



# AG COMMODITY PROCESSING FACILITY INVESTMENT REPORTING FORM

NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER  
SFN 28214 (6-2023)

► **Important:** This form is for reporting investments made in tax years beginning on or after January 1, 2007.

## Investment information

Date of investment		Amount of investment	
Type of investor (If investor is a limited liability company, see instructions) <input type="radio"/> Individual <input type="radio"/> Partnership <input type="radio"/> "C" Corporation <input type="radio"/> "S" corporation <input type="radio"/> Estate or trust			
Name of investor (If investor is a limited liability company, see instructions)		Social security number or Federal Employer Identification Number	
Spouse's name, if joint investment		Spouse's social security number	
Address	City	State	ZIP Code

## Qualified business

Name of qualified business	FEIN
Signature of authorized representative	Date
Printed name of authorized representative	Title

### Privacy Act Notification

In compliance with the Privacy Act of 1974, disclosure of a social security number or Federal Employer Identification Number (FEIN) on this form is required under N.D.C.C. §§ 57-01-15 and 57-38.6-06, and will be used for tax reporting, identification, and administration of North Dakota tax laws. Disclosure is mandatory. Failure to provide the social security number or FEIN may delay or prevent the processing of this form.

## General instructions

This form must be completed and filed by a qualified business to report the receipt of a qualified investment from an eligible taxpayer for purposes of the agricultural commodity processing facility investment tax credit under N.D.C.C. Ch. 57-38.6.

## Definitions

The following definitions apply:

**Qualified investment**—means one that meets all of the following:

- It is made by an eligible taxpayer—see "Eligible taxpayer" below.
- It is in the form of a cash payment or the transfer of a fee simple interest in real property located in North Dakota. For a fee simple interest in real property, see N.D.C.C. §§ 57-38.6-01(5) and 57-38.6-03(8) for all of the requirements.
- It is made to acquire an equity interest or a right to receive a dividend payment.

- It is made within the certification period specified in the certification confirmation letter issued to the qualified business by the North Dakota Commerce Department.
- It is at risk in the qualified business. An investment is at risk when it is available to the qualified business for its use. Monies placed in escrow are not at risk. The investment must remain at risk for at least three years from the date of investment to maintain its qualified status.

A direct transfer (by the trustee) of monies from an individual's retirement plan to a qualified business is a qualified investment if (1) a separate retirement plan account is maintained for the individual, (2) the monies come out of the individual's account, and (3) the individual controls where the account's assets are invested.

**Eligible taxpayer**—means an individual, estate, trust, partnership (all types), corporation ("C" or "S"), or limited liability company. An

eligible taxpayer does not include a government entity, tax-exempt organization, or an angel fund certified under N.D.C.C. § 57-38-01.26 after June 30, 2017.

**Date of investment**—means the date on which the cash is received and is available for use by the qualified business. For a qualified investment of a fee simple interest in real property, this is the date on which the instrument transferring title is recorded as provided under N.D.C.C. Ch. 47-19.

## Specific instructions for qualified business

Use this form only if you have been certified by the North Dakota Commerce Department's Division of Economic Development and Finance as a qualified business for purposes of the agricultural commodity processing facility investment tax credit program under N.D.C.C. Ch. 57-38.6. This will be evidenced by your receipt of a letter from the Commerce Department confirming the certification and setting out the certification period.

You must complete and file this form for each qualified investment you receive. Only complete and file for qualified investments.

Complete all applicable items on the form. Unless the investment is made jointly by married individuals, provide the investment information for only one eligible taxpayer on each form. For a joint investment by married individuals, provide the name and social security number of both spouses.

If the investor is a limited liability company, note the following when completing the "Investment Information" section:

- For the type of investor, fill in the circle for the entity type that the LLC is filing as for federal income tax purposes. For a single-member LLC that is treated as a disregarded entity for federal income tax purposes, fill in the circle for the entity type of the member (owner).
- For a single-member LLC that is treated as a disregarded entity for federal income tax purposes, enter the name, address, and social security number (or FEIN) of the member (owner) of the LLC.

For a qualified investment consisting of a direct transfer (by a trustee) of monies from a retirement plan account, fill in "Individual" and enter the name, address, and social security number of the individual (participant).

**Filing instructions.** Give a copy of the completed form to the investor. Keep a copy for your files. File a copy of this form with each of the following agencies:

- Office of State Tax Commissioner  
600 E. Boulevard Ave., Dept. 127  
Bismarck, ND 58505-0599
- Economic Development & Finance  
P.O. Box 2057  
Bismarck, ND 58502-2057

For an investment of a fee simple interest in real property, the copy of this form filed with the Office of State Tax Commissioner must be accompanied by copies of the (1) appraisal, (2) governing body's

resolution approving the value of the investment, and (3) statement of full consideration. See N.D.C.C. § 57-38.6-03(8) for complete details.

### **Specific instructions for the eligible taxpayer (investor)**

This form is evidence of your qualified investment in a qualified business for purposes of the agricultural commodity facility investment tax credit. Keep it for your records.

**Eligibility for credit.** To maintain the qualified status of your investment, it must remain at risk in the qualified business for a minimum of three years after the date of investment.

**Amount of tax credit.** The allowable tax credit is 30% of the total qualified investments you make during the tax year. The tax credit must be claimed first in the tax year in which the date of investment falls. No more than \$50,000 of your allowable tax credit may be used in any tax year.

**Unused tax credit carryover.** If you are unable to use all of your allowable tax credit in the tax year in which the investment was made because it exceeds the lesser of your tax liability or \$50,000, you may carry over and use the unused tax credit on subsequent years' returns for up to 10 tax years.

**Lifetime maximum tax credit.** The total tax credits each taxpayer is allowed over any combination of tax years is limited to \$250,000. A passthrough entity and each of its owners are considered separate taxpayers for this purpose.

**Passthrough entity.** If you are a passthrough entity—partnership (all types), S corporation, or limited liability company treated like a partnership or S corporation—pass the credit through to your owners based on their respective ownership interests. However, because of the lifetime maximum credit limit, no more than \$250,000 of credits may be passed through to your owners over any combination of tax years.

See the instructions to Form 58 (partnership) or Form 60 (S corporation) for more information on reporting the credit and the amount passed through to each owner.

The following items do not apply at the passthrough entity level, but apply to each owner (that is not another passthrough entity):

- Annual \$50,000 usage limitation.
- Unused credit carryover.

**Angel fund certified before July 1, 2017.** If you are an angel fund that was certified under N.D.C.C. § 57-38-01.26 before July 1, 2017, you are treated like a passthrough entity. See "Passthrough entity" for how to claim the credit. If your fund members also qualified for the angel fund tax credit for investing in your fund, they must choose which of the two credits to claim; they may not claim both credits.

**Recapture of tax credit.** If the qualified business loses its certification because it made misrepresentations in its certification application, or if either you or the qualified business fails to satisfy any condition set by law or the Office of State Tax Commissioner, the tax credit will be disallowed. If the tax credit is disallowed, you must file an amended state return for each tax year in which the tax credit was claimed and pay any tax, penalty, and interest due. If you are a passthrough entity, you must file amended state returns to remove the disallowed tax credit and issue amended North Dakota Schedule K-1s to your owners; in turn, your owners must file amended state returns and pay any tax, penalty, and interest due.

### **Contact Information**

If you have questions, contact us at:

- 701-328-1247  
TDD/TTY—call 1-800-366-6888  
and ask for 701-328-1247
- [individualtax@nd.gov](mailto:individualtax@nd.gov)
- Office of State Tax Commissioner  
600 E. Boulevard Ave., Dept. 127  
Bismarck, ND 58505-0599