

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2385

Introduced by

Senators Schobinger, Mutch, Naaden

Representative Tollefson

1 A BILL for an Act to create and enact a new section to chapter 57-38 of the North Dakota
2 Century Code, relating to annual reductions in corporate income tax liability; to amend and
3 reenact section 10-06.1-22, subsection 2 of section 10-30.1-01, subsection 4 of section
4 10-33-124, sections 57-35.3-06, 57-38-01, 57-38-01.1, subdivision i of subsection 1 of section
5 57-38-01.2, subsections 1 and 2 of section 57-38-01.7, section 57-38-01.17, subsection 5 of
6 section 57-38-04, sections 57-38-07.1, 57-38-34, subsection 12 of section 57-38-40, sections
7 57-38-44, 57-38-45, 57-38-62, and 57-38.1-17.2 of the North Dakota Century Code relating to
8 elimination of the corporate income tax; to repeal sections 57-38-01.3, 57-38-01.4, 57-38-07.2,
9 57-38-11, 57-38-12, 57-38-13, 57-38-14, 57-38-30, 57-38-30.1, 57-38-30.5, 57-38-32,
10 57-38-64, 57-38.1-17.3, and chapter 57-38.4 of the North Dakota Century Code, relating to the
11 corporate income tax; to provide an effective date; and to provide an expiration date.

12 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

13 **SECTION 1. AMENDMENT.** Section 10-06.1-22 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **10-06.1-22. Tax commissioner to compare returns and reports.** Each year the tax
16 commissioner shall select at random at least five percent of the income tax returns filed by
17 ~~corporations or~~ limited liability companies which report on income from farming or ranching
18 operations and shall compare such returns with the annual report required to be filed with the
19 secretary of state by section 10-06.1-17 and shall forward any apparent violations to the
20 attorney general and the governor.

21 **SECTION 2. AMENDMENT.** Subsection 2 of section 10-30.1-01 of the North Dakota
22 Century Code is amended and reenacted as follows:

23 2. "Taxpayer" includes any individual, ~~corporation,~~ or fiduciary subject to a tax or a
24 duty to file a tax return imposed by chapter 57-38.

1 **SECTION 3. AMENDMENT.** Subsection 4 of section 10-33-124 of the 1997
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 3 4. a. An individual or ~~a corporation that~~ who buys membership in, or pays dues or
4 contributes to, a nonprofit development corporation is entitled to an income
5 tax credit equal to twenty-five percent of the amount paid.
- 6 b. This credit may not be claimed by an individual who elects to file an income
7 tax return under section 57-38-30.3 ~~or by a corporation that is recognized as~~
8 ~~a subchapter S corporation under section 57-38-01.4.~~
- 9 c. No taxpayer is entitled to more than two thousand dollars in total income tax
10 credits under this section.
- 11 d. The amount of the credit under this section in excess of the taxpayer's income
12 tax liability may be carried forward for up to seven taxable years.

13 **SECTION 4. AMENDMENT.** Section 57-35.3-06 of the 1997 Supplement to the North
14 Dakota Century Code is amended and reenacted as follows:

15 **57-35.3-06. Tax return.** On or before April fifteenth of each year, the taxpayer shall file
16 with the commissioner, on forms or in a manner prescribed by the commissioner, a report in
17 writing under oath showing the amount of taxable income of the financial institution for the
18 preceding calendar year. If required by the commissioner, the return must be accompanied by
19 a true copy of the federal income tax return of the taxpayer or by equivalent information in the
20 form and manner prescribed by the commissioner. A true copy of the federal income tax return
21 must be furnished to the commissioner by the taxpayer at any time after the taxpayer has filed
22 the return required by this section if required by the commissioner before the expiration of the
23 applicable period for assessment of additional tax liability under section 57-38-38. The
24 commissioner may prescribe alternative methods for signing, subscribing, or verifying a return
25 filed by electronic means, including telecommunications, that has the same validity and
26 consequence as the actual signature and written declaration for a paper return. The
27 commissioner may grant a reasonable extension of time for filing a return ~~under the standards~~
28 ~~and terms applicable to other corporations under section 57-38-34.~~

29 **SECTION 5. AMENDMENT.** Section 57-38-01 of the 1997 Supplement to the North
30 Dakota Century Code is amended and reenacted as follows:

1 **57-38-01. Definitions.** As used in this chapter, unless the context or subject matter
2 otherwise requires:

3 ~~0.4.~~ 1. "Chronically mentally ill" means a person who, as a result of a mental disorder,
4 exhibits emotional or behavioral functioning which is so impaired as to interfere
5 substantially with the person's capacity to remain in the community without verified
6 supportive treatment or services of a long-term or indefinite duration. This mental
7 disability must be severe and persistent, resulting in a long-term limitation of the
8 person's functional capacities for primary activities of daily living such as
9 interpersonal relationships, homemaking, self-care, employment, and recreation.

10 ~~4.~~ "Corporation" includes associations, business trusts, joint stock companies, and
11 insurance companies.

12 ~~4.4.~~ 2. "Developmental disability" has the same meaning as defined in section 25-01.2-01.

13 ~~2.~~ "Domestic" when applied to a corporation means created or organized under the
14 laws of North Dakota.

15 3. "Federal Internal Revenue Code of 1954, as amended", "United States Internal
16 Revenue Code of 1954, as amended", and "Internal Revenue Code of 1954, as
17 amended", mean the United States Internal Revenue Code of 1986, as amended.
18 Reference to the Internal Revenue Code of 1954, as amended, includes a
19 reference to the United States Internal Revenue Code of 1986, as amended, and
20 reference to the United States Internal Revenue Code of 1986, as amended,
21 includes a reference to the provisions of law formerly known as the Internal
22 Revenue Code of 1954, as amended.

23 a. Except that the provisions of section 168(f)(8) of the Internal Revenue Code
24 of 1954, as amended, are not adopted in those instances where the minimum
25 investment by the lessor is less than one hundred percent for the purpose of
26 computing North Dakota taxable income for individuals, estates, and trusts,
27 ~~and corporations~~ for taxable years beginning on or after January 1, 1983.
28 Therefore, federal taxable income must be increased, or decreased, as the
29 case may be, to reflect the adoption or nonadoption of the provisions of
30 section 168(f)(8) of the Internal Revenue Code of 1954, as amended, and

1 such adjustments must be made before computing income subject to
2 apportionment.

3 b. Provided, that one-half of the amount not allowed as an accelerated cost
4 recovery system depreciation deduction for the taxable year beginning after
5 December 31, 1982, may be deducted from federal taxable income in each of
6 the next two taxable years beginning after December 31, 1985, and one-half
7 of the amount not allowed as an accelerated cost recovery system
8 depreciation deduction for the taxable year beginning after December 31,
9 1983, may be deducted from federal taxable income in each of the next two
10 years beginning after December 31, 1987, and one-half of the amount not
11 allowed as an accelerated cost recovery system depreciation deduction for
12 the taxable year beginning after December 31, 1984, may be deducted from
13 federal taxable income in each of the next two taxable years beginning after
14 December 31, 1989. All such adjustments must be made before computing
15 income subject to apportionment.

16 c. Provided, that the depreciation adjustments allowed in subdivision b shall be
17 limited to those eligible assets acquired during taxable years beginning after
18 December 31, 1982. Acquisitions made before taxable years beginning
19 January 1, 1983, must be depreciated pursuant to the methods permissible
20 under Internal Revenue Code provisions in effect prior to January 1, 1981.

21 ~~d. Except that for purposes of applying the Internal Revenue Code of 1954, as~~
22 ~~amended, with respect to actual distributions made after December 31, 1984,~~
23 ~~by a domestic international sales corporation, or former domestic international~~
24 ~~sales corporation, which was a domestic international sales corporation on~~
25 ~~December 31, 1984, any accumulated domestic international sales~~
26 ~~corporation income of a domestic international sales corporation, or former~~
27 ~~domestic international sales corporation, which is derived before January 1,~~
28 ~~1985, may not be treated as previously taxed income.~~

29 4. ~~"Foreign" when applied to a corporation means created or organized outside of~~
30 ~~North Dakota.~~

1 ~~4.1.~~ "Mental disorder" means a substantial disorder of the person's emotional
2 processes, thought, cognition, or memory. Mental disorder is distinguished from:
3 a. Conditions which are primarily those of drug abuse, alcoholism, or mental
4 retardation, unless in addition to one or more of these conditions, the person
5 has a mental disorder.
6 b. The declining mental abilities that accompany impending death.
7 c. Character and personality disorders characterized by lifelong and deeply
8 ingrained antisocial behavior patterns, including sexual behaviors which are
9 abnormal and prohibited by statute, unless the behavior results from a mental
10 disorder.

11 ~~4.2.~~ 5. "Qualified investment fund" means any regulated investment company as defined
12 under the Internal Revenue Code, which for the calendar year in which the
13 distribution is paid:
14 a. Has investments in interest-bearing obligations issued by or on behalf of this
15 state, any political subdivision of this state, or the United States government;
16 and
17 b. Has provided the tax commissioner with a detailed schedule of the assets
18 contained in its investment portfolio and a schedule of the income attributable
19 to each asset in its investment portfolio for the calendar year.

20 ~~5.~~ 6. "Person" includes individuals, fiduciaries, partnerships, ~~corporations~~ trusts, and
21 limited liability companies.

22 ~~6.~~ 7. "Resident" applies only to natural persons and includes, for the purpose of
23 determining liability for the tax imposed by this chapter upon or with reference to
24 the income of any income year, any person domiciled in the state of North Dakota
25 and any other person who maintains a permanent place of abode within the state
26 and spends in the aggregate more than seven months of the income year within
27 the state. A full-time active duty member of the armed forces assigned to a military
28 installation in this state, or the spouse of such a person, is not a "resident" of this
29 state for purposes of this chapter simply by reason of having voted in an election in
30 this state.

31 ~~7.~~ 8. "Tax commissioner" means the state tax commissioner.

1 ~~8-~~ 9. "Taxable income" in the case of individuals, estates, and trusts, ~~and corporations~~
2 means the taxable income as computed for an individual, estate, or trust, ~~or~~
3 ~~corporation~~ for federal income tax purposes under the United States Internal
4 Revenue Code of 1954, as amended, plus or minus such adjustments as may be
5 provided by this ~~act~~ and chapter or other provisions of law. Except as otherwise
6 expressly provided, "taxable income" does not include any amount computed for
7 federal alternative minimum tax purposes.

8 ~~9-~~ 10. "Taxpayer" includes any individual, ~~corporation~~, or fiduciary subject to a tax
9 imposed by this chapter.

10 ~~10-~~ 11. Any term, as used in this code, as it pertains to the filing and reporting of income,
11 deductions, or exemptions or the paying of North Dakota income tax, has the same
12 meaning as when used in a comparable context in the laws of the United States
13 relating to federal income taxes, unless a different meaning is clearly required or
14 contemplated.

15 **SECTION 6. AMENDMENT.** Section 57-38-01.1 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **57-38-01.1. Declaration of legislative intent.** It is the intent of the legislative
18 assembly to simplify the state income tax laws and to demonstrate that federal legislation is not
19 necessary to deal with certain interstate tax problems, by adopting the federal definition of
20 taxable income as the starting point for the computation of state income tax by all taxpayers
21 and providing the necessary adjustments thereto to substantially preserve and maintain
22 existing exemptions and deductions. ~~It is the further intent of the legislative assembly to~~
23 ~~eliminate double taxation of the earnings of small corporations by recognizing a subchapter S~~
24 ~~election when made for federal income tax purposes.~~

25 **SECTION 7. AMENDMENT.** Subdivision i of subsection 1 of section 57-38-01.2 of the
26 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 27 i. Reduced by any dividends or income, up to a maximum of fifteen thousand
28 dollars, received from stock or interest in any corporation and included in the
29 adjusted gross income as computed for federal income tax purposes ~~where if~~
30 the income of such corporation has been assessed and tax paid by the
31 ~~corporation under this chapter or~~ any liability it may have under sections

57-35.3-01 through 57-35.3-12 and such dividends or income was received by the taxpayer as income during the income year if such corporation has reported the name and address of each North Dakota resident owning stock and the amount of dividends or income paid each such person during the year; ~~provided, that when.~~ If only part of the income of ~~any~~ the corporation ~~shall have~~ has been assessed ~~and corporation income tax paid thereon~~ under ~~this chapter or~~ sections 57-35.3-01 through 57-35.3-12, only a corresponding part of the dividends or income received therefrom and included in federal adjusted gross income shall be subtracted. The commissioner is hereby authorized to prescribe rules and regulations to implement this subdivision to avoid injustice to taxpayers, to prevent duplication of deductions, and to eliminate taxation of income not fairly and properly taxable under this chapter.

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 57-38-01.7 of the North Dakota Century Code is amended and reenacted as follows:

1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax imposed by this chapter for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund.
 - a. ~~In the case of a taxpayer other than a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.
 - b. ~~In the case of a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.~~
2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax imposed

by this chapter for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state.

a. ~~In the case of a taxpayer other than a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.

b. ~~In the case of a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.~~

SECTION 9. AMENDMENT. Section 57-38-01.17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-01.17. Credit for investments in development corporations. An individual, estate, or trust, ~~or corporation~~ is allowed, as a credit against a tax otherwise due under section 57-38-29 ~~or 57-38-30~~ the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 10-33-124.

SECTION 10. AMENDMENT. Subsection 5 of section 57-38-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Whenever a trade or business is carried on partly within and partly without this state by a nonresident of this state, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of ~~corporations~~ taxpayers doing business within and without this state.

SECTION 11. AMENDMENT. Section 57-38-07.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-07.1. Taxation of ~~two or more member~~ limited liability companies. For purposes of this chapter, a limited liability company ~~having two or more members that is formed under either the laws of this state or under similar laws of another state, and that is considered to be a partnership for federal income tax purposes,~~ is considered to be a partnership and the

members must be considered to be partners. ~~A limited liability company having two or more members that is not treated as a partnership for federal income tax purposes must be treated as a corporation for state tax purposes.~~

SECTION 12. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Phaseout of corporate income tax. The income tax liability of a corporation as determined under this chapter must be reduced by:

1. Twenty percent for the first taxable year beginning after December 31, 2000.
2. Forty percent for the first taxable year beginning after December 31, 2001.
3. Sixty percent for the first taxable year beginning after December 31, 2002.
4. Eighty percent for the first taxable year beginning after December 31, 2003.

SECTION 13. AMENDMENT. Section 57-38-34 of the North Dakota Century Code is amended and reenacted as follows:

57-38-34. Time and place of filing returns - Interest on tax when time for filing is extended.

1. Returns must be in such form as the tax commissioner from time to time may prescribe and may include the requirement that a copy of the taxpayer's federal income tax return or a portion thereof or information reflected thereon be attached to, furnished with, or included in the taxpayer's state income tax return, but the taxpayer's state income tax return must contain a method for the taxpayer to identify the school district in which ~~he~~ the taxpayer resides, and must be filed with the tax commissioner at ~~his~~ the commissioner's office in Bismarck, North Dakota. The tax commissioner shall prepare blank forms for use in making returns and shall cause them to be distributed throughout this state, but failure to receive or secure a form does not relieve a taxpayer from making a return.
2. Returns made on the basis of the calendar year must be filed on or before the fifteenth day of April following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the fourth month following the close of the fiscal year.
3. ~~Returns for cooperatives, domestic international sales corporations, and foreign sales corporations, however, made on the basis of the calendar year must be filed~~

~~on or before the fifteenth day of September following the close of the calendar year
and returns made on the basis of a fiscal year must be filed on or before the
fifteenth day of the ninth month following the close of the fiscal year.~~

4. A taxpayer actively serving in the armed forces or merchant marine, outside the boundaries of the United States, may defer the filing of an income tax return and the payment of the income tax until such time as the federal income tax return is required to be filed at which time the state income tax return, with payment of tax, will also be due. No interest or penalty accrues to the date of such filing.

~~5.~~ 4. The tax commissioner may grant a reasonable extension of time for filing a return when, in the judgment of the tax commissioner, good cause exists.

SECTION 14. AMENDMENT. Subsection 12 of section 57-38-40 of the 1997

Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. The tax commissioner shall reconsider the denial of the claim for credit or refund after the filing of a protest. The reconsideration may include the further examination by the tax commissioner or the authorized representative of the tax commissioner of a taxpayer's books, papers, records, or memoranda, ~~including corporate minutes and committee notes.~~

SECTION 15. AMENDMENT. Section 57-38-44 of the North Dakota Century Code is amended and reenacted as follows:

57-38-44. Tax a personal debt. Every tax imposed by this chapter, and all increases, interest, and penalties thereon, becomes, from the time it is due and payable, a personal debt from the person ~~or corporation~~ liable to pay the same to this state.

SECTION 16. AMENDMENT. Section 57-38-45 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-45. Interest and penalties.

1. In addition to other increases to tax and penalty prescribed in this chapter, a taxpayer is subject to interest as follows:

a. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest on the tax at the rate of twelve percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.

- 1 b. If any amount of tax imposed by this chapter, including tax withheld by an
2 employer, is not paid on or before the due date or extended due date for the
3 payment, there must be added to the tax interest at the rate of one percent
4 per month or fraction of a month during which the tax remains unpaid,
5 computed from the due date of the return to the date paid excepting the
6 month in which the return was required to be filed or the tax became due.
- 7 c. If upon audit an additional tax is found to be due, there must be added to the
8 additional tax due interest at the rate of one percent of the additional tax for
9 each month or fraction of a month during which the tax remains unpaid,
10 computed from the due date of the return to the date paid, excepting the
11 month in which the return was required to be filed or the tax became due.
- 12 d. If the mathematical verification of a taxpayer's return results in additional tax
13 due, there must be added to the additional tax interest at the rate of one
14 percent of the additional tax due for each month or fraction of a month during
15 which the tax remains unpaid, computed from the due date of the return to the
16 date paid, excepting the month in which the return was required to be filed or
17 the tax became due.
- 18 e. If, for any portion of the time period over which interest is otherwise computed
19 under this subsection on additional tax due, interest was previously computed
20 under subsection 2 of section 57-38-35.2 on a refund for any tax period, the
21 interest computed on the additional tax due for that portion of the time period
22 must be computed at the same rate and in the same manner that was used in
23 computing the interest on the refund, but only to the extent that the amount of
24 the additional tax due does not exceed the amount of the refund.
- 25 f. If a deficiency is determined for a tax period for which there was an
26 overpayment that was applied to the following tax period's estimated tax
27 under subsection 6 of section 57-38-62, interest accrues with respect to the
28 amount of the deficiency that is equal to or less than the amount of the
29 overpayment applied from the estimated tax payment date to which the
30 overpayment was applied.

- 1 2. In addition to the interest prescribed in this chapter, a taxpayer is subject to
2 additions to tax and penalty as follows:
- 3 a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall
4 fail to pay the amount shown as tax due on any return, including tax withheld
5 by an employer, filed on or before the due date or extended due date
6 prescribed therefor, there shall be added to the tax a penalty of five percent
7 thereof, or five dollars, whichever is greater.
- 8 b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall
9 fail to file a return, including the employer's withheld tax return, on or before
10 the due date or extended due date prescribed therefor, there shall be added a
11 penalty equal to five percent of the tax required to be reported, or five dollars,
12 whichever is greater, if the failure is for not more than one month, counting
13 each fraction of a month as an entire month, with an additional five percent for
14 each additional month or fraction thereof during which the failure continues,
15 not exceeding twenty-five percent in the aggregate.
- 16 c. If upon audit of a taxpayer's return, including tax withheld by an employer, an
17 additional tax is found to be due, there shall be added to the tax penalty as
18 prescribed in subdivision a or b.
- 19 d. If the mathematical verification of a taxpayer's return, including tax withheld
20 by an employer, results in additional tax due, there shall be added to the tax
21 penalty as prescribed in subdivision a or b.
- 22 e. The provisions of subdivision a, b, c, or d do not apply to the extent it has
23 been determined that the taxpayer has offsetting overpayments of income
24 taxes which have not been refunded.
- 25 f. An employer, required to file returns under subsection 1 of section 57-38-60,
26 with four to eight delinquent original tax returns or payments is subject to a
27 penalty of ten percent of the tax due or twenty-five dollars, whichever is
28 greater. An employer with nine or more delinquent original returns or
29 payments is subject to a penalty of fifteen percent of the tax due or one
30 hundred dollars, whichever is greater.

- 1 3. Any person including any ~~officer or employee of any corporation or any~~ member or
2 employee of any partnership or any member, employee, governor, or manager of a
3 limited liability company who, with intent to evade any requirement of this chapter,
4 shall fail to pay any tax, or to make, sign, or verify any return, or to supply any
5 information required by law, or under the provisions of this chapter, or who with like
6 intent shall make, render, sign, or verify any false or fraudulent information, shall
7 be liable to a penalty of not more than one thousand dollars to be recovered by the
8 attorney general, in the name of the state, by action in any court of competent
9 jurisdiction. Such person shall also be guilty of a class A misdemeanor.
- 10 4. In case any person ~~or any corporation~~ fails to pay any tax, addition to tax, interest,
11 or penalty imposed by this chapter, the attorney general shall bring action for the
12 recovery of the amount of the tax, addition to tax, interest, or penalty which may be
13 due, in the name of the state, in any court of competent jurisdiction.
- 14 5. The tax commissioner may for good cause shown waive all or any part of any civil
15 penalty or interest that attached pursuant to the provisions of this chapter.
- 16 6. If any taxpayer who has failed to file a return and has been notified by the tax
17 commissioner of the delinquency, refuses or neglects within thirty days after such
18 notice to file a proper return, the tax commissioner shall determine the income of
19 such taxpayer according to the best information available, and shall assess the tax
20 at not more than double the amount so determined. The appropriate interest and
21 penalty prescribed in subsections 1 and 2 shall also be added.
- 22 ~~7. If any corporation fails to file an income tax return as required by section 57-38-32~~
23 ~~on the date prescribed in section 57-38-34, and after thirty days' notice to file is~~
24 ~~given by the tax commissioner, the tax commissioner may assess a penalty of up~~
25 ~~to five hundred dollars for each failure to file.~~

26 **SECTION 17. AMENDMENT.** Section 57-38-62 of the 1997 Supplement to the North
27 Dakota Century Code is amended and reenacted as follows:

28 **57-38-62. Payment of estimated income tax.**

- 29 1. An individual, estate, or trust that is subject to section 6654 of the Internal
30 Revenue Code relating to a failure to pay federal estimated income tax shall, at the
31 time prescribed in this chapter, pay estimated tax for the current taxable year.

Notwithstanding any other provision of this section, an individual, estate, or trust whose net tax liability for the preceding taxable year was less than two hundred dollars is not required to pay estimated tax for the current taxable year. Married individuals who file a joint federal income tax return and are subject to section 6654 of the Internal Revenue Code must each be deemed to be subject to the federal provision. If payment of estimated tax is required, the individual, estate, or trust shall, at the time prescribed in this chapter, pay the lesser of the following:

- a. An amount which, when added to the taxpayer's withholding, equals ninety percent of the taxpayer's current taxable year's net tax liability.
- b. An amount which, when added to the taxpayer's withholding, equals one hundred percent of the taxpayer's net tax liability for the immediately preceding taxable year.
 - (1) This subdivision does not apply to any taxpayer who was not required by this chapter to file a return for the immediately preceding taxable year, to an individual who moved into this state during the immediately preceding taxable year, or to an estate or trust that was not in existence for the entire immediately preceding taxable year. The amount under this subdivision must be deemed to be equal to the amount in subdivision a if this part applies.
 - (2) In order to satisfy the requirements of this subdivision, married individuals who are required to file separate state returns for the current taxable year but who were required to file a joint state return for the immediately preceding taxable year must each be required to pay estimated tax in an amount which, when added to the individual's withholding, equals the net tax liability which would have been computed for the immediately preceding taxable year if separate state returns had been required to be filed.
 - (3) In order to satisfy the requirements of this subdivision, married individuals who are required to file a joint state return for the current taxable year but were required to file separate state returns for the immediately preceding taxable year must be required to pay estimated

1 tax in an amount which, when added to their withholding, equals the
2 sum of their separate net tax liabilities for the immediately preceding
3 taxable year.

4 2. ~~A corporation shall, at the time prescribed in this chapter, pay estimated tax for the~~
5 ~~current taxable year if the corporation's estimated tax can reasonably be expected~~
6 ~~to exceed five thousand dollars and if the corporation's net tax liability for the~~
7 ~~immediately preceding taxable year exceeded five thousand dollars. If payment of~~
8 ~~estimated tax is required, the corporation shall, at the time prescribed in this~~
9 ~~chapter, pay the lesser of the following:~~

10 a. ~~Ninety percent of the corporation's current taxable year's net tax liability.~~

11 b. ~~One hundred percent of the corporation's net tax liability for the immediately~~
12 ~~preceding taxable year.~~

13 ~~3.~~ The provisions of section 57-38-45, except those provisions relating to the
14 imposition of a penalty, apply in case of nonpayment, late payment, or
15 underpayment of estimated tax. For purposes of applying the interest provisions of
16 section 57-38-45, interest accrues on a per annum basis from the due date of an
17 installment to the fifteenth day of the fourth month following the end of the current
18 taxable year or, with respect to any portion of the estimated tax required to be
19 paid, the date on which the portion thereof is paid, whichever date is earlier.
20 ~~Notwithstanding the other provisions of this section, no interest is due if the~~
21 ~~estimated tax paid on or before each due date under section 57-38-63 by a~~
22 ~~corporation is based on the annualized or adjusted seasonal method under section~~
23 ~~6655 of the Internal Revenue Code.~~ Notwithstanding the other provisions of this
24 section, no interest is due if the estimated tax of an individual, estate, or trust is
25 less than two hundred dollars per income tax return filed.

26 4. ~~3.~~ For purposes of this section, "estimated tax" means the amount that a taxpayer
27 estimates to be income tax under this chapter for the current taxable year less the
28 amount of any credits allowable, including tax withheld.

29 ~~5.~~ 4. For purposes of this section, "net tax liability" means the amount of income tax
30 computed for the taxable year as shown on the return less the amount of any
31 credits allowable except tax withheld and estimated tax paid.

1 6- 5. An individual ~~or corporation~~ may apply a tax overpayment from a preceding
2 taxable year as an estimated tax payment on the individual's ~~or corporation's~~
3 behalf for the taxable year succeeding the overpayment. The individual ~~or~~
4 ~~corporation~~ may elect to apply the overpayment to specific estimated tax
5 installments. If the individual ~~or corporation~~ does not specify the installment period
6 toward which the overpayment is to be applied, the individual ~~or corporation~~ must
7 be considered to have elected to apply the overpayment toward the first required
8 estimated tax installment for the succeeding taxable year.

9 **SECTION 18. AMENDMENT.** Section 57-38.1-17.2 of the 1997 Supplement to the
10 North Dakota Century Code is amended and reenacted as follows:

11 **57-38.1-17.2. Taxation of ~~two or more member~~ limited liability companies.** For
12 purposes of this chapter, a limited liability company ~~having two or more members that is formed~~
13 ~~under either the laws of this state or under similar laws of another state, and that is considered~~
14 ~~to be a partnership for federal income tax purposes,~~ is considered to be a partnership and the
15 members must be considered to be partners. ~~A limited liability company having two or more~~
16 ~~members that is not treated as a partnership for federal income tax purposes must be treated~~
17 ~~as a corporation for state tax purposes.~~

18 **SECTION 19. REPEAL.** Sections 57-38-01.4, 57-38-11, 57-38-12, 57-38-13,
19 57-38-30, 57-38-30.5, 57-38-64, and chapter 57-38.4 of the North Dakota Century Code and
20 sections 57-38-01.3, 57-38-07.2, 57-38-14, 57-38-30.1, 57-38-32, and 57-38.1-17.3 of the 1997
21 Supplement to the North Dakota Century Code are repealed.

22 **SECTION 20. EFFECTIVE DATE - EXPIRATION DATE.** Section 12 of this Act is
23 effective for the first four taxable years beginning after December 31, 2000, and is thereafter
24 ineffective. Sections 1 through 11 and 13 through 19 of this Act are effective for taxable years
25 beginning after December 31, 2004.