

## Agricultural commodity processing facility investment tax credit provisions

### Comparison of law before and after changes made by the 2007 North Dakota Legislature

Tax provision	<p style="text-align: center;">Law before 2007 legislation</p> <p style="text-align: center;">Applies to tax years beginning on or after January 1, 2005, before January 1, 2007, and to qualified investments made on or after January 1, 2005, and before January 1, 2007</p>	<p style="text-align: center;">Law after 2007 legislation</p> <p style="text-align: center;">Applies to tax years beginning on or after January 1, 2007, and to qualified investments made on or after January 1, 2007</p> <p style="text-align: center; color: blue;">Changes are indicated by light blue text</p>
<b>Eligible taxpayers</b>	<ul style="list-style-type: none"> <li>Individual (on Form ND-1 or Form ND-2)</li> <li>Estate (on Form 38, Schedule 1 or 2)</li> <li>Trust (on Form 38, Schedule 1 or 2)</li> <li>Partnership</li> <li>Regular ("C") corporation (on Form 40)</li> <li>S corporation</li> <li>Limited liability company</li> </ul> <p>In the case of a partnership, S corporation, or limited liability company treated like a partnership or S corporation, the credit is determined at the passthrough entity level and passed through to the partners, shareholders, or members in proportion to their ownership interests.</p>	<ul style="list-style-type: none"> <li>Individual (on Form ND-1 or Form ND-2)</li> <li>Estate (on Form 38, Schedule 1 or 2)</li> <li>Trust (on Form 38, Schedule 1 or 2)</li> <li>Partnership</li> <li>Regular ("C") corporation (on Form 40)</li> <li>S corporation</li> <li>Limited liability company</li> </ul> <p>In the case of a partnership, S corporation, or limited liability company treated like a partnership or S corporation, the credit is determined at the passthrough entity level and passed through to the partners, shareholders, or members in proportion to their ownership interests.</p>
<b>Qualified investment</b>	<ul style="list-style-type: none"> <li>A "qualified investment" means a payment of cash.</li> <li>The payment must be made on or after the date the qualified agricultural commodity processing facility is certified by the Commerce Department's Division of Economic Development and Finance.</li> </ul>	<ul style="list-style-type: none"> <li>A "qualified investment" means either:                             <ul style="list-style-type: none"> <li>A payment of cash, <b>or</b></li> <li>A transfer of a fee simple interest in real property located in North Dakota.</li> </ul> </li> <li>The following apply to a transfer of real property: (1) Personal property becoming a fixture to the real property after the transfer is not a qualified investment; (2) The value of the investment may not exceed the appraised value; (3) The value of the investment must be approved by the governing body of the qualified business using the standards for valuing consideration for shares under North Dakota corporation law; (4) The qualified business must provide to the Tax Commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the investment value, and a copy of the statement of full consideration within 30 days after record the transfer with the register of deeds; and (5)</li> </ul>

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		<p>The tax credit is allowed in the tax year in which the transfer is recorded with the register of deeds.</p> <ul style="list-style-type: none"> <li>• The cash payment or transfer of a fee simple interest in real estate must be made on or after the date the qualified agricultural commodity processing facility is certified by the Commerce Department's Division of Economic Development and Finance.</li> <li>• A transfer of monies from a retirement plan to a qualified business is deemed an investment made by the taxpayer (retirement plan participant) if a separate account is maintained for the participant and the participant directly controls where the account assets are invested.</li> </ul>
<b>Rate of tax credit</b>	30%	30%
<b>Maximum amount of credit allowed per taxpayer per tax year</b>	\$50,000; the amount of the credit in excess of \$50,000 is not allowed in any tax year.  The equivalent investment amount is \$166,666.67 (\$50,000 divided by 30%).	No more than \$50,000 of the total credit based on investments made in a tax year may be used in any tax year. This differs from previous law in that the amount of the total credit in excess of \$50,000 may be carried over to subsequent tax years, as limited by the carryover feature—see <b>Carryover of unused tax credit</b> .
<b>Maximum amount of tax credits allowed per taxpayer for all tax years</b>	\$250,000  <i>Note: This does not preclude a taxpayer from investing additional amounts for which no tax credit is allowed.</i>	\$250,000  <i>Note: This does not preclude a taxpayer from investing additional amounts for which no tax credit is allowed.</i>

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<b>Other limitations/conditions on tax credit</b>	<ul style="list-style-type: none"> <li>• In any tax year, a taxpayer may claim no more than one-half of the total allowable tax credit attributable to the investments made in a given tax year.</li> <li>• In any tax year, a taxpayer may claim a credit amount that is no more than one-half of the tax liability (before credits) for the tax year.</li> <li>• Investment must remain in qualified business for at least 3 years.</li> <li>• Investment monies placed in escrow do not constitute an eligible investment and are not eligible for the tax credit. Investment monies placed in escrow become an eligible investment on the date the monies are paid out of escrow and are available to the qualified business.</li> </ul>	<ul style="list-style-type: none"> <li>• Investment must remain in qualified business for at least 3 years.</li> <li>• Investment monies placed in escrow do not constitute an eligible investment and are not eligible for the tax credit. Investment monies placed in escrow become an eligible investment on the date the monies are paid out of escrow and are available to the qualified business.</li> </ul> <p><i>Note: The two limitations—i.e., no more than one-half of the total allowable credit may be claimed in one year and no more than one-half of the tax liability may be reduced by the credit—were repealed.</i></p>
<b>Carryover of unused tax credit</b>	5-year carryover	10-year carryover
<b>Administrative provisions</b>	<ul style="list-style-type: none"> <li>• Within 30 days after receiving an investment, the qualified business must complete an investment reporting form prescribed by the Office of State Tax Commissioner. A copy of the form must be filed with the Office of State Tax Commissioner and the Commerce Department’s Division of Economic Development and Finance.</li> <li>• If the Office of State Tax Commissioner determines that either the taxpayer or the qualified business has misrepresented anything in the application for certification, or fails to satisfy any condition of the law, the credit will be disallowed and must be paid back with applicable penalty and interest.</li> </ul>	<ul style="list-style-type: none"> <li>• Within 30 days after receiving an investment, the qualified business must complete an investment reporting form prescribed by the Office of State Tax Commissioner. A copy of the form must be filed with the Office of State Tax Commissioner and the Commerce Department’s Division of Economic Development and Finance.</li> <li>• If the Office of State Tax Commissioner determines that either the taxpayer or the qualified business has misrepresented anything in the application for certification, or fails to satisfy any condition of the law, the credit will be disallowed and must be paid back with applicable penalty and interest.</li> </ul>

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<p><b>Non-tax provisions</b></p> <p>These provisions are administered by the Commerce Department's Division of Economic Development and Finance. They are mentioned here only for informational purposes.</p>	<p>To participate in the program, a business must apply to the Commerce Department's Division of Economic Development and Finance (Division) for certification as a qualified business. The Division must certify whether a business meets the statutory requirements to be a qualified business. The Division is responsible for establishing the necessary forms and procedures for certifying qualified businesses.</p>	<p>To participate in the program, a business must apply to the Commerce Department's Division of Economic Development and Finance (Division) for certification as a qualified business. The Division must certify whether a business meets the statutory requirements to be a qualified business. The Division is responsible for establishing the necessary forms and procedures for certifying qualified businesses.</p> <p style="color: blue;">The Division must issue to the qualified business a certification letter containing (1) the certification effective date and (2) the certification expiration date, which may not be more than 4 years from the certification effective date.</p> <p style="color: blue;">A qualified business may apply to the Division for one-time recertification under the program. The application must be filed with the director within 90 days before the original certification expiration date. The recertification letter must contain (1) the recertification effective date and (2) the recertification expiration date, which may not be more than 4 years from the recertification effective date.</p> <p style="color: blue;"><b><i>The changes to the certification process and the recertification process apply to businesses certified or recertified on or after January 1, 2007.</i></b></p>
	<p>The Division may certify no more than 10 businesses for the program.</p>	<p style="color: blue;">The Division may certify up to 10 businesses in each calendar year.</p>
	<p>An "agricultural commodity processing facility" means a facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in North Dakota.</p>	<p>An "agricultural commodity processing facility" means:</p> <ul style="list-style-type: none"> <li>• A facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in North Dakota; or</li> </ul>

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		<ul style="list-style-type: none"> <li>A livestock feeding, handling, milking, or holding operation that uses as part of its operation a byproduct produced at a biofuels production facility. For this purpose, a "biofuels production facility" means a corporation, limited liability company, partnership, individual, or association in this state that (1) produces diesel fuel containing at least five percent biodiesel, (2) produces corn-, ethanol-, or cellulose-based ethanol, or (3) crushes soybeans or canola.</li> </ul>