

Sixtieth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2091**

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact section 57-35.3-06, subsection 3 of section 57-38-31.1,  
2 subsection 2 of section 57-38-34, and section 57-38-63 of the North Dakota Century Code,  
3 relating to the due date for filing short period financial institutions tax and corporate income tax  
4 returns, composite returns filed by passthrough entities, and the due date for estimated tax  
5 payments by corporations for short-period tax years; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Section 57-35.3-06 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **57-35.3-06. Tax return.** On or before April fifteenth of each year, the taxpayer shall file  
10 with the commissioner, on forms or in a manner prescribed by the commissioner, a report in  
11 writing under oath showing the amount of taxable income of the financial institution for the  
12 preceding calendar year. A return for a period of less than one year must be filed on or before  
13 April fifteenth, or on or before the date prescribed by the United States internal revenue service,  
14 whichever is later. If required by the commissioner, the return must be accompanied by a true  
15 copy of the federal income tax return of the taxpayer or by equivalent information in the form  
16 and manner prescribed by the commissioner. A true copy of the federal income tax return must  
17 be furnished to the commissioner by the taxpayer at any time after the taxpayer has filed the  
18 return required by this section if required by the commissioner before the expiration of the  
19 applicable period for assessment of additional tax liability under section 57-38-38. The  
20 commissioner may prescribe alternative methods for signing, subscribing, or verifying a return  
21 filed by electronic means, including telecommunications, that has the same validity and  
22 consequence as the actual signature and written declaration for a paper return. The  
23 commissioner may grant a reasonable extension of time for filing a return under the standards  
24 and terms applicable to other corporations under section 57-38-34.

1           **SECTION 2. AMENDMENT.** Subsection 3 of section 57-38-31.1 of the North Dakota  
2 Century Code is amended and reenacted as follows:

3           3.   a.   A passthrough entity shall withhold income tax, at the highest tax rate  
4               provided in section 57-38-30.3 for individuals, on the share of income of the  
5               entity distributed to each nonresident member and pay the withheld amount in  
6               the manner prescribed by the tax commissioner. The passthrough entity is  
7               liable to the state for the payment of the tax required to be withheld under this  
8               section and is not liable to any member for the amount withheld and paid over  
9               in compliance with this section. A member of a passthrough entity that is itself  
10              a passthrough entity (a lower-tier passthrough entity) is subject to this same  
11              requirement to withhold and pay over income tax on the share of income  
12              distributed by the lower-tier passthrough entity to each of its nonresident  
13              members. The tax commissioner shall apply tax withheld and paid over by a  
14              passthrough entity on distributions to a lower-tier passthrough entity to the  
15              withholding required of that lower-tier passthrough entity.

16           b.   At the time of a payment made under this section, a passthrough entity shall  
17               deliver to the tax commissioner a return upon a form prescribed by the tax  
18               commissioner showing the total amounts paid or credited to its nonresident  
19               members, the amount withheld in accordance with this section, and any other  
20               information the tax commissioner may require. A passthrough entity shall  
21               furnish to its nonresident member annually, but not later than the fifteenth day  
22               of the third month after the end of its taxable year, a record of the amount of  
23               tax withheld on behalf of such member on a form prescribed by the tax  
24               commissioner.

25           c.   Notwithstanding subdivision a, a passthrough entity is not required to withhold  
26               tax for a nonresident member if:

27               (1)   The member has a pro rata or distributive share of income of the  
28                      passthrough entity from doing business in, or deriving income from  
29                      sources within, this state of less than one thousand dollars per annual  
30                      accounting period;

- 1                   (2)    The tax commissioner has determined by rule, ruling, or instruction that  
2                               the member's income is not subject to withholding;
- 3                   (3)    The member elects to have the tax due paid as part of a composite  
4                               return filed by the passthrough entity under subsection 2; or
- 5                   (4)    The entity is a publicly traded partnership as defined by section 7704(b)  
6                               of the Internal Revenue Code which is treated as a partnership for the  
7                               purposes of the Internal Revenue Code and which has agreed to file an  
8                               annual information return reporting the name, address, taxpayer  
9                               identification number, and other information requested by the tax  
10                              commissioner of each unitholder with an income in the state in excess  
11                              of five hundred dollars.

12                   d.    A passthrough entity failing to file a return, or failing to withhold or remit the  
13                              tax withheld, as required by this section, is subject to the provisions of  
14                              section 57-38-45.

15                   **SECTION 3. AMENDMENT.** Subsection 2 of section 57-38-34 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17                   2.    Returns made on the basis of the calendar year must be filed on or before the  
18                              fifteenth day of April following the close of the calendar year and returns made on  
19                              the basis of a fiscal year must be filed on or before the fifteenth day of the fourth  
20                              month following the close of the fiscal year. A return filed for a period of less than  
21                              one year must be filed on or before April fifteenth, or on or before the date  
22                              prescribed by the United States internal revenue service, whichever is later.

23                   **SECTION 4. AMENDMENT.** Section 57-38-63 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25                   **57-38-63. Due date for payment of estimated income tax.** A taxpayer shall pay no  
26 less than one-quarter of the estimated tax to the tax commissioner on April fifteenth, June  
27 fifteenth, and September fifteenth of the taxable year, and January fifteenth of the following  
28 taxable year; provided, that a taxpayer having a taxable year other than a calendar year shall  
29 pay the estimated tax on the fifteenth day of the fourth, sixth, and ninth months of the taxable  
30 year, and the fifteenth day of the first month of the following taxable year. In the case of a tax  
31 year that is for a period of less than one year, and the short tax year ends prior to any

1 remaining due dates under this section, the final estimated tax payment is due on the fifteenth  
2 day of the last month of the short tax year. In the case of a tax year that is for a period of less  
3 than one hundred twenty days, no estimated tax payment is due.

4 **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
5 December 31, 2006.