

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2320

Introduced by

Senators Nodland, Klein, Miller

Representatives Delmore, Porter, Streyle

1 A BILL for an Act to amend and reenact sections 57-35.3-03, 57-35.3-05, 57-35.3-07, and
2 57-35.3-08 of the North Dakota Century Code, relating to reduction of the rate of the financial
3 institutions tax and adjustment of the allocation of the tax; to provide for a legislative
4 management study; and to provide an effective date.

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

6 **SECTION 1. AMENDMENT.** Section 57-35.3-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-35.3-03. Imposition and basis of tax.**

9 An annual tax is imposed upon each financial institution for the grant to it of the privilege of
10 transacting, or for the actual transacting by it, of business within this state during any part of
11 each tax year. The tax is based upon and measured by the taxable income of the financial
12 institution for the calendar year. The rate of tax is ~~sevensix and one-half~~ percent of taxable
13 income, but the amount of tax may not be less than fifty dollars.

14 **SECTION 2. AMENDMENT.** Section 57-35.3-05 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **57-35.3-05. Credits.**

17 1. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through
18 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of
19 charitable contributions made by the taxpayer during the taxable year to nonprofit
20 private institutions of higher education located within the state or to the North
21 Dakota independent college fund. The amount allowable as a credit under this
22 subdivision for any taxable year may not exceed ~~five and seven-tenths~~four and
23 six-tenths percent of the tax before credits allowed under this section, or two
24 thousand five hundred dollars, whichever is less.

1 b. There is allowed a credit against the tax imposed by sections 57-35.3-01 through
2 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of
3 charitable contributions made by the taxpayer during the taxable year to nonprofit
4 private institutions of secondary education located within the state. The amount
5 allowable as a credit under this subdivision for any taxable year may not exceed
6 ~~five and seven-tenths~~four and six-tenths percent of the tax before credits allowed
7 under this section, or two thousand five hundred dollars, whichever is less.

8 c. For the purposes of this subsection, the term "nonprofit private institution of
9 higher education" means only a nonprofit private educational institution located in
10 North Dakota which normally maintains a regular faculty and curriculum and
11 which normally has a regularly organized body of students in attendance at the
12 place where its educational activities are carried on, and which regularly offers
13 education at a level above the twelfth grade. The term "nonprofit private
14 institution of secondary education" means only a nonprofit private educational
15 institution located in North Dakota which normally maintains a regular faculty and
16 curriculum approved by the department of public instruction and which normally
17 has a regularly organized body of students in attendance at the place where its
18 educational activities are carried on, and which regularly offers education to
19 students in the ninth through twelfth grades.

20 d. For the purposes of this subsection, a taxpayer may elect to treat a contribution
21 as made in the preceding taxable year if the contribution and election are made
22 not later than the time prescribed for filing the return for the taxable year.

23 2. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through
24 57-35.3-12 in an amount equal to any overpayment of tax paid pursuant to
25 chapter 57-35 or 57-35.1, for a taxable year beginning before January 1, 1997, to
26 the extent that the overpayment would have been an allowable deduction from
27 tax payable for the current taxable year, under section 57-35-12 or 57-35.1-07, if
28 chapters 57-35 and 57-35.1 applied to the current taxable year. The amount
29 allowable as a credit under this subsection for any taxable year may not exceed
30 five-sevenths of the tax before credits allowed under this section.

1 b. For purposes of determining distributions to and from the counties under section
2 57-35.3-09:

3 (1) The balance in the financial institution tax distribution fund and the amount
4 of the payment received by each county from the state shall be determined
5 as if any credit allowed under subdivision a had not been claimed and the
6 full amount of the tax otherwise due had been timely paid;

7 (2) The credited amount must be deducted from the distributions that would
8 otherwise be made to and from the county that received the tax
9 overpayment until the sum of the deductions equals the credit; and

10 (3) The deductions from distributions made by a county to each distributee
11 must be proportionate to the overpayment of tax received by each
12 distributee.

13 3. There is allowed a credit against the tax imposed by sections 57-35.3-01 through
14 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of
15 contributions made by the taxpayer during the taxable year for tuition scholarships for
16 participation in rural leadership North Dakota conducted through the North Dakota
17 state university extension service. Contributions by a taxpayer may be earmarked for
18 use by a designated recipient. The amount allowable as a credit under this subsection
19 for any taxable year may not exceed ~~five and seven-tenths~~four and six-tenths percent
20 of the tax before credits allowed under this section, or two thousand five hundred
21 dollars, whichever is less.

22 **SECTION 3. AMENDMENT.** Section 57-35.3-07 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-35.3-07. Payment of tax.**

25 ~~Two-sevenths~~Three-thirteenths of the tax before credits allowed under section 57-35.3-05,
26 less the credit allowed under subsection 1 of section 57-35.3-05, must be paid to the
27 commissioner on or before April fifteenth of the year in which the return is due, regardless of
28 any extension of the time for filing the return granted under section 57-35.3-06.

29 ~~Five-sevenths~~Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less
30 the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the commissioner
31 on or before January fifteenth of the year after the return is due. Payment must be made by

1 check, draft, or money order, payable to the commissioner, or as prescribed by the
2 commissioner under subsection 15 of section 57-01-02.

3 **SECTION 4. AMENDMENT.** Section 57-35.3-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-35.3-08. Disposition of tax.**

6 The commissioner shall deposit the portion of the tax payable in the year the return is due
7 in the general fund of the state treasury and shall deposit the portion of the tax payable in the
8 year after the return is due in the financial institution tax distribution fund of the state treasury,
9 ~~which is hereby created~~. Interest, penalty, and late tax payments attributable to each portion of
10 the tax must be deposited in the appropriate fund.

11 **SECTION 5. LEGISLATIVE MANAGEMENT STUDY - FINANCIAL INSTITUTIONS**

12 **TAXATION.** During the 2011-12 interim, the legislative management shall consider studying the
13 feasibility and desirability of revision of the financial institutions taxes, including the feasibility of
14 taxing financial institutions under the state corporate income tax laws. The legislative
15 management shall report its findings and recommendations, together with any legislation
16 required to implement the recommendations, to the sixty-third legislative assembly.

17 **SECTION 6. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
18 December 31, 2010.