

Fifty-ninth  
Legislative Assembly  
of North Dakota

**ENGROSSED SENATE BILL NO. 2330**

Introduced by

Senators Christmann, Bercier, Nething

Representatives Brandenburg, Drovdal, Kroeber

1 A BILL for an Act to create and enact a new subsection to section 57-35.3-05 of the North  
2 Dakota Century Code, relating to financial institutions tax credits for tax overpayments; to  
3 provide an effective date; and to provide an expiration date.

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

5 **SECTION 1.** A new subsection to section 57-35.3-05 of the North Dakota Century  
6 Code is created and enacted as follows:

7 An amended return and credit of an overpayment of tax under chapters 57-35,  
8 57-35.1, or 57-35.2 is allowed if an internal revenue service adjustment resulting in  
9 discovery of the overpayment is completed more than one year after the tax was  
10 due, provided that the amended return and claim for credit of the overpayment of  
11 tax would have otherwise been timely under subdivision a or b of subsection 7 of  
12 section 57-38-40 or section 57-38-34.4. The credit must be credited against  
13 liability under this chapter as provided in this section. For purposes of this  
14 subsection:

15 a. The taxpayer is entitled to a credit of:

16 (1) The amount of the overpayment that was made under chapter 57-35  
17 plus the amount of any interest paid by the taxpayer on this portion of  
18 the overpayment; and

19 (2) Interest at the rate of two and one-half percent per year on the  
20 uncredited amount under paragraph 1 from the date tax and interest  
21 under paragraph 1 was paid by the taxpayer to December 31, 2006.

22 b. The taxpayer is entitled to a credit of:

- (1) The amount of the overpayment that was made under chapter 57-35.2 plus the amount of any interest paid by the taxpayer on this portion of the overpayment; and
    - (2) Interest at the rate of two and one-half percent per year on the unrefunded amount under paragraph 1 from the date tax and interest under paragraph 1 was paid by the taxpayer to April 15, 2006.
  - c. For purposes of determining distributions to and by counties under section 57-35.3-09 in any year a credit under subdivision a is claimed:
    - (1) The balance in the financial institution tax distribution fund and the amount of the payment received by each county from the state shall be determined as if any credit allowed under subdivision a had not been claimed and the full amount of the tax otherwise due had been timely paid;
    - (2) The credited amount under subdivision a must be deducted from the distributions that would otherwise be made to and by the county that received the tax overpayment until the sum of the deductions under this paragraph equals the amount of the credit under subdivision a; and
    - (3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.
  - d. The entire amount of the credit under subdivision a must be deducted from the portion of the tax payable by the taxpayer that would be deposited in the financial institution tax distribution fund. The entire amount of the credit under subdivision b must be deducted from the amount payable by the taxpayer that would be deposited in the state general fund.
  - e. The amount of the credit under subdivision a is limited to not more than fifty percent of the taxpayer's liability under this chapter that would be payable to the county that received the overpayment unless the board of county commissioners of that county approves allowing a greater amount of the credit. The board of county commissioners must notify the tax commissioner, by December thirty-first of the taxable year for which the credit will be

1                    claimed, if the board of county commissioners approves allowing a greater  
2                    amount of the credit under this subdivision.

3                    f.    Any amount not allowed as a credit because of the limitations under this  
4                    section may be carried forward to the next taxable year.

5                    **SECTION 2. EFFECTIVE DATE - RETROACTIVE APPLICATION - EXPIRATION**

6                    **DATE.** This Act applies retroactively and prospectively to all claims filed after December 31,  
7                    2001, and is ineffective for any refund claim filed after February 15, 2005.