

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 subsection 2 of section 57-35.3-01 of the North Dakota
2 Century Code, relating to the definition of a financial institution for financial institution tax
3 purposes; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Subsection 2 of section 57-35.3-01 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 2. "Financial institution" means:

- 8 a. A corporation or other business entity registered under state law as a bank
9 holding company, registered under the Bank Holding Company Act of 1956,
10 as amended [Pub. L. 84-240; 70 Stat. 133; 12 U.S.C. 1841 et seq.], or
11 registered as a savings and loan holding company under the National
12 Housing Act, as amended [Pub. L. 73-847; 48 Stat. 1246; 12 U.S.C. 1701
13 et seq.];
- 14 b. A national bank organized and existing as a national bank association
15 pursuant to the provisions of the National Bank Act [1864 ch. 106, § 5;
16 13 Stat. 100; 12 U.S.C. 21 et seq.];
- 17 c. A savings association or federal savings bank as defined in the Federal
18 Deposit Insurance Act [Pub. L. 81-967; 64 Stat. 873; 12 U.S.C. 1813(b)(1)];
- 19 d. A bank or thrift institution incorporated or organized under the laws of any
20 state;
- 21 e. A trust company organized under the laws of any state, the United States, a
22 dependency or insular possession of the United States, or a foreign country;
- 23 f. A corporation organized under the provisions of Public Law No. 63-6, § 25A
24 [38 Stat. 273; 12 U.S.C. 611 to 631];

- 1 g. An agency or branch of a foreign depository as defined in Public Law
2 No. 95-369 [92 Stat. 607; 12 U.S.C. 3101];
- 3 h. A production credit association organized under the Farm Credit Act of 1933
4 [Pub. L. 73-98; 48 Stat. 257; 12 U.S.C. 1131 et seq.], all of the stock of which
5 held by the federal production credit corporation has been retired;
- 6 i. ~~A corporation the voting stock of which is more than fifty percent owned,~~
7 ~~directly or indirectly, by any person or business entity described in~~
8 ~~subdivisions a through h other than an insurance company taxable under~~
9 ~~section 26.1-03-17 or a corporation taxable under chapter 57-38;~~
- 10 j. A corporation or other business entity that derives more than fifty percent of
11 its total gross income for financial accounting purposes from finance leases.
12 For purposes of this subdivision, a "finance lease" means any lease
13 transaction that is the functional equivalent of an extension of credit and which
14 transfers substantially all of the benefits and risks incident to the ownership of
15 property. The phrase includes any "direct financing lease" or "leverage lease"
16 that meets the criteria of financial accounting standards board statement no.
17 13, "accounting for leases", or any other lease that is accounted for as a
18 financing by a lessor under generally accepted accounting principles. For the
19 classification under this subdivision to apply:
- 20 (1) The average of the gross income in the current tax year and
21 immediately preceding two tax years must satisfy the more than fifty
22 percent requirement; and
- 23 (2) Gross income from incidental or occasional transactions must be
24 disregarded; ~~or,~~
- 25 k. ~~Any other person or business entity, other than an insurance company taxable~~
26 ~~under section 26.1-03-17, a real estate broker, a securities dealer, or a person~~
27 ~~or entity taxable under chapter 57-38, which derives more than fifty percent of~~
28 ~~its gross income from activities that a person described in subdivisions b~~
29 ~~through h and j is authorized to transact. For the purpose of this subsection,~~
30 ~~the computation of gross income does not include income from nonrecurring,~~
31 ~~extraordinary items.~~

1 ~~The commissioner may exclude any person from the application of subdivision k~~
2 ~~upon that person proving, by clear and convincing evidence, that the~~
3 ~~income-producing activity of that person is not in substantial competition with those~~
4 ~~persons described in subdivisions b through h and j.~~

5 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
6 December 31, 2008.