CHAPTER 57-38.6
AGRICULTURAL BUSINESS INVESTMENT TAX CREDIT

57-38.6-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural commodity processing facility" means:

   a. A facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state; or

   b. A livestock feeding, handling, milking, or holding operation that uses as part of its operation a byproduct produced at a biofuels production facility.

2. "Biofuels production facility" means a corporation, limited liability company, partnership, individual, or association in this state:

   a. Involved in production of diesel fuel containing at least five percent biodiesel meeting the specifications adopted by the American society for testing and materials;

   b. Involved in the production of corn-based ethanol or cellulose-based ethanol; or

   c. Involved in a soybean or canola crushing facility.

3. "Director" means the director of the department of commerce division of economic development and finance.

4. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:

   a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of being an agricultural commodity processing facility;

   b. Has been certified by the securities commissioner to be in compliance under the securities laws of this state; and

   c. Has an agricultural commodity processing facility, or intends to locate one, in this state.

5. "Qualified investment" means an investment in cash or an investment of a fee simple interest in real property located in this state. For purposes of this chapter, the definition of real property does not include any personal property that may become a fixture to the real property, as defined by chapter 41-09, which is added to the real property following investment of the real property in the qualified business.

6. "Taxpayer" means an individual, estate, trust, corporation, partnership, or limited liability company.

57-38.6-02. Certification - Investment reporting by qualified businesses.

1. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses.

2. A qualified business may apply to the director for a recertification. Only one recertification is available to a qualified business. The application for recertification

must be filed with the director within ninety days before the original certification expiry date. The recertification issued by the director must comply with the provisions of subsection 3.

3. The director may not certify more than ten qualified businesses during each calendar year. This limitation does not apply to a qualified business that is seeking recertification during the calendar year.

4. A certification letter must be issued by the director to the qualified business. The certification letter must include:

   a. The certification effective date.

   b. The certification expiry date. The expiry date may not be more than four years from the certification effective date.

57-38.6-03. Agricultural business investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section 57-38-30 or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year.

2. The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.

3. The credit under this section may not exceed the liability for tax under chapter 57-38. If the amount of credit under this section exceeds the liability for tax, the excess may be carried forward for up to ten taxable years after the taxable year in which the investment was made.

4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's owners, in proportion to their respective ownership interests in the passthrough entity.

5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purposes of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.

6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.

7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified

business. Real property that qualifies as an investment must be used in, and be an integral part of, the qualified business's North Dakota business operations.

8. If the investment is a contribution of real property:

    a. The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.

    b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.

    c. The qualified business receiving the contribution of real property shall provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the recorder as provided in chapter 47-19.

    d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the recorder as provided in chapter 47-19.

9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

57-38.6-04. Taxable year for agricultural business investment tax credit. The tax credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in which the investment in the qualified business was received by the qualified business.

57-38.6-05. Agricultural business investment tax credit - Procedure - Rules. To receive the tax credit provided by section 57-38.6-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.6-06.

57-38.6-06. Investment reporting forms. Within thirty days after the date on which an investment in a qualified business is purchased, the qualified business shall file with the tax commissioner and the director and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the qualified business the following:

1. The name, address, and social security number of the taxpayer who made the investment.

2. The dollar amount paid for the investment by the taxpayer.

3. The date on which full consideration was received by the qualified business for the investment.

57-38.6-07. Rules and administration. The tax commissioner is charged with administration of this chapter as it relates to an income tax credit and has the same powers for purposes of this chapter as provided under section 57-38-56. The director is charged with administration of this chapter as it relates to certification of qualified businesses and the director may adopt rules for that purpose.