

SENATE BILL NO. 2091

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact sections 57-38-11, 57-38-14, and 57-38-30 of the North
2 Dakota Century Code, relating to obsolete corporate income tax provisions; and to repeal
3 sections 57-38-12 and 57-38-13 of the North Dakota Century Code, relating to obsolete
4 corporate income tax provisions.

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

6 **SECTION 1. AMENDMENT.** Section 57-38-11 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-38-11. Annual tax on corporations.** The tax imposed by this chapter must be
9 levied, collected, and paid annually with respect to its North Dakota ~~net~~ income, as hereinafter
10 defined, received by every corporation doing business in this state.

11 **SECTION 2. AMENDMENT.** Section 57-38-14 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **57-38-14. ~~Allocation in special cases~~ General provisions relating to corporate**
14 **income.** ~~In the special cases mentioned in this section, the~~ The following principles may be
15 applied in ~~allocating corporate~~ determining North Dakota income:

- 16 1. Any corporation organized under the laws of North Dakota and subject to a tax
17 under the provisions of this chapter, which maintains no regular place of business
18 outside this state, except a statutory office, must be taxed upon its entire ~~net~~
19 income.
- 20 2. Corporations engaged in business within and without this state may be taxed only
21 on such income as is derived from business transacted and property located within
22 this state. The amount of such income apportionable to North Dakota ~~may~~ must
23 be determined ~~by an allocation and separate accounting thereof, when in the~~

- 1 ~~judgment of the tax commissioner that method will reasonably reflect the income~~
2 ~~properly assignable to this state as provided in chapter 57-38.1.~~
- 3 3. Any corporation liable to report under this chapter and owning or controlling, either
4 directly or indirectly, substantially all of the voting capital stock of another
5 corporation, or of other corporations, may be required to make a consolidated
6 report showing the combined ~~net~~ income, such assets of the corporation as are
7 required for the purposes of this chapter, and such other information as the tax
8 commissioner may require, but excluding intercorporate stock holdings and
9 intercorporate accounts.
- 10 4. Any corporation liable to report under this chapter and owned or controlled either
11 directly or indirectly by another corporation may be required to make a report
12 consolidated with the owning company, showing the combined ~~net~~ income, such
13 assets of the corporation as are required for the purposes of this chapter, and such
14 other information as the tax commissioner may require, but excluding
15 intercorporate stock holdings and intercorporate accounts.
- 16 5. In case it appears to the tax commissioner that any arrangement exists in such a
17 manner as to reflect improperly the business done, the segregable assets, or the
18 entire ~~net~~ income earned from business done in this state, the tax commissioner is
19 authorized and empowered, in such manner as the tax commissioner may
20 determine, to adjust the tax equitably.
- 21 6. The tax commissioner may permit or require the filing of a combined report if
22 substantially all the voting capital stock of two or more corporations liable to report
23 under this chapter is owned or controlled by the same interests. The tax
24 commissioner may impose the tax provided by this chapter as though the
25 combined entire ~~net~~ income and segregated assets were those of one corporation,
26 but in the computation, dividends received from any corporation whose assets, as
27 distinguished from shares of stock, are included in the segregations may not be
28 included in the ~~net~~ income.
- 29 7. When any corporation required to make a return under this chapter conducts the
30 business, whether under agreement or otherwise, in such manner as directly or
31 indirectly to benefit the members or stockholders of the corporation, or any of them,

1 or any person or persons, directly or indirectly interested in such business, by
2 selling its products, or the goods or commodities in which it deals, at less than a
3 fair price which might be obtained therefor, or if such a corporation, a substantial
4 portion of whose capital stock is owned either directly or indirectly by another
5 corporation, acquires and disposes of the products of the corporation owning the
6 substantial portion of its capital stock, in such manner as to create a loss or
7 improper net income, the tax commissioner may require such facts as the tax
8 commissioner deems necessary for the proper computation provided by this
9 chapter, and for the purposes of this chapter may determine the amount which
10 must be deemed to be the entire net income, of the business of such corporation
11 for the calendar or fiscal year. In determining such entire net income, the tax
12 commissioner shall have regard to the fair profits which, but for any agreement,
13 arrangement, or understanding, might be or could have been obtained from dealing
14 in such products, goods, or commodities.

15 8. If it appears to the tax commissioner that the segregation of assets shown by any
16 report made under this chapter does not reflect properly the corporate activity or
17 business done, or the income earned from corporate activity, or from business
18 done in this state because of the character of the corporation's business and the
19 character and location of its assets, the tax commissioner is authorized and
20 empowered to adjust the tax equitably.

21 9. ~~In determining the entire net income for purposes of equitable taxation under this~~
22 ~~section, the tax commissioner may determine the portion of net income derived~~
23 ~~from business done within this state by an allocation upon the basis of sales,~~
24 ~~purchases, expenses of manufacture, payroll, value and situs of tangible property,~~
25 ~~or by reference to these or other factors, or by such other method of allocation as~~
26 ~~is fairly calculated to assign to this state the portion of net income reasonably~~
27 ~~attributable to the business done within this state. In determining the entire net~~
28 ~~income for purposes of equitable taxation under this chapter, the tax commissioner~~
29 ~~may include income from any source, if the assets from which the income was~~
30 ~~derived shall be included in any segregation for the purpose of computing the tax.~~

1 ~~10. In case any corporation or individual uses leased property in its business, the value~~
2 ~~of the leasehold interest of the lessee must be included in the value of the tangible~~
3 ~~property of the corporation and computed at eight times the net annual rental rate~~
4 ~~for purposes of allocation or apportionment of the net income.~~

5 44. Notwithstanding any other provision of law, two or more North Dakota domestic
6 corporations, affiliated as parent and subsidiary, and filing a federal consolidated
7 tax return, shall file a combined report and consolidated return for income tax
8 under this chapter.

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

11 **57-38-30. Imposition and rate of tax on corporations.** A tax is hereby imposed upon
12 the taxable income of every domestic and foreign corporation ~~received from the sources~~
13 ~~described in sections 57-38-12, 57-38-13, and 57-38-14~~, which must be levied, collected, and
14 paid annually as in this chapter provided:

- 15 1. a. For the first three thousand dollars of taxable income, at the rate of three
16 percent.
- 17 b. On all taxable income above three thousand dollars and not in excess of eight
18 thousand dollars, at the rate of four and one-half percent.
- 19 c. On all taxable income above eight thousand dollars and not in excess of
20 twenty thousand dollars, at the rate of six percent.
- 21 d. On all taxable income above twenty thousand dollars, and not in excess of
22 thirty thousand dollars, at the rate of seven and one-half percent.
- 23 e. On all taxable income above thirty thousand dollars, and not in excess of fifty
24 thousand dollars, at the rate of nine percent.
- 25 f. On all taxable income above fifty thousand dollars, at the rate of ten and
26 one-half percent.

27 2. A corporation that has paid North Dakota alternative minimum tax in years
28 beginning before January 1, 1991, may carry over any alternative minimum tax
29 credit remaining to the extent of the regular income tax liability of the corporation
30 for a period not to exceed four taxable years.

- 1 **SECTION 4. REPEAL.** Sections 57-38-12 and 57-38-13 of the North Dakota Century
- 2 Code are repealed.