

SENATE BILL NO. 2054

Introduced by

Legislative Council

(Taxation Committee)

1 A BILL for an Act to amend and reenact subsections 1 and 2 of section 57-35.3-02,
2 subsection 1 of section 57-38-01.3, and sections 57-38-30 and 57-38.4-02 of the North Dakota
3 Century Code, relating to financial institutions taxes, the corporate income tax deduction for
4 federal income taxes paid, and to change corporate income tax rates from graduated rates to a
5 flat rate; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 57-35.3-02 of the North
8 Dakota Century Code are amended and reenacted as follows:

- 9 1. In determining "taxable income" there must be added to federal taxable income:
- 10 a. The adjustments provided by subdivisions ~~d, e, and f~~ c, d, and g of
11 subsection 1 of section 57-38-01.3;
- 12 b. Interest not subject to federal tax upon obligations of the state of North Dakota
13 and its political subdivisions;
- 14 c. The amount of any charitable contribution deduction taken for federal income
15 tax purposes under section 170 of the Internal Revenue Code;
- 16 d. In the case of a building and loan association or savings and loan association,
17 the amount of any bad debt reserve deduction taken for federal income tax
18 purposes under section 585 of the Internal Revenue Code; and
- 19 e. Dividends paid by a federal reserve bank to the extent not subject to federal
20 tax.
- 21 2. In determining "taxable income" there must be subtracted from federal taxable
22 income:
- 23 a. The adjustments provided by ~~subdivisions b, c, and h~~ subdivision b of
24 subsection 1 of section 57-38-01.3;

- 1 b. In the case of a financial institution described in subdivision a of subsection 2
2 of section 57-35.3-01, the adjustment provided by subdivision g of
3 subsection 1 of section 57-38-01.3;
- 4 c. In the case of a building and loan association or savings and loan association
5 that uses the bad debt reserve method under section 585 of the Internal
6 Revenue Code to account for bad debts for federal income tax purposes, an
7 amount equal to the deduction for bad debts that would have been allowed
8 under section 166(a) of the Internal Revenue Code if a deduction had not
9 been claimed under section 585 or 593;
- 10 d. The amount of any adjustments taken into account for federal income tax
11 purposes under section 593(g) of the Internal Revenue Code;
- 12 e. The amount of any interest and expenses relating to income not taxable for
13 federal income tax purposes if the income is taxable under sections
14 57-35.3-01 through 57-35.3-12 and the interest and expenses were
15 disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal
16 Revenue Code in computing federal taxable income;
- 17 f. The amount of any wage and salary expenses disallowed as deductions
18 under section 280C(a) of the Internal Revenue Code in computing federal
19 taxable income;
- 20 g. An amount equal to the deduction for charitable contributions that would be
21 allowed for federal income tax purposes under section 170 of the Internal
22 Revenue Code if the percentage limitation of section 170(b)(2) of the Internal
23 Revenue Code was applied in all relevant taxable periods to taxable income,
24 rather than federal taxable income, but computed without regard to this
25 subdivision and that portion of subdivision a that refers to subdivision g of
26 subsection 1 of section 57-38-01.3. However, no deduction is allowable for a
27 contribution if and to the extent that a credit is allowed for the contribution
28 under section 57-35.3-05; ~~and~~
- 29 h. The amount of net income not allocated and apportioned to this state under
30 sections 57-35.3-13 through 57-35.3-17, but only to the extent that the
31 amount of net income not allocated and apportioned to this state under those

1 sections is not included in any adjustment made pursuant to the preceding
2 subdivisions-; and
3 i. The amount of federal income tax liability for the same taxable year for which
4 North Dakota taxable income is being determined, to the extent that the
5 federal taxes are computed upon income that becomes part of North Dakota
6 taxable income. Provided, that no adjustment to federal income taxes, paid or
7 accrued, is required because of allowable deductions to federal taxable
8 income made under the cost recovery provisions of subdivision b of
9 subsection 5 of section 57-38-01. Federal income taxes for prior periods
10 assessed against the taxpayer by reason of audit or other adjustment by the
11 internal revenue service, or voluntary disclosure by the taxpayer, are not
12 deductible except in the period in which income so taxed was reported or
13 reportable or in which an adjustment was required but only after an
14 adjustment is made by or with the office of the state tax commissioner. A
15 refund of federal income tax must be reported and included in North Dakota
16 taxable income in the year in which the tax was originally deducted. Income
17 must be further reduced by federal alternative minimum tax when a federal
18 credit for prior year minimum tax is taken. This reduction is limited to federal
19 alternative minimum tax previously disallowed in computing North Dakota
20 taxable income and may not exceed North Dakota taxable income computed
21 before the North Dakota net operating loss deduction. Any excess may be
22 carried forward to the next taxable year a federal credit for prior year minimum
23 tax is taken.

24 **SECTION 2. AMENDMENT.** Subsection 1 of section 57-38-01.3 of the North Dakota
25 Century Code is amended and reenacted as follows:

- 26 1. The taxable income of a corporation as computed pursuant to the provisions of the
27 Internal Revenue Code of 1954, as amended, must be:
- 28 a. Reduced by any interest received from obligations of the United States that is
29 included in taxable income or in the computation thereof on the federal return.
 - 30 b. Reduced by any other income included in the taxable income, or in the
31 computation thereof, on the federal return which is exempt from taxation by

- 1 this state because of the provisions of the Constitution of North Dakota or the
2 Constitution of the United States.
- 3 c. ~~Reduced by the amount of federal income tax liability, as computed under~~
4 ~~chapter 1 of the Internal Revenue Code of 1986, as amended, for the same~~
5 ~~taxable year for which the North Dakota return is being filed, to the extent that~~
6 ~~the taxes are computed upon income which becomes a part of the North~~
7 ~~Dakota taxable income. Provided, that no adjustment to federal income~~
8 ~~taxes, paid or accrued, is required because of allowable deductions to federal~~
9 ~~taxable income made under the cost recovery provisions of subdivision b of~~
10 ~~subsection 5 of section 57-38-01. Federal income taxes for prior periods~~
11 ~~assessed against the taxpayer by reason of audit or other adjustment by the~~
12 ~~internal revenue service, or voluntary disclosure by the taxpayer, are not~~
13 ~~deductible except in the period in which income so taxed was reported or~~
14 ~~reportable or in which an adjustment was required but only after an~~
15 ~~adjustment is made by or with the office of the state tax commissioner. A~~
16 ~~refund of federal income tax must be reported and included in North Dakota~~
17 ~~taxable income in the year in which the tax was originally deducted. Income~~
18 ~~must be further reduced by federal alternative minimum tax when a federal~~
19 ~~credit for prior year minimum tax is taken. This reduction is limited to federal~~
20 ~~alternative minimum tax previously disallowed in computing North Dakota~~
21 ~~taxable income and may not exceed North Dakota taxable income computed~~
22 ~~before the North Dakota net operating loss deduction. Any excess may be~~
23 ~~carried forward to the next taxable year a federal credit for prior year minimum~~
24 ~~tax is taken.~~
- 25 e. Increased by the amount of any income taxes, including income taxes of
26 foreign countries, or franchise or privilege taxes measured by income, to the
27 extent that such taxes were deducted to determine federal taxable income.
- 28 e- d. Increased by the amount of any interest and dividends from foreign securities
29 and from securities of state and their political subdivisions exempt from
30 federal income tax, provided that interest upon obligations of the state of
31 North Dakota or any of its political subdivisions may not be included.

- 1 **57-38.4-02. Water's edge election.** A corporation required to file a worldwide unitary
2 combined report must do so unless it elects to apportion its income using the water's edge
3 method.
- 4 1. A corporation electing to file using the water's edge method must comply with the
5 following:
- 6 a. The election must be made on the return as originally and timely filed.
- 7 b. ~~The corporation may not reduce taxable income for federal taxes deducted~~
8 ~~under subdivision c of subsection 1 of section 57-38-01.3.~~
- 9 e. The water's edge election is binding for five consecutive taxable years after
10 making the election.
- 11 e. c. The corporation must file with the tax commissioner a domestic disclosure
12 spreadsheet, after which the corporation must file a domestic disclosure
13 spreadsheet only every third year while the election remains in effect.
- 14 2. All corporations electing the water's edge method must include the income and
15 apportionment factors of the water's edge group. Foreign dividends and income
16 from 80/20 corporations must be included as follows:
- 17 a. An existing corporation must include fifty percent of foreign dividends and
18 sixty percent of income from 80/20 corporations. However, an existing
19 corporation that increases and maintains a threshold activity by twenty-five
20 percent or more, but not by business reorganization or acquisition, is only
21 required to include thirty percent of foreign dividends and thirty percent of
22 income from 80/20 corporations.
- 23 b. A new corporation must include thirty percent of foreign dividends and thirty
24 percent of income from 80/20 corporations.
- 25 c. For taxable years beginning after December 31, 1994, all corporations making
26 the water's edge election may reduce the inclusion to include thirty percent of
27 foreign dividends and thirty percent of income from 80/20 corporations.
- 28 3. Notwithstanding subsection 1 of section 57-38-30, a tax is imposed upon the
29 taxable income of a corporation electing to file using the water's edge method, to
30 be levied, collected, and paid annually as provided in chapter 57-38, at the rate of
31 nine and nine-tenths percent.

1 **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
2 December 31, 2002.