

**Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015**

SENATE BILL NO. 2340
(Senators Campbell, Robinson, Sorvaag)
(Representatives Keiser, Mock, Steiner)

AN ACT to amend and reenact section 57-38-01.33 and subdivision r of subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax credit for purchases of manufacturing machinery and equipment for automating manufacturing processes; to provide a statement of legislative intent; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.33 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.33. (Effective for the first three taxable years beginning after December 31, 20122014) Income tax credit for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes.

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 manufacturing machinery and equipment for the purpose of automating manufacturing processes in this state. The amount of the credit under this section is twenty percent of the ~~costs incurred in the taxable year to purchase~~cost of the manufacturing machinery and equipment ~~for the purpose of automating manufacturing processes 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 ~~by law under this chapter.~~
2. For purposes of this section:
 - a. "Manufacturing machinery and equipment for the purpose of automating manufacturing processes" means new or used automation and robotic equipment.
 - b. "Primary sector business" means a business certified by the department of commerce which, through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth.
 - c. "Purchase" includes manufacturing 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.
3. The taxpayer shall claim the total credit amount for the taxable year in which the manufacturing 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. ~~The~~For the 2015 calendar year, the aggregate amount of credits allowed under this section may not exceed two million dollars ~~in any calendar year. Credits subject to this limitation must be determined based upon the date of the qualified purchase~~For the 2016 and 2017 calendar years, the aggregate amount of credits allowed each calendar year may not exceed five hundred thousand dollars. However, 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. If the aggregate amount of credits claimed under this section exceeds the amount available in a calendar year, the tax commissioner shall prorate the credits among the 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 that were 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 who made the purchase; and
 - b. An itemization of:
 - (1) Each item of machinery or equipment purchased for automation;
 - (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. 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 2. AMENDMENT. Subdivision r of subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 3. LEGISLATIVE INTENT REGARDING AUTOMATING MANUFACTURING PROCESSES CREDIT. It is the intent of the sixty-fourth legislative assembly that the income tax credit for purchases of manufacturing machinery and equipment for automating manufacturing processes be one of the economic development tax incentives selected for analysis during the 2015-16 interim by the legislative management interim committee assigned the study responsibility under subsection 3 of section 1 of Senate Bill No. 2057, as approved by the sixty-fourth legislative assembly.

SECTION 4. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first three taxable years after December 31, 2014, and is thereafter ineffective.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2340.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 75 Nays 13 Absent 6

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2015.

Approved at _____ M. on _____, 2015.

Governor

Filed in this office this _____ day of _____, 2015,

at _____ o'clock _____ M.

Secretary of State