentives created by the sixty-fourth legislative assembly; to  
4 amend and reenact section 57-38-01.33 and subdivision r of subsection 7 of section 57-38-30.3  
5 of the North Dakota Century Code, relating to an income tax credit for purchases of  
6 manufacturing machinery and equipment for automating manufacturing processes; and to  
7 provide an effective date.

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

9 **SECTION 1.** A new subdivision to subsection 3 of section 1 of Senate Bill No. 2057, as  
10 approved by the sixty-fourth legislative assembly, is created and enacted as follows:

11 Any economic development tax incentive created by the sixty-fourth legislative  
12 assembly.

13 **SECTION 2. AMENDMENT.** Section 57-38-01.33 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **57-38-01.33. (~~Effective for the first three taxable years beginning after December 31,~~**  
16 **2012) Income tax credit for purchases of manufacturing machinery and equipment for**  
17 **the purpose of automating manufacturing processes.**

18 1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against  
19 the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of manufacturing  
20 machinery and equipment for the purpose of automating manufacturing processes in  
21 this state. The amount of the credit under this section is twenty percent of the ~~costs~~  
22 ~~incurred in the taxable year to purchase~~cost of the manufacturing machinery and  
23 ~~equipment for the purpose of automating manufacturing processes~~purchased in the  
24 taxable year. Qualified expenditures under this section may not be used in the

- 1 calculation of any other income tax deduction or credit allowed ~~by law~~under this  
2 chapter.
- 3 2. For purposes of this section:
- 4 a. "Manufacturing machinery and equipment for the purpose of automating  
5 manufacturing processes" means new or used automation and robotic  
6 equipment.
- 7 b. "Primary sector business" means a business certified by the department of  
8 commerce which, through the employment of knowledge or labor, adds value to a  
9 product, process, or service that results in the creation of new wealth.
- 10 c. "Purchase" includes manufacturing machinery and equipment acquired under a  
11 capital lease only for the taxable year in which the lease is executed. A capital  
12 lease is a lease which meets generally accepted accounting principles. The  
13 qualifying costs of the equipment acquired under a capital lease is the fair market  
14 value of the equipment at the inception of the lease.
- 15 3. The taxpayer shall claim the total credit amount for the taxable year in which the  
16 manufacturing machinery and equipment are purchased. The maximum credit that  
17 may be claimed by a taxpayer under this section for a taxable year is ten thousand  
18 dollars. The credit under this section may not exceed the taxpayer's liability as  
19 determined under this chapter for any taxable year.
- 20 4. If the amount of the credit determined under this section exceeds the liability for tax  
21 under this chapter, the excess may be carried forward to each of the next five  
22 succeeding taxable years.
- 23 5. The aggregate amount of credits allowed under this section may not exceed ~~two~~  
24 million five hundred thousand dollars in any calendar year. ~~Credits subject to this~~  
25 ~~limitation must be determined based upon the date of the qualified purchase~~ However,  
26 if the maximum amount of allowed credits are not claimed in any calendar year, any  
27 remaining unclaimed credits may be carried forward and made available in the next  
28 succeeding calendar year. If the aggregate amount of credits claimed under this  
29 section exceeds the amount available in a calendar year, the tax commissioner shall  
30 prorate the credits among the claimants.

- 1           6. If a taxpayer entitled to the credit provided by this section is a member of a group of  
2           corporations filing a North Dakota consolidated tax return using the combined  
3           reporting method, the credit may be claimed against the aggregate North Dakota tax  
4           liability of all the corporations included in the North Dakota consolidated return.
- 5           7. A passthrough entity entitled to the credit under this section must be considered to be  
6           the taxpayer for purposes of calculating the credit. The amount of the allowable credit  
7           must be determined at the passthrough entity level. The maximum credit that may be  
8           claimed by the entity under this subsection for a taxable year is ten thousand dollars.  
9           The total credit determined at the entity level must be passed through to the partners,  
10          shareholders, or members in proportion to their respective interests in the passthrough  
11          entity. An individual taxpayer may take the credit passed through under this subsection  
12          against the individual's state income tax liability under section 57-38-30.3.
- 13          8. The department of commerce shall provide the tax commissioner the name, address,  
14          and federal identification number or social security number of the taxpayer approved  
15          as qualifying for the credit under this section, and a list of those items that were  
16          approved as a qualified expenditure by the department. The taxpayer claiming the  
17          credit shall file with the taxpayer's return, on forms prescribed by the tax  
18          commissioner, the following information:
- 19           a. The name, address, and federal identification number or social security number  
20           of the taxpayer who made the purchase; and
- 21           b. An itemization of:
- 22               (1) Each item of machinery or equipment purchased for automation;
- 23               (2) The amount paid for each item of machinery or equipment if the amount  
24               paid for the machinery or equipment is being used as a basis for calculating  
25               the credit; and
- 26               (3) The date on which payment for the purchase was made.
- 27          9. Notwithstanding the time limitations contained in section 57-38-38, this section does  
28          not prohibit the tax commissioner from conducting an examination of the credit  
29          claimed and assessing additional tax due under section 57-38-38.

30           **SECTION 3. AMENDMENT.** Subdivision r of subsection 7 of section 57-38-30.3 of the North  
31          Dakota Century Code is amended and reenacted as follows:

- 1           r. Automating manufacturing processes tax credit under section 57-38-01.33  
2                    (effective for the first three taxable years beginning after December 31, 2012).

3           **SECTION 4. EFFECTIVE DATE.** This Act is effective for purchases made after  
4   December 31, 2014.