

ECONOMIC DEVELOPMENT TAX INCENTIVES REVIEW - BACKGROUND MEMORANDUM

Senate Bill 2057 (2015) ([appendix](#)) creates a new section to North Dakota Century Code Chapter 54-35. Section 54-35-26 provides for the review of specified economic development tax incentives by a Legislative Management interim committee selected by the Legislative Management. The Political Subdivision Taxation Committee is the interim committee that has been selected to review tax incentives during the 2015-16 interim.

BACKGROUND

The impetus behind the introduction of 2015 Senate Bill 2057 was a directive by the Chairman of the Legislative Management to the 2013-14 interim Taxation Committee to study state economic development tax exemptions, including consideration of whether a regular review process should be established for state economic development tax incentives to ensure regular consideration of whether incentives are still serving the intended purpose for which they were created.

The 2013-14 interim Taxation Committee received testimony from multiple parties in determining the best methods to be utilized when evaluating tax incentives. The committee received testimony from a representative of The Pew Charitable Trusts regarding methods the organization had observed and analyzed in other states when evaluating tax incentive provisions. The committee also arranged a panel discussion comprised of representatives from the City of Bismarck, The Pew Charitable Trusts, the Economic Development Association of North Dakota, and the Department of Commerce to further evaluate methods to evaluate incentives.

The committee reviewed data provided by representatives of the Tax Department and the Department of Commerce regarding the use of various tax credits including a review of a number of claimants and amounts claimed. The committee also considered reviewing credits in light of the original purpose behind the enactment of the credit. The committee acknowledged that some credits were created at a time when the state was seeking to create jobs, a purpose which may not be as necessary given the state's current economic conditions. The committee also thought it prudent to assess credits based on their effectiveness given the original stated purposes for the incentive's enactment.

The bill that resulted from the committee's deliberations was Senate Bill No. 2057, which was recommended to the Legislative Management for introduction during the 2015 legislative session.

2015 SENATE BILL NO. 2057

The provisions of the recently enacted Section 54-35-26, direct a detailed analysis of enacted economic development tax incentives to assure that incentives are serving their intended purposes in a cost-effective and equitable manner. To make such a determination, the interim Political Subdivision Taxation Committee shall apply certain considerations when evaluating incentives. These considerations include:

1. The extent of achievement of the goals of the incentive and whether unintended consequences have developed in its application.
2. Whether the design and application of the incentive can be improved.
3. The extent of complementary or duplicative effect of other incentives or governmental programs.
4. Whether the incentive has a positive influence on business behavior or rewards business behavior that is likely to have occurred without the incentive.
5. The effect of the incentive on the state economy, including the extent of primary sector operation of the recipient and any competitive disadvantage imposed or benefit conferred on other state businesses, any benefit or burden created for local government, and the extent of the incentive's benefit that flows to out-of-state concerns.
6. The employment opportunities generated by the incentive and the extent those represent career opportunities.
7. Whether the incentive is the most effective use of state resources to achieve desired goals.
8. If the committee's analysis of the incentive is constrained by lack of data, whether statutory or administrative changes should be made to improve collection and availability of data.

The incentives to be reviewed are specifically designated in Section 54-35-26(3) and include:

1. Renaissance zone credits and exemptions.
2. Research expense credit.
3. Agricultural commodity processing facility investment credit.
4. Biodiesel fuel production facility construction or retrofit credit, biodiesel fuel blending credit, and biodiesel fuel equipment credit.
5. Seed capital investment credit.
6. Wage and salary credit.
7. Internship program credit.
8. Microbusiness credit.
9. Angel fund investment credit.
10. Workforce recruitment credit.
11. Soybean or canola crushing facility construction or retrofit credit.
12. Manufacturing automation equipment credit.
13. New or expanding business exemption.
14. Manufacturing and recycling equipment sales tax exemption.
15. Coal severance and conversion tax exemptions.
16. Oil and gas gross production and oil extraction tax exemptions.
17. Fuel tax refunds for certain users.
18. New jobs credit from income tax withholding.
19. Any economic development tax incentive created by the 64th Legislative Assembly, which includes a sales and use tax exemption for materials used to construct a fertilizer or chemical processing facility, pursuant to Senate Bill No. 2035; a sales and use tax exemption for materials used to construct or expand a system for compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for use in enhanced recovery of oil and natural gas, pursuant to Senate Bill No. 2318; and a sales and use tax exemption for enterprise information technology equipment and computer software purchased for use by a qualifying business in a qualified data center, pursuant to House Bill No. 1089.

By October 1, 2015, the interim Political Subdivision Taxation Committee shall specify the incentives to be analyzed during the 2015-16 interim as well as a plan under which the remaining tax incentives will be evaluated over the ensuing six-year period. The committee shall also identify the perceived goals of the Legislative Assembly in creating or altering each of the economic development tax incentives selected for review during the 2015-16 interim and the data and testimony required in conducting an effective analysis of the selected incentives. The committee may request data and analysis from other state agencies or instrumentalities including the Department of Commerce, the Tax Commissioner, and the Economic Development Foundation. If the requested data is not available or is available but cannot be shared, the entity requested to provide the data shall advise the committee on options to obtain the information or an adequate substitute.

Following a review of the selected incentives, the interim Political Subdivision Taxation Committee shall report its findings and recommendations, together with any legislation required to implement those recommendations, to the Legislative Management. Included in the committee's findings may be recommendations to add or remove any incentives subject to analysis under Section 54-35-26 or to amend the substantive provisions of Section 54-35-26.

SUGGESTED APPROACH

In determining the priority of incentives selected for study, the committee may wish to review the list of incentives for any incentives that may be:

1. Underutilized;

2. Nearing expiration;
3. Seemingly outdated in light of changed circumstances;
4. Historically contentious; or
5. Too recently enacted to contain data sufficient for review.

In determining the number of incentives selected for each round of study, the committee may wish to consider the scope of analysis and volume of data collection the review of each incentive may entail. The committee may also consider receiving testimony from interested parties utilizing or administering the incentives to determine if any preferences exist among those parties for first round study selection.

An overriding consideration to be taken into account by the committee is the directive provided in 2015 Senate Bill No. 2340 that it is the intent of the 64th 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.

ATTACH:1