Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003

SENATE BILL NO. 2091
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact sections 57-38-11, 57-38-14, and 57-38-30 of the North Dakota Century Code, relating to obsolete corporate income tax provisions; and to repeal sections 57-38-12 and 57-38-13 of the North Dakota Century Code, relating to obsolete corporate income tax provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

1. Any corporation organized under the laws of North Dakota and subject to a tax under the provisions of this chapter, which maintains no regular place of business outside this state, except a statutory office, must be taxed upon its entire ~~net~~ income.

2. Corporations engaged in business within and without this state may be taxed only on such income as is derived from business transacted and property located within this state. The amount of such income apportionable to North Dakota ~~may~~ must be determined ~~by an allocation and separate accounting thereof, when in the judgment of the tax commissioner that method will reasonably reflect the income properly assignable to this state~~ as provided in chapter 57-38.1.

3. Any corporation liable to report under this chapter and owning or controlling, either directly or indirectly, substantially all of the voting capital stock of another corporation, or of other corporations, may be required to make a consolidated report showing the combined ~~net~~ income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the tax commissioner may require, but excluding intercorporate stock holdings and intercorporate accounts.

4. Any corporation liable to report under this chapter and owned or controlled either directly or indirectly by another corporation may be required to make a report consolidated with the owning company, showing the combined ~~net~~ income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the tax commissioner may require, but excluding intercorporate stock holdings and intercorporate accounts.

5. In case it appears to the tax commissioner that any arrangement exists in such a manner as to reflect improperly the business done, the segregable assets, or the entire ~~net~~ income earned from business done in this state, the tax commissioner is authorized and

empowered, in such manner as the tax commissioner may determine, to adjust the tax equitably.

6. The tax commissioner may permit or require the filing of a combined report if substantially all the voting capital stock of two or more corporations liable to report under this chapter is owned or controlled by the same interests. The tax commissioner may impose the tax provided by this chapter as though the combined entire ~~net~~ income and segregated assets were those of one corporation, but in the computation, dividends received from any corporation whose assets, as distinguished from shares of stock, are included in the segregations may not be included in the ~~net~~ income.

7. When any corporation required to make a return under this chapter conducts the business, whether under agreement or otherwise, in such manner as directly or indirectly to benefit the members or stockholders of the corporation, or any of them, or any person or persons, directly or indirectly interested in such business, by selling its products, or the goods or commodities in which it deals, at less than a fair price which might be obtained therefor, or if such a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation owning the substantial portion of its capital stock, in such manner as to create a loss or improper ~~net~~ income, the tax commissioner may require such facts as the tax commissioner deems necessary for the proper computation provided by this chapter, and for the purposes of this chapter may determine the amount which must be deemed to be the entire ~~net~~ income, of the business of such corporation for the calendar or fiscal year. In determining such entire ~~net~~ income, the tax commissioner shall have regard to the fair profits which, but for any agreement, arrangement, or understanding, might be or could have been obtained from dealing in such products, goods, or commodities.

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

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

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

~~11.~~ Notwithstanding any other provision of law, two or more North Dakota domestic corporations, affiliated as parent and subsidiary, and filing a federal consolidated tax return, shall file a combined report and consolidated return for income tax under this chapter.

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

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

1. a. For the first three thousand dollars of taxable income, at the rate of three percent.

   b. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of four and one-half percent.

   c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of six percent.

   d. On all taxable income above twenty thousand dollars, and not in excess of thirty thousand dollars, at the rate of seven and one-half percent.

   e. On all taxable income above thirty thousand dollars, and not in excess of fifty thousand dollars, at the rate of nine percent.

   f. On all taxable income above fifty thousand dollars, at the rate of ten and one-half percent.

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

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

President of the Senate	Speaker of the House
Secretary of the Senate	Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2091.

Senate Vote:	Yeas	47	Nays	0	Absent	0
House Vote:	Yeas	90	Nays	0	Absent	4

Secretary of the Senate

Received by the Governor at _________ M. on ___________________________________, 2003.

Approved at _________ M. on ____, 2003.

Governor

Filed in this office this _____________ day of _____________________________________, 2003,

at _________ o'clock ______ M.

Secretary of State