

STATUTORY DEFINITIONS OF PRIMARY SECTOR BUSINESS

This memorandum was requested by the interim Political Subdivision Taxation Committee to compare the various ways a primary sector business is defined throughout the North Dakota Century Code.

The phrase "primary sector business" is defined in nine separate instances throughout Century Code. The most commonly used components found in the definitions of primary sector business include components defining a primary sector business as:

1. An individual, corporation, limited liability company, partnership, or association;
2. Which through the employment of knowledge or labor adds value to a product, process, or service;
3. That results in the creation of new wealth.

A definition containing only these three components is found in Section 40-57.1-02, pertaining to tax exemptions for new and expanding businesses, which provides:

3. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association which through the employment of knowledge or labor adds value to a product, process, or service that results in the creation of new wealth.

Nearly identical definitions can be found in Sections 26.1-50-01, 57-39.2-04.3, and 57-38-01.33. These sections contain all three components, with the additional requirement that the business's status as a primary sector business be certified by the Department of Commerce. Any deviations in the language found in these three sections from the language found in Section 40-57.1-02 have been offset in bold below.

Section 26.1-50-01, pertaining to the North Dakota low-risk incentive fund, provides:

4. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth. **Qualification as a primary sector business under this subsection must be determined by the department of commerce division of economic development and finance. (emphasis supplied)**

Section 57-39.2-04.3, pertaining to a sales tax exemption for primary sector business computer and telecommunications equipment, provides:

- g. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth **and which has been certified by the department of commerce division of economic development and finance to be qualified under this subdivision. (emphasis supplied)**

Section 57-38-01.33, pertaining to an income tax credit for purchasing manufacturing machinery and equipment to automate a manufacturing process, provides:

- 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. **(emphasis supplied)**

Definitions of a primary sector business in Sections 10-33-124 and 57-38-30.5 lack the final component of the definition provided in Section 40-57.1-02 associated with the creation of new wealth. The definition in Section 10-33-124 only pertains to adding value to a product produced for resale, rather than a product, process, or service. Any deviations in the language found in these two sections from the language found in Section 40-57.1-02 have been offset in bold below.

Section 10-33-124, pertaining to certified nonprofit development corporations, provides:

- b. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that, through a process employing knowledge and labor, adds value to a **product produced for resale. (emphasis supplied)**

Section 57-38-30.5, pertaining to the income tax credit for research and experimental expenditures, provides:

- c. "Primary sector business" means **a qualified business** that through the employment of knowledge or labor adds value to a product, process, or service. **(emphasis supplied)**

The final three definitions of a primary sector business are found in Sections 10-30.5-01, 57-38.5-01, and 52-02.1-01 and either add or omit certain types of businesses or facilities from the definition of a primary sector business or add additional eligibility criteria. Any deviations in the language found in these three sections from the language found in Section 40-57.1-02 have been offset in bold below.

Section 10-30.5-01, pertaining to the North Dakota Development Fund, provides:

- 4. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association which through the employment of knowledge or labor adds value to a product, process, or service that results in the creation of new wealth. **The term includes tourism but does not include production agriculture. (emphasis supplied)**

Section 57-38.5-01, pertaining to the seed capital investment tax credit, provides:

- 4. "Primary sector business" means **a qualified business** that through the employment of knowledge or labor adds value to a product, process, or service and which results in the creation of new wealth **but does not include an agricultural commodity processing facility as defined under section 57-38.6-01. (emphasis supplied)**

The definition of "qualified business" in Section 57-38.5-01 requires a business to be incorporated as a corporation, passthrough entity, or joint venture.

Section 52-02.1-01, pertaining to the new jobs training program, provides:

- 11. "Primary sector business" means **an employer engaged in locating to or in this state which previously had no presence in this state, or in expanding its operations within this state,** which through the employment of knowledge or labor, adds value to a product, process, or **export** service that results in the creation of new wealth, **excluding production agriculture, if it meets the following eligibility criteria:**
 - a. **An employer entering into an agreement, and increasing its base employment level by at least one employee, or in the case of an employer without an established base employment level in this state creating at least five employees, within the time set in the agreement, is entitled to the new jobs credit from withholding.**
 - b. **An employer must have an economically productive and socially desirable purpose within the state.**
 - c. **An employer must not be closing or reducing its operation in one area of the state and relocating substantially the same operation in another area. (emphasis supplied)**

CONCLUSION

Though some variations exist among the nine separate definitions for a primary sector business within Century Code, many common elements are shared by them. The main differences tend to center around whether a business must be certified by the Department of Commerce; whether the addition of value to a product, process, or service must result in the creation of new wealth; and the types of entities that are included in or excluded from the definition of a primary sector business for purposes of the incentive being applied.