

HOUSE BILL NO. 1471

Introduced by

Representatives Carlson, Timm

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, section 57-38-30, subsection 9 of section 57-39.2-01, and
3 subsections 5 and 8 of section 57-40.2-01 of the North Dakota Century Code, relating to
4 financial institutions taxes, the corporate income tax deduction for federal income taxes paid,
5 corporate income tax rates, and the sales and use tax application to newspapers and
6 magazines; to repeal chapter 57-38.4, subsection 16 of section 57-39.2-04, and subsection 6 of
7 section 57-40.2-04 of the North Dakota Century Code, relating to the corporate income tax
8 water's edge filing election and the sales tax exemption for newsprint and ink used in
9 publication of a newspaper; and to provide an effective date.

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

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

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

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

1 contribution if and to the extent that a credit is allowed for the contribution
2 under section 57-35.3-05; ~~and~~

3 h. The amount of net income not allocated and apportioned to this state under
4 sections 57-35.3-13 through 57-35.3-17, but only to the extent that the
5 amount of net income not allocated and apportioned to this state under those
6 sections is not included in any adjustment made pursuant to the preceding
7 subdivisions-; and

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

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

- 1 1. The taxable income of a corporation as computed pursuant to the provisions of the
2 Internal Revenue Code of 1954, as amended, must be:
- 3 a. Reduced by any interest received from obligations of the United States that is
4 included in taxable income or in the computation thereof on the federal return.
- 5 b. Reduced by any other income included in the taxable income, or in the
6 computation thereof, on the federal return which is exempt from taxation by
7 this state because of the provisions of the Constitution of North Dakota or the
8 Constitution of the United States.
- 9 c. ~~Reduced by the amount of federal income tax liability, as computed under~~
10 ~~chapter 1 of the Internal Revenue Code of 1986, as amended, for the same~~
11 ~~taxable year for which the North Dakota return is being filed, to the extent that~~
12 ~~the taxes are computed upon income which becomes a part of the North~~
13 ~~Dakota taxable income. Provided, that no adjustment to federal income~~
14 ~~taxes, paid or accrued, is required because of allowable deductions to federal~~
15 ~~taxable income made under the cost recovery provisions of subdivision b of~~
16 ~~subsection 5 of section 57-38-01. Federal income taxes for prior periods~~
17 ~~assessed against the taxpayer by reason of audit or other adjustment by the~~
18 ~~internal revenue service, or voluntary disclosure by the taxpayer, are not~~
19 ~~deductible except in the period in which income so taxed was reported or~~
20 ~~reportable or in which an adjustment was required but only after an~~
21 ~~adjustment is made by or with the office of the state tax commissioner. A~~
22 ~~refund of federal income tax must be reported and included in North Dakota~~
23 ~~taxable income in the year in which the tax was originally deducted. Income~~
24 ~~must be further reduced by federal alternative minimum tax when a federal~~
25 ~~credit for prior year minimum tax is taken. This reduction is limited to federal~~
26 ~~alternative minimum tax previously disallowed in computing North Dakota~~
27 ~~taxable income and may not exceed North Dakota taxable income computed~~
28 ~~before the North Dakota net operating loss deduction. Any excess may be~~
29 ~~carried forward to the next taxable year a federal credit for prior year minimum~~
30 ~~tax is taken.~~

1 income that is not subject to taxation under this chapter when earned by the
2 regulated investment company. Sections 852(b)(7) and 855 of the Internal
3 Revenue Code of 1986, as amended, apply for computing the deduction for
4 dividends paid. A regulated investment company is not allowed a deduction
5 for dividends received as defined in sections 243 through 245 of the Internal
6 Revenue Code of 1986, as amended.

7 Provided, however, that each adjustment in the above subdivisions authorized
8 under law is allowed only to the extent that the adjustment is allocated and
9 apportioned to North Dakota income.

10 **SECTION 3. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **57-38-30. Imposition and rate of tax on corporations.** A tax is hereby imposed upon
13 the taxable income of every domestic and foreign corporation received from the sources
14 described in sections 57-38-12, 57-38-13, and 57-38-14, which must be levied, collected, and
15 paid annually as in this chapter provided:

- 16 1. a. ~~For the first three thousand dollars of taxable income, at the rate of three~~
17 ~~percent.~~
18 b. ~~On all taxable income above three thousand dollars and not in excess of eight~~
19 ~~thousand dollars, at the rate of four and one half percent.~~
20 c. ~~On all taxable income above eight thousand dollars and not in excess of~~
21 ~~twenty thousand dollars, at the rate of six percent.~~
22 d. ~~On all taxable income above twenty thousand dollars, and not in excess of~~
23 ~~thirty thousand dollars, at the rate of seven and one half percent.~~
24 e. ~~On all taxable income above thirty thousand dollars, and not in excess of fifty~~
25 ~~thousand dollars, at the rate of nine percent.~~
26 f. ~~On all taxable income above fifty thousand dollars, at the rate of ten and~~
27 ~~one half percent. The tax imposed on corporations by this chapter is imposed~~
28 ~~on taxable income at the rate of six and seventy-three hundredths percent.~~
29 2. A corporation that has paid North Dakota alternative minimum tax in years
30 beginning before January 1, 1991, may carry over any alternative minimum tax

1 credit remaining to the extent of the regular income tax liability of the corporation
2 for a period not to exceed four taxable years.

3 **SECTION 4. AMENDMENT.** Subsection 9 of section 57-39.2-01 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 9. "Sale" means any transfer of title or possession, exchange or barter, conditional or
6 otherwise, in any manner or by any means whatever, for a consideration, and
7 includes the furnishing or service of steam, gas, or communication, the furnishing
8 of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the
9 furnishing of tickets or admissions to any place of amusement, athletic event, or
10 place of entertainment including the playing of any machine for amusement or
11 entertainment in response to the use of a coin, and sales of newspapers and
12 magazines and other periodicals. Provided, the words "magazines and other
13 periodicals" as used in this subsection do not include ~~newspapers nor~~
14 subscriptions to magazines or periodicals or magazines or periodicals that are
15 furnished free by a nonprofit corporation or organization to its members or because
16 of payment by its members of membership fees or dues.

17 **SECTION 5. AMENDMENT.** Subsections 5 and 8 of section 57-40.2-01 of the North
18 Dakota Century Code are amended and reenacted as follows:

19 5. "Purchased at retail" includes, but is not limited to:
20 a. The completion of the fabricating, compounding, or manufacturing of tangible
21 personal property by a person for storage, use, or consumption by that
22 person.
23 b. The leasing or renting of tangible personal property, the sale, storage, use, or
24 consumption of which has not been previously subjected to a retail sales or
25 use tax in this state.
26 c. The purchase of newspapers and magazines or other periodicals. Provided,
27 the words "magazines and other periodicals" as used in this subdivision do
28 not include ~~newspapers nor~~ subscriptions to magazines or periodicals or
29 magazines or periodicals that are furnished free by a nonprofit corporation or
30 organization to its members or because of payment by its members of
31 membership fees or dues.

- 1 d. The severance of sand or gravel from the soil.
- 2 e. The purchase, including the leasing or renting, of tangible personal property
- 3 from any bank for storage, use, or consumption.
- 4 f. The purchase of an item of tangible personal property by a purchaser who
- 5 rents or leases it to a person under a finance leasing agreement over the term
- 6 of which the property will be substantially consumed, if the purchaser elects to
- 7 treat it as being purchased at retail by paying or causing the transferor to pay
- 8 the use tax to the commissioner on or before the last day on which payments
- 9 may be made without penalty as provided in section 57-40.2-07.
- 10 8. "Tangible personal property" means:
- 11 a. Tangible goods, including the furnishing of bingo cards, wares, and
- 12 merchandise, and gas, when furnished or delivered to consumers or users
- 13 within this state, and the sale of vulcanizing, recapping, and retreading
- 14 services for tires.
- 15 b. The leasing or renting of tangible personal property, the sale, storage, use, or
- 16 consumption of which has not been previously subjected to a retail sales or
- 17 use tax in this state.
- 18 c. The purchase of newspapers and magazines or other periodicals. Provided,
- 19 the words "magazines and other periodicals" as used in this subdivision do
- 20 not include ~~newspapers nor~~ subscriptions to magazines or periodicals or
- 21 magazines or periodicals that are furnished free by a nonprofit corporation or
- 22 organization to its members or because of payment by its members of
- 23 membership fees or dues.
- 24 d. The severance of sand or gravel from the soil.

25 **SECTION 6. REPEAL.** Chapter 57-38.4, subsection 16 of section 57-39.2-04, and

26 subsection 6 of section 57-40.2-04 of the North Dakota Century Code are repealed.

27 **SECTION 7. EFFECTIVE DATE.** Sections 1 through 3 of this Act and the repeal of

28 chapter 57-38.4 are effective for taxable years beginning after December 31, 2002. Sections 4

29 and 5 and the repeal of subsection 16 of section 57-39.2-04 and subsection 6 of section

30 57-40.2-04 are effective for taxable events occurring after June 30, 2003.