

Sixty-first
Legislative Assembly
of North Dakota

Introduced by

Finance and Taxation Committee

(At the request of the Office of State Tax Commissioner)

1 A BILL for an Act to amend and reenact section 57-38-30.5 of the North Dakota Century Code,
2 relating to references to base period research expenses and the time period for claiming a
3 carryback of the research and experimental expenditure tax credit; and to provide an effective
4 date.

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

6 **SECTION 1. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-38-30.5. Income tax credit for research and experimental expenditures.** A
9 taxpayer is allowed a credit against the tax imposed under section 57-38-29, 57-38-30, or
10 57-38-30.3 for conducting qualified research in this state.

- 11 1. The amount of the credit for taxpayers that earned or claimed a credit under this
12 section in taxable years beginning before January 1, 2007, is calculated as follows:
- 13 a. For the first taxable year beginning after December 31, 2006, the credit is
14 equal to twenty-five percent of the first one hundred thousand dollars of the
15 qualified research expenses for the taxable year in excess of the base ~~period~~
16 ~~research expenses~~ amount and equal to seven and one-half percent of all
17 qualified research expenses for the taxable year more than one hundred
18 thousand dollars in excess of the base ~~period-research expenses~~ amount.
- 19 b. For the second taxable year beginning after December 31, 2006, the credit is
20 equal to twenty-five percent of the first one hundred thousand dollars of the
21 qualified research expenses for the taxable year in excess of the base ~~period~~
22 ~~research expenses~~ amount and equal to eleven percent of all qualified
23 research expenses for the taxable year more than one hundred thousand
24 dollars in excess of the base ~~period-research expenses~~ amount.

- 1 c. For the third taxable year beginning after December 31, 2006, the credit is
2 equal to twenty-five percent of the first one hundred thousand dollars of the
3 qualified research expenses for the taxable year in excess of the base ~~period~~
4 ~~research expenses~~ amount and equal to fourteen and one-half percent of all
5 qualified research expenses for the taxable year more than one hundred
6 thousand dollars in excess of the base ~~period-research expenses~~ amount.
- 7 d. For the fourth through the tenth taxable years beginning after December 31,
8 2006, the credit is equal to twenty-five percent of the first one hundred
9 thousand dollars of the qualified research expenses for the taxable year in
10 excess of the base ~~period-research expenses~~ amount and equal to eighteen
11 percent of all qualified research expenses for the taxable year more than one
12 hundred thousand dollars in excess of the base ~~period-research expenses~~
13 amount.
- 14 e. For the eleventh taxable year beginning after December 31, 2006, and for
15 each subsequent taxable year in which the taxpayer conducts qualified
16 research in this state, the credit is equal to twenty-five percent of the first one
17 hundred thousand dollars of the qualified research expenses for the taxable
18 year in excess of the base ~~period-research expenses~~ amount and equal to
19 eight percent of all qualified research expenses for the taxable year more than
20 one hundred thousand dollars in excess of the base ~~period-research~~
21 ~~expenses~~ amount.
- 22 f. The maximum annual credit a taxpayer may obtain under this ~~section~~
23 subsection is two million dollars. Any credit amount earned in the taxable
24 year in excess of two million dollars may not be carried back or forward as
25 provided in subsection 7.

- 26 2. For taxpayers that have not earned or claimed a credit under this section in taxable
27 years beginning before January 1, 2007, and which begin conducting qualified
28 research in North Dakota in any of the first four taxable years beginning after
29 December 31, 2006, the amount of the credit is equal to twenty-five percent of the
30 first one hundred thousand dollars of the qualified research expenses for the
31 taxable year in excess of the base ~~period-research expenses~~ amount and equal to

twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses~~ amount.

a. This rate applies through the tenth taxable year beginning after December 31, 2006.

b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses~~ amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses~~ amount.

3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses~~ amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses~~ amount.

4. For purposes of this section:

a. "Base ~~period research expenses~~ amount" means base ~~period research expenses~~ amount as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.

b. "Director" means the director of the department of commerce division of economic development and finance.

- 1 c. "Primary sector business" means a qualified business that through the
2 employment of knowledge or labor adds value to a product, process, or
3 service.
- 4 d. "Qualified research" means qualified research as defined in section 41(d) of
5 the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include
6 research conducted outside the state of North Dakota.
- 7 e. "Qualified research and development company" means a taxpayer that is a
8 primary sector business with annual gross revenues of less than seven
9 hundred fifty thousand dollars and which has not conducted new research and
10 development in North Dakota.
- 11 f. "Qualified research expenses" means qualified research expenses as defined
12 in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it
13 does not include expenses incurred for basic research conducted outside the
14 state of North Dakota.

- 15 5. The credit allowed under this section for the taxable year may not exceed the
16 liability for tax under this chapter.
- 17 6. In the case of a taxpayer that is a partner in a partnership or a member in a limited
18 liability company, the credit allowed for the taxable year may not exceed an
19 amount separately computed with respect to the taxpayer's interest in the trade,
20 business, or entity equal to the amount of tax attributable to that portion of the
21 taxpayer's taxable income which is allocable or apportionable to the taxpayer's
22 interest in the trade, business, or entity.
- 23 7. Except as provided in subsection 1, if the amount of the credit determined under
24 this section for any taxable year exceeds the limitation under subsection 5, the
25 excess may be used as a research credit carryback to each of the three preceding
26 taxable years and a research credit carryover to each of the fifteen succeeding
27 taxable years. The entire amount of the excess unused credit for the taxable year
28 must be carried first to the earliest of the taxable years to which the credit may be
29 carried and then to each successive year to which the credit may be carried and
30 the amount of the unused credit which may be added under this subsection may
31 not exceed the taxpayer's liability for tax less the research credit for the taxable

year. A claim to carryback the credit under this section must be filed within three years of the due date or extended due date of the return for the tax year in which the credit was earned.

8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner.

A tax credit can be sold, transferred, or assigned subject to the following:

- a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
- b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
- c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of

- 1 the tax credit purchaser to reduce the tax liability of the purchaser, regardless
2 of the actual tax liability of the tax credit transferor.
- 3 d. The original purchaser of the tax credit may not sell, assign, or otherwise
4 transfer the credit purchased under this section.
- 5 e. If the amount of the credit available under this section is changed as a result
6 of an amended return filed by the transferor, or as the result of an audit
7 conducted by the internal revenue service or the tax commissioner, the
8 transferor shall report to the purchaser the adjusted credit amount within thirty
9 days of the amended return or within thirty days of the final determination
10 made by the internal revenue service or the tax commissioner. The tax credit
11 purchaser shall file amended returns reporting the additional tax due or
12 claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax
13 commissioner may audit these returns and assess or issue refunds, even
14 though other time periods prescribed in these sections may have expired for
15 the purchaser.
- 16 f. Gross proceeds received by the tax credit transferor must be assigned to
17 North Dakota. The amount assigned under this subsection cannot be
18 reduced by the taxpayer's income apportioned to North Dakota or any North
19 Dakota net operating loss of the taxpayer.
- 20 g. The tax commissioner has four years after the date of the credit assignment to
21 audit the returns of the credit transferor and the purchaser to verify the
22 correctness of the amount of the transferred credit and if necessary assess
23 the credit purchaser if additional tax is found due. This subdivision does not
24 limit or restrict any other time period prescribed in this chapter for the
25 assessment of tax.
- 26 h. The tax commissioner may adopt rules to permit verification of the validity and
27 timeliness of the transferred tax credit.
- 28 9. If a taxpayer acquires or disposes of the major portion of a trade or business or the
29 major portion of a separate unit of a trade or business in a transaction with another
30 taxpayer, the taxpayer's qualified research expenses and base period must be

adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].

10. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return.

This section does not apply to tax credits received or purchased under subsection 8.

11. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section 57-38-29 or 57-38-30.3.

12. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under sections 57-38-29 and 57-38-30.

SECTION 2. EFFECTIVE DATE. This Act is effective for research and expenditure tax credits earned after December 31, 2008.