

Fifty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1471

Introduced by

Representatives Carlson, Timm

1 A BILL for an Act to amend and reenact subsections 1 and 2 of section 57-35.3-02,
2 subsection 1 of section 57-38-01.3, section 57-38-30, subsection 9 of section 57-39.2-01, and
3 subsections 5 and 8 of section 57-40.2-01 of the North Dakota Century Code, relating to
4 financial institutions taxes, the corporate income tax deduction for federal income taxes paid,
5 corporate income tax rates, and the sales and use tax application to newspapers and
6 magazines; to repeal chapter 57-38.4, subsection 16 of section 57-39.2-04, and subsection 6 of
7 section 57-40.2-04 of the North Dakota Century Code, relating to the corporate income tax
8 water's edge filing election and the sales tax exemption for newsprint and ink used in
9 publication of a newspaper; and to provide an effective date.

10 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

11 **SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 57-35.3-02 of the North
12 Dakota Century Code are amended and reenacted as follows:

- 13 1. In determining "taxable income" there must be added to federal taxable income:
- 14 a. The adjustments provided by subdivisions ~~d, e, and f~~ c, d, and g of
- 15 subsection 1 of section 57-38-01.3;
- 16 b. Interest not subject to federal tax upon obligations of the state of North Dakota
- 17 and its political subdivisions;
- 18 c. The amount of any charitable contribution deduction taken for federal income
- 19 tax purposes under section 170 of the Internal Revenue Code;
- 20 d. In the case of a building and loan association or savings and loan association,
- 21 the amount of any bad debt reserve deduction taken for federal income tax
- 22 purposes under section 585 of the Internal Revenue Code; and
- 23 e. Dividends paid by a federal reserve bank to the extent not subject to federal
- 24 tax.

2. In determining "taxable income" there must be subtracted from federal taxable income:

- a. The adjustments provided by ~~subdivisions~~ subdivision b, c, and h of subsection 1 of section 57-38-01.3;
- b. In the case of a financial institution described in subdivision a of subsection 2 of section 57-35.3-01, the adjustment provided by subdivision g of subsection 1 of section 57-38-01.3;
- c. In the case of a building and loan association or savings and loan association that uses the bad debt reserve method under section 585 of the Internal Revenue Code to account for bad debts for federal income tax purposes, an amount equal to the deduction for bad debts that would have been allowed under section 166(a) of the Internal Revenue Code if a deduction had not been claimed under section 585 or 593;
- d. The amount of any adjustments taken into account for federal income tax purposes under section 593(g) of the Internal Revenue Code;
- e. The amount of any interest and expenses relating to income not taxable for federal income tax purposes if the income is taxable under sections 57-35.3-01 through 57-35.3-12 and the interest and expenses were disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal Revenue Code in computing federal taxable income;
- f. The amount of any wage and salary expenses disallowed as deductions under section 280C(a) of the Internal Revenue Code in computing federal taxable income;
- g. An amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under section 170 of the Internal Revenue Code if the percentage limitation of section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable periods to taxable income, rather than federal taxable income, but computed without regard to this subdivision and that portion of subdivision a that refers to subdivision g of subsection 1 of section 57-38-01.3. However, no deduction is allowable for a

contribution if and to the extent that a credit is allowed for the contribution
under section 57-35.3-05; ~~and~~

h. The amount of net income not allocated and apportioned to this state under
sections 57-35.3-13 through 57-35.3-17, but only to the extent that the
amount of net income not allocated and apportioned to this state under those
sections is not included in any adjustment made pursuant to the preceding
subdivisions-; and

i. The amount of federal income tax liability for the same taxable year for which
North Dakota taxable income is being determined, to the extent that the
federal taxes are computed upon income that becomes part of North Dakota
taxable income. Provided, that no adjustment to federal income taxes, paid or
accrued, is required because of allowable deductions to federal taxable
income made under the cost recovery provisions of subdivision b of
subsection 5 of section 57-38-01. Federal income taxes for prior periods
assessed against the taxpayer by reason of audit or other adjustment by the
internal revenue service, or voluntary disclosure by the taxpayer, are not
deductible except in the period in which income so taxed was reported or
reportable or in which an adjustment was required but only after an
adjustment is made by or with the office of the state tax commissioner. A
refund of federal income tax must be reported and included in North Dakota
taxable income in the year in which the tax was originally deducted. Income
must be further reduced by any federal alternative minimum tax when a
federal credit for a prior year minimum tax is taken. This reduction is limited
to any federal alternative minimum tax previously disallowed in computing
North Dakota taxable income and may not exceed North Dakota taxable
income computed before the North Dakota net operating loss deduction. Any
excess may be carried forward to the next taxable year a federal credit for a
prior year minimum tax is taken.

SECTION 2. AMENDMENT. Subsection 1 of section 57-38-01.3 of the North Dakota
Century Code is amended and reenacted as follows:

- 1 1. The taxable income of a corporation as computed pursuant to the provisions of the
- 2 Internal Revenue Code of 1954, as amended, must be:
- 3 a. Reduced by any interest received from obligations of the United States that is
- 4 included in taxable income or in the computation thereof on the federal return.
- 5 b. Reduced by any other income included in the taxable income, or in the
- 6 computation thereof, on the federal return which is exempt from taxation by
- 7 this state because of the provisions of the Constitution of North Dakota or the
- 8 Constitution of the United States.
- 9 c. ~~Reduced by the amount of federal income tax liability, as computed under~~
- 10 ~~chapter 1 of the Internal Revenue Code of 1986, as amended, for the same~~
- 11 ~~taxable year for which the North Dakota return is being filed, to the extent that~~
- 12 ~~the taxes are computed upon income which becomes a part of the North~~
- 13 ~~Dakota taxable income. Provided, that no adjustment to federal income~~
- 14 ~~taxes, paid or accrued, is required because of allowable deductions to federal~~
- 15 ~~taxable income made under the cost recovery provisions of subdivision b of~~
- 16 ~~subsection 5 of section 57-38-01. Federal income taxes for prior periods~~
- 17 ~~assessed against the taxpayer by reason of audit or other adjustment by the~~
- 18 ~~internal revenue service, or voluntary disclosure by the taxpayer, are not~~
- 19 ~~deductible except in the period in which income so taxed was reported or~~
- 20 ~~reportable or in which an adjustment was required but only after an~~
- 21 ~~adjustment is made by or with the office of the state tax commissioner. A~~
- 22 ~~refund of federal income tax must be reported and included in North Dakota~~
- 23 ~~taxable income in the year in which the tax was originally deducted. Income~~
- 24 ~~must be further reduced by federal alternative minimum tax when a federal~~
- 25 ~~credit for prior year minimum tax is taken. This reduction is limited to federal~~
- 26 ~~alternative minimum tax previously disallowed in computing North Dakota~~
- 27 ~~taxable income and may not exceed North Dakota taxable income computed~~
- 28 ~~before the North Dakota net operating loss deduction. Any excess may be~~
- 29 ~~carried forward to the next taxable year a federal credit for prior year minimum~~
- 30 ~~tax is taken.~~

- e. Increased by the amount of any income taxes, including income taxes of foreign countries, or franchise or privilege taxes measured by income, to the extent that such taxes were deducted to determine federal taxable income.
- e. d. Increased by the amount of any interest and dividends from foreign securities and from securities of state and their political subdivisions exempt from federal income tax, provided that interest upon obligations of the state of North Dakota or any of its political subdivisions may not be included.
- f. e. Reduced by the amount of net income not allocated and apportioned to this state under the provisions of chapter 57-38.1, but only to the extent that the amount of net income not allocated and apportioned to this state under the provisions of that chapter is not included in any adjustment made pursuant to the preceding subdivisions.
- g. f. Reduced by dividends or income received by any person from stock or interest in any corporation, the income of which has been assessed and paid by a corporation under this chapter or sections 57-35.3-01 through 57-35.3-12, received by the taxpayer and included in the gross income within the income year if such corporation has reported the name and address of each person owning stock and the amount of dividends or income paid each such person during the year, but when only part of the income of any corporation has been assessed and income tax paid 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 may be deducted.
- h. ~~Repealed by S.L. 1999, ch. 487, § 3.~~
- i. g. Increased by the amount of any special deductions and net operating loss deductions to the extent that these items were deducted in determining federal taxable income.
- j. h. Reduced by dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, as amended, by a regulated investment company or a fund of a regulated investment company as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, as amended, except that the deduction for dividends paid is not allowed with respect to dividends attributable to any

income that is not subject to taxation under this chapter when earned by the regulated investment company. Sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as amended, apply for computing the deduction for dividends paid. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as amended.

Provided, however, that each adjustment in the above subdivisions authorized under law is allowed only to the extent that the adjustment is allocated and apportioned to North Dakota income.

SECTION 3. AMENDMENT. Section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30. Imposition and rate of tax on corporations. A tax is hereby imposed upon the taxable income of every domestic and foreign corporation received from the sources described in sections 57-38-12, 57-38-13, and 57-38-14, which must be levied, collected, and paid annually as in this chapter provided:

1. ~~a. For the first three thousand dollars of taxable income, at the rate of three percent.~~
 - ~~b. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of four and one half percent.~~
 - ~~c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of six percent.~~
 - ~~d. On all taxable income above twenty thousand dollars, and not in excess of thirty thousand dollars, at the rate of seven and one half percent.~~
 - ~~e. On all taxable income above thirty thousand dollars, and not in excess of fifty thousand dollars, at the rate of nine percent.~~
 - ~~f. On all taxable income above fifty thousand dollars, at the rate of ten and one half percent.~~ The tax imposed on corporations by this chapter is imposed on taxable income at the rate of six and seventy-three hundredths percent.
2. A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative minimum tax

credit remaining to the extent of the regular income tax liability of the corporation
for a period not to exceed four taxable years.

SECTION 4. AMENDMENT. Subsection 9 of section 57-39.2-01 of the North Dakota
Century Code is amended and reenacted as follows:

9. "Sale" means any transfer of title or possession, exchange or barter, conditional or
otherwise, in any manner or by any means whatever, for a consideration, and
includes the furnishing or service of steam, gas, or communication, the furnishing
of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the
furnishing of tickets or admissions to any place of amusement, athletic event, or
place of entertainment including the playing of any machine for amusement or
entertainment in response to the use of a coin, and sales of newspapers and
magazines and other periodicals. Provided, the words "magazines and other
periodicals" as used in this subsection do not include ~~newspapers nor~~
subscriptions to magazines or periodicals or magazines or periodicals that are
furnished free by a nonprofit corporation or organization to its members or because
of payment by its members of membership fees or dues.

SECTION 5. AMENDMENT. Subsections 5 and 8 of section 57-40.2-01 of the North
Dakota Century Code are amended and reenacted as follows:

5. "Purchased at retail" includes, but is not limited to:

- a. The completion of the fabricating, compounding, or manufacturing of tangible
personal property by a person for storage, use, or consumption by that
person.
- b. The leasing or renting of tangible personal property, the sale, storage, use, or
consumption of which has not been previously subjected to a retail sales or
use tax in this state.
- c. The purchase of newspapers and magazines or other periodicals. Provided,
the words "magazines and other periodicals" as used in this subdivision do
not include ~~newspapers nor~~ subscriptions to magazines or periodicals or
magazines or periodicals that are furnished free by a nonprofit corporation or
organization to its members or because of payment by its members of
membership fees or dues.

- d. The severance of sand or gravel from the soil.
- e. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.
- f. The purchase of an item of tangible personal property by a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.

8. "Tangible personal property" means:

- a. Tangible goods, including the furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
- b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
- c. The purchase of newspapers and magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include ~~newspapers or~~ subscriptions to magazines or periodicals or magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
- d. The severance of sand or gravel from the soil.

SECTION 6. REPEAL. Chapter 57-38.4, subsection 16 of section 57-39.2-04, and subsection 6 of section 57-40.2-04 of the North Dakota Century Code are repealed.

SECTION 7. EFFECTIVE DATE. Sections 1 through 3 of this Act and the repeal of chapter 57-38.4 are effective for taxable years beginning after December 31, 2002. Sections 4 and 5 and the repeal of subsection 16 of section 57-39.2-04 and subsection 6 of section 57-40.2-04 are effective for taxable events occurring after June 30, 2003.