Fifty-ninth Legislative Assembly of North Dakota

HOUSE BILL NO. 1155

Introduced by

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Finance and Taxation Committee

(At the request of the Tax Commissioner)

- 1 A BILL for an Act to amend and reenact subsection 1 of section 10-30.1-05, section 10-30.2-12,
- 2 subsection 4 of section 10-33-124, subsection 5 of section 11-37-08, subsections 1 and 3 of
- 3 section 40-63-04, section 40-63-06, subsection 4 of section 40-63-07, subsections 1 and 2 of
- 4 section 57-38-01.7, subsections 1 and 4 of section 57-38-01.8, sections 57-38-01.14,
- 5 57-38-01.16, and 57-38-01.17, subsection 1 of section 57-38-01.20, and sections 57-38.5-03
- 6 and 57-38.6-03 of the North Dakota Century Code, relating to elimination of the optional
- 7 long-form income tax return; to repeal subsection 2 of section 10-30.1-01, sections 57-38-01.2,
- 8 57-38-01.18, 57-38-02, 57-38-03, 57-38-06.1, 57-38-29, 57-38-29.2, and 57-38-30.4,
- 9 subsection 2 of section 57-38-31, and sections 57-38-67, 57-38-68, 57-38-69, 57-38-70,
- 10 57-38-71, 57-38-72, 57-38-73, and 57-38-74 of the North Dakota Century Code, relating to
- 11 elimination of the optional long-form income tax return; and to provide an effective date.

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

- SECTION 1. AMENDMENT. Subsection 1 of section 10-30.1-05 of the North Dakota

 Century Code is amended and reenacted as follows:
 - Subject to sections 10-30.1-06, 10-30.1-07, and 10-30.1-08, a taxpayer is entitled to a credit against any state income tax liability which may be imposed on the taxpayer <u>under section 57-38-30</u> for a particular taxable year that begins after December 31, 1984, if the taxpayer makes an investment in a venture capital corporation. However, a taxpayer that makes an investment in a venture capital corporation on or after July 1, 1989, is only entitled to a tax credit if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a business that owns tax-exempt securities. Investments by Myron G. Nelson Fund, Incorporated, in a venture capital corporation do not qualify for the tax credit

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provided by this chapter. Tax credits under this chapter are not subject to payment of interest as provided in section 57-38-35.1. For a venture capital corporation that was organized before January 1, 1989, which invested in an entity or affiliate of an entity that owned tax-exempt securities, investments made in that venture capital corporation after February 28, 1991, do not qualify for the tax credit provided by this chapter.

SECTION 2. AMENDMENT. Section 10-30.2-12 of the North Dakota Century Code is amended and reenacted as follows:

10-30.2-12. Income tax credits for investment. A taxpayer that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, or in investments in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.] is entitled, subject to section 10-30.2-13, to a credit in the amount equal to twenty-five percent of the total amount invested against any state income tax liability imposed against the taxpayer under section 57-38-30. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years. No taxpayer claiming a credit under this section is eligible to claim a credit for the same investment under chapter 10-30.1. Except in the case of a tax credit that is carried forward from a prior tax year, no tax credit is allowed under this section to a taxpayer who received a tax credit for investment in the corporation and as a result of the dissolution of the corporation agreed to invest in the small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.].

1	SECT	ON 3. AMENDMENT. Subsection 4 of section 10-33-124 of the North Dakota
2	Century Code	is amended and reenacted as follows:
3	4. a	. An individual or a \underline{A} corporation that buys membership in, or pays dues or
4		contributes to, a nonprofit development corporation is entitled to an income
5		tax credit against the tax liability under section 57-38-30 equal to twenty-five
6		percent of the amount paid.
7	b	. This credit may not be claimed by an individual who elects to file an income
8		tax return under section 57-38-30.3 or by a corporation that is recognized as a
9		subchapter S corporation under section 57-38-01.4.
10	С	No taxpayer is entitled to more than two thousand dollars in total income tax
11		credits under this section.
12	d	. The amount of the credit under this section in excess of the taxpayer's income
13		tax liability may be carried forward for up to seven taxable years.
14	SECT	ON 4. AMENDMENT. Subsection 5 of section 11-37-08 of the North Dakota
15	Century Code	is amended and reenacted as follows:
16	5. B	onds issued by a commerce authority under this section are declared to be
17	is	sued for an essential public government purpose, and together with interest and
18	ir	ncome on the bonds, are exempt from all individual and corporate taxes imposed
19	u	nder sections 57-35.3-03, 57-38-29, 57-38-30, and 57-38-30.3.
20	SECT	ON 5. AMENDMENT. Subsections 1 and 3 of section 40-63-04 of the North
21	Dakota Centu	ry Code are amended and reenacted as follows:
22	1. A	n individual taxpayer who purchases or rehabilitates single-family residential
23	р	roperty for the individual's primary place of residence as a zone project is exempt
24	fr	om up to ten thousand dollars of personal income tax liability as determined
25	u	nder section 57-38-29 or 57-38-30.3 for five taxable years beginning with the date
26	0	f occupancy or completion of rehabilitation.
27	3. If	the cost of a new business purchase or expansion of an existing business,
28	а	pproved as a zone project, exceeds seventy-five thousand dollars, and the
29	b	usiness is located in a city with a population of not more than two thousand five
30	h	undred, an individual taxpayer may, in lieu of the exemption provided in
31	s	ubsection 2, elect to take an income tax exemption of up to two thousand dollars

1	of personal income tax liability as determined under section 57 38 29 or		
2	57-38-30.3. The election must be made on the taxpayer's zone project application.		
3	The election is irrevocable and binding for the duration of the exemptions provided		
4	in subsection 2 or 3. If no election is made on the zone project application, the		
5	taxpayer is only eligible for the exemption provided in subsection 2.		
6	SECTION 6. AMENDMENT. Section 40-63-06 of the North Dakota Century Code is		
7	amended and reenacted as follows:		
8	40-63-06. Historic preservation and renovation tax credit. A credit against state tax		
9	liability as determined under sections 57-35.3-03, 57-38-29, 57-38-30, and 57-38-30.3 is		
10	allowed for investments in the historic preservation or renovation of property within the		
11	renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to		
12	a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in		
13	which the preservation or renovation is completed. Any excess credit may be carried forward		
14	for a period of up to five taxable years.		
15	SECTION 7. AMENDMENT. Subsection 4 of section 40-63-07 of the North Dakota		
16	Century Code is amended and reenacted as follows:		
17	4. A credit against state tax liability as determined under section 57-35.3-03,		
18	57-38-29, 57-38-30, or 57-38-30.3 is allowed for investments in a renaissance fund		
19	organization. The amount of the credit is fifty percent of the amount invested in the		
20	renaissance fund organization during the taxable year. Any amount of credit which		
21	exceeds a taxpayer's tax liability for the taxable year may be carried forward for up		
22	to five taxable years after the taxable year in which the investment was made.		
23	SECTION 8. AMENDMENT. Subsections 1 and 2 of section 57-38-01.7 of the North		
24	Dakota Century Code are amended and reenacted as follows:		
25	1. At the election of the taxpayer, there must be allowed, subject to the applicable		
26	limitations provided in this subsection, as a credit against the income tax imposed		
27	by this chapter liability under section 57-38-30 for the taxable year, an amount		
28	equal to fifty percent of the aggregate amount of charitable contributions made by		
29	the taxpayer during the year to nonprofit private institutions of higher education		

located within the state or to the North Dakota independent college fund.

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1 In the case of a taxpayer other than a corporation, the amount allowable as a 2 credit under this subsection for any taxable year may not exceed forty percent 3 of the taxpayer's total income tax under this chapter for the year, or two 4 hundred fifty dollars, whichever is less. 5 In the case of a corporation, the The amount allowable as a credit under this b. 6 subsection for any taxable year may not exceed twenty percent of the 7 corporation's total income tax under this chapter for the year, or two thousand 8 five hundred dollars, whichever is less. 9 2. At the election of the taxpayer, there must be allowed, subject to the applicable 10 limitations provided in this subsection, as a credit against the income tax imposed 11 by this chapter liability under section 57-38-30 for the taxable year, an amount 12 equal to fifty percent of the aggregate amount of charitable contributions made by 13 the taxpayer during the year directly to nonprofit private institutions of secondary 14 education, located within the state. 15 In the case of a taxpayer other than a corporation, the amount allowable as a a. 16 eredit under this subsection for any taxable year may not exceed forty percent 17 of the taxpayer's total income tax under this chapter for the year, or two 18 hundred fifty dollars, whichever is less. 19 In the case of a corporation, the The amount allowable as a credit under this b. 20 subsection for any taxable year may not exceed twenty percent of the 21 corporation's total income tax under this chapter for the year, or two thousand 22 five hundred dollars, whichever is less. 23 **SECTION 9. AMENDMENT.** Subsections 1 and 4 of section 57-38-01.8 of the North 24 Dakota Century Code are amended and reenacted as follows: 25 Any A taxpayer filing a North Dakota income tax return pursuant to the provisions 26 of this chapter may claim a credit against the tax liability under section 57-38-30 for 27 the cost of a geothermal, solar, or wind energy device installed before January 1, 28 2011, in a building or on property owned or leased by the taxpayer in North 29 Dakota. The credit provided in this section for a device installed before January 1,

2001, must be in an amount equal to five percent per year for three years, and for

a device installed after December 31, 2000, must be in an amount equal to three

- percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, or wind energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
- 4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, or wind energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the <u>corporate</u> partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
- **SECTION 10. AMENDMENT.** Section 57-38-01.14 of the North Dakota Century Code is amended and reenacted as follows:
- **57-38-01.14.** No gain recognized on property subject to eminent domain sale or transfer. If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for <u>corporate</u> income tax purposes.
- **SECTION 11. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:
- 57-38-01.16. Income tax credit for employment of developmentally disabled or chronically mentally ill persons. Any A taxpayer filing an income tax return under this chapter, except a return on which liability is determined under section 57-38-30.3, may claim a credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

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- 1 The total of credits allowed under this section may not exceed fifty percent of the 2 taxpayer's liability under this chapter. 3 SECTION 12. AMENDMENT. Section 57-38-01.17 of the North Dakota Century Code 4 is amended and reenacted as follows: 5 57-38-01.17. Credit for investments in development corporations. An individual, 6 estate, trust, or A corporation is allowed, as a credit against a tax otherwise due under section 7 57 38 29 or 57-38-30, the credit for buying membership in, or paying dues or contributions to, a 8 certified nonprofit development corporation as provided in section 10-33-124. 9 SECTION 13. AMENDMENT. Subsection 1 of section 57-38-01.20 of the North Dakota 10 Century Code is amended and reenacted as follows: 11 An individual is entitled to a credit against the tax imposed under section 57 38 29 12 er 57-38-30.3 in the amount of qualified care expenses under this section paid by 13 the individual for the care of a qualifying family member during the taxable year. 14 SECTION 14. AMENDMENT. Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows: 15 16 57-38.5-03. Seed capital investment tax credit. If a taxpayer makes a qualified 17 investment in a qualified business, the taxpayer is entitled to a credit against state income tax 18 liability under section 57-38-29 or 57-38-30.3. The amount of the credit to which a taxpayer is 19 entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses 20 during the taxable year, subject to the following: 21 1. The aggregate annual investment for which a taxpayer may obtain a tax credit 22 under this section is not less than five thousand dollars and not more than two 23 hundred fifty thousand dollars. This subsection may not be interpreted to limit 24 additional investment by a taxpayer for which that taxpayer is not applying for a 25 credit. 26 2. In any taxable year, a taxpayer may claim no more than one-third of the credit 27
 - under this section which is attributable to investments in a single taxable year.
 - 3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to four taxable years after the taxable year in which the investment was made.

- 4. A partnership that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a partnership's investment in a qualified business must be determined at the partnership level. The amount of the total credit determined at the partnership level must be allowed to the partners, limited to individuals, estates, and trusts, in proportion to their respective interests in the partnership.
- 5. The investment must be at risk in the business. An investment for which a credit is received under this section must remain in the business for at least three years.
- 6. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
- 7. A taxpayer who owns a controlling interest in the qualified business or whose full-time professional activity is the operation of the business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
- 8. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.
- **SECTION 15. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:
- **57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state

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- income tax liability as determined under section 57-38-29 or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:
 - The aggregate annual investment for which a taxpayer may obtain a tax credit under this section is not more than twenty thousand dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
 - 2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit under this section which is attributable to qualified investments in a single taxable year. The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under chapter 57-38.
 - Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to fifteen taxable years after the taxable year in which the investment was made.
 - 4. A partnership that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a partnership's investment in a qualified business must be determined at the partnership level. The amount of the total credit determined at the partnership level must be allowed to the partners, limited to individuals, estates, and trusts, in proportion to their respective interests in the partnership.
 - 5. The investment must be at risk in the business. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years.
 - The entire amount of an investment for which a credit is claimed under this section
 must be expended by the qualified business for plant, equipment, research and
 development, marketing and sales activity, or working capital for the qualified
 business.

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1	7.	The tax commissioner may disallow any credit otherwise allowed under this section
2		if any representation by a business in the application for certification as a qualified
3		business proves to be false or if the taxpayer or qualified business fails to satisfy
4		any conditions under this section or any conditions consistent with this section
5		otherwise determined by the tax commissioner. The amount of any credit
6		disallowed by the tax commissioner that reduced the taxpayer's income tax liability
7		for any or all applicable tax years, plus penalty and interest provided under section
8		57-38-45, must be paid by the taxpayer.
9	SEC	CTION 16. REPEAL. Subsection 2 of section 10-30.1-01, sections 57-38-01.2,
10	57-38-01.18	3, 57-38-02, 57-38-03, 57-38-06.1, 57-38-29, 57-38-29.2, and 57-38-30.4,
11	subsection	2 of section 57-38-31, and sections 57-38-67, 57-38-68, 57-38-69, 57-38-70,
12	57-38-71, 5	7-38-72, 57-38-73, and 57-38-74 of the North Dakota Century Code are repealed.
13	SEC	CTION 17. EFFECTIVE DATE. This Act is effective for taxable years beginning
14	after Decen	nber 31, 2004.