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FIRST ENGROSSMENT

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1203

Introduced by

Representatives Keiser, Froseth

Senators Horne, Robinson

A BILL for an Act to create and enact a new subsection to section 57-35.3-05 of the North Dakota Century Code, relating to a financial institution tax credit for charitable gifts; to amend and reenact section 57-38-01.21 of the North Dakota Century Code, relating to the income tax credit for charitable gifts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

<u>There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12, the credit for charitable gifts to a qualified endowment as provided in section 57-38-01.21. The amount allowable as a credit under this subsection for any taxable year may not exceed five and seven-tenths percent of the tax before credits allowed under this section, or ten thousand dollars, whichever is less.</u>

SECTION 2. AMENDMENT. Section 57-38-01.21 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.21. Planned gifts and qualified endowments credit - Definitions.

1. For purposes of this section:
   a. "Permanent~~, irrevocable fund~~ <u>endowment</u>" means a fund ~~comprising cash, securities, mutual funds, or other investment assets~~ established <u>to provide a permanent source of income</u> for a specific charitable, religious, educational, or eleemosynary purpose and invested for the production or growth of income, or both, which may either be added to principal or expended.
   b. "Planned gift" means an irrevocable contribution to a North Dakota qualified nonprofit organization or qualified endowment held by or for a North Dakota

qualified nonprofit organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

(1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

(5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

(6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or

(9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

"Planned gift" does not include a contribution using a charitable remainder unitrust or charitable remainder annuity trust unless the agreement provides that the trust may not terminate and beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of the date of death of the beneficiaries or five years from the date of the contribution.

"Planned gift" does not include a deferred charitable gift annuity unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the contribution.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified nonprofit organization or qualified endowment sooner than the earlier of the date of death of the annuitant or annuitants or five years after the date of the contribution.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity is a qualified charitable gift annuity for federal income tax purposes.

c. "Qualified endowment" means a permanent~~, irrevocable fund~~ endowment held by a North Dakota incorporated or established organization that is:

(1) A qualified nonprofit organization; or

(2) A bank or trust company holding the fund on behalf of a qualified nonprofit organization.

d. "Qualified nonprofit organization" means a North Dakota incorporated or established tax-exempt organization under 26 U.S.C. 501(c) to which contributions qualify for federal charitable income tax deductions with an established business presence or situs in North Dakota.

2. a. An individual is allowed a tax credit against the tax imposed by section 57-38-29 or 57-38-30.3 ~~in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the year to a qualified nonprofit organization or qualified endowment.~~ for a charitable gift as follows:

(1) For a charitable gift in the form of a planned gift made to a qualified nonprofit organization or to a qualified endowment, the credit is equal to forty percent of the aggregate amount of the charitable gift portion of all planned gifts made during the taxable year.

(2) For a charitable gift other than a planned gift made to a qualified endowment, the credit is equal to forty percent of the aggregate amount of all charitable gifts made during the taxable year, provided the aggregate amount of all charitable gifts made during the taxable year to a single qualified endowment is two thousand five hundred dollars or more.

b. The maximum credit that may be claimed under this subsection for contributions made in a taxable year is ten thousand dollars, or twenty thousand dollars for married individuals filing a joint return. The credit allowed under this section may not exceed the taxpayer's income tax liability.

3. A corporation is allowed a tax credit against the tax imposed by section 57-38-30 in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit that may be claimed by a corporation under this subsection for contributions made in a taxable year is ten thousand dollars. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability.

4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit allowed under this subsection for contributions made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section 57-38-29, 57-38-30, or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.

5. A partnership, subchapter S corporation, or limited liability company ~~treated like a partnership~~ is entitled to a credit in an amount equal to forty percent of a charitable gift to a qualified endowment ~~by the entity during the taxable year~~. The maximum credit allowed ~~to the entity~~ under this subsection for charitable gifts ~~and planned gifts~~ made in a taxable year is ten thousand dollars. The credit determined at the entity level must be passed through to the partners, shareholders, or members in the same proportion that the charitable contributions ~~attributable to the charitable gifts and planned gifts under this section~~ are distributed to the partners, shareholders, or members. The partner, shareholder, or member may claim the credit only in the partner's, shareholder's, or member's taxable year in which the taxable year of the partnership, subchapter S corporation, or limited liability company ends. Subsections 6 and 7 apply to the partner, shareholder, or member.

6. The amount of the contribution upon which an allowable credit is computed must be added to federal taxable income ~~in~~ for purposes of computing North Dakota taxable income in ~~the taxable~~ any tax year in which the ~~credit~~ contribution is ~~first claimed~~ deducted for federal tax purposes, but only to the extent that the contribution reduced federal taxable income.

7. An unused credit may be carried forward for up to three taxable years.

8. If a contribution for which a credit was claimed is recovered by the taxpayer, an amount equal to the credit claimed in all taxable years must be added to the tax due on the income tax return filed for the taxable year in which the recovery occurs. For purposes of subsection 4, this subsection applies if the estate or trust recovers the contribution and the estate or trust and its beneficiaries are liable for the additional tax due with respect to their respective shares of the apportioned credit. For purposes of subsection 5, this subsection applies if the partnership, subchapter S corporation, or limited liability company recovers the contribution, and the partner, shareholder, or member is liable for the additional tax due.

9. An organization that receives a charitable gift that qualifies for the credit under this section shall provide the donor a receipt that indicates whether the charitable gift has been deposited in a permanent endowment.

SECTION 2. EFFECTIVE DATE. This Act is effective for contributions made in taxable years beginning after December 31, 2008.