

October 2008

Introduced by

1 A BILL for an Act to amend and reenact subsection 4 of section 10-33-124, subsection 5 of  
2 section 11-37-08, section 37-28-07, subsections 1 and 3 of section 40-63-04, section 40-63-06,  
3 subsection 4 of section 40-63-07, subsections 1 and 2 of section 57-38-01.7, subsections 1 and  
4 4 of section 57-38-01.8, sections 57-38-01.14, 57-38-01.16, and 57-38-01.17, subsection 1 of  
5 section 57-38-01.20, subsections 2 and 4 of section 57-38-01.21, sections 57-38-01.22,  
6 57-38-01.23, 57-38-01.24, 57-38-01.25, and 57-38-01.26, subsection 6 of section 57-38-01.27,  
7 subsection 1 of section 57-38-01.29, subsection 1 of section 57-38-01.30, and sections  
8 57-38-30.3, 57-38-30.5, 57-38-31, 57-38.5-03, and 57-38.6-03 of the North Dakota Century  
9 Code, relating to elimination of the optional long-form individual, estate, and trust income tax  
10 return; to repeal sections 57-38-01.2, 57-38-01.18, 57-38-06.1, 57-38-29, 57-38-29.2,  
11 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code,  
12 relating to elimination of the optional long-form individual, estate, and trust income tax return;  
13 and to provide an effective date.

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

15 **SECTION 1. AMENDMENT.** Subsection 4 of section 10-33-124 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17 4. a. ~~An individual or a~~ A corporation that buys membership in, or pays dues or  
18 contributes to, a nonprofit development corporation is entitled to an income  
19 tax credit against the tax liability under section 57-38-30 equal to twenty-five  
20 percent of the amount paid.
- 21 b. This credit may not be claimed by ~~an individual who elects to file an income~~  
22 ~~tax return under section 57-38-30.3~~ or by a corporation that is recognized as a  
23 subchapter S corporation under section 57-38-01.4.

1 c. No taxpayer is entitled to more than two thousand dollars in total income tax  
2 credits under this section.

3 d. The amount of the credit under this section in excess of the taxpayer's income  
4 tax liability may be carried forward for up to seven taxable years.

5 **SECTION 2. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 5. Bonds issued by a commerce authority under this section are declared to be  
8 issued for an essential public government purpose, and together with interest and  
9 income on the bonds, are exempt from all individual and corporate taxes imposed  
10 under sections 57-35.3-03, ~~57-38-29~~, 57-38-30, and 57-38-30.3.

11 **SECTION 3. AMENDMENT.** Section 37-28-07 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **37-28-07. Payments exempt from taxation and from execution - Assignments void**  
14 **- Debts to state and political subdivisions not deducted.** Payments under this chapter are  
15 exempt from all state and local taxes, including taxes determined under section ~~57-38-29~~ or  
16 57-38-30.3, and from levy, garnishment, attachment, and sale on execution. Any pledge,  
17 mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment  
18 under this chapter is void and payment to the veteran may not be denied because of any sums  
19 owed to the state or any political subdivisions, except as provided in section 37-26-05.

20 **SECTION 4. AMENDMENT.** Subsections 1 and 3 of section 40-63-04 of the North  
21 Dakota Century Code are amended and reenacted as follows:

22 1. An individual taxpayer who purchases or rehabilitates single-family residential  
23 property for the individual's primary place of residence as a zone project is exempt  
24 from up to ten thousand dollars of personal income tax liability as determined  
25 under section ~~57-38-29~~ or 57-38-30.3 for five taxable years beginning with the date  
26 of occupancy or completion of rehabilitation.

27 3. If the cost of a new business purchase or expansion of an existing business,  
28 approved as a zone project, exceeds seventy-five thousand dollars, and the  
29 business is located in a city with a population of not more than two thousand five  
30 hundred, an individual taxpayer may, in lieu of the exemption provided in  
31 subsection 2, elect to take an income tax exemption of up to two thousand dollars

1 of personal income tax liability as determined under section ~~57-38-29~~ or  
2 57-38-30.3. The election must be made on the taxpayer's zone project application.  
3 The election is irrevocable and binding for the duration of the exemptions provided  
4 in subsection 2 or this subsection. If no election is made on the zone project  
5 application, the taxpayer is only eligible for the exemption provided in subsection 2.

6 **SECTION 5. AMENDMENT.** Section 40-63-06 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **40-63-06. Historic preservation and renovation tax credit.** A credit against state tax  
9 liability as determined under sections 57-35.3-03, ~~57-38-29~~, 57-38-30, and 57-38-30.3 is  
10 allowed for investments in the historic preservation or renovation of property within the  
11 renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to  
12 a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in  
13 which the preservation or renovation is completed. Any excess credit may be carried forward  
14 for a period of up to five taxable years.

15 **SECTION 6. AMENDMENT.** Subsection 4 of section 40-63-07 of the North Dakota  
16 Century Code is amended and reenacted as follows:

17 4. A credit against state tax liability as determined under section 57-35.3-03,  
18 ~~57-38-29~~, 57-38-30, or 57-38-30.3 is allowed for investments in a renaissance fund  
19 organization. The amount of the credit is fifty percent of the amount invested in the  
20 renaissance fund organization during the taxable year. Any amount of credit which  
21 exceeds a taxpayer's tax liability for the taxable year may be carried forward for up  
22 to five taxable years after the taxable year in which the investment was made.

23 **SECTION 7. AMENDMENT.** Subsections 1 and 2 of section 57-38-01.7 of the North  
24 Dakota Century Code are amended and reenacted as follows:

25 1. At the election of the taxpayer, there must be allowed, subject to the applicable  
26 limitations provided in this subsection, as a credit against the income tax ~~imposed~~  
27 ~~by this chapter~~ liability under section 57-38-30 for the taxable year, an amount  
28 equal to fifty percent of the aggregate amount of charitable contributions made by  
29 the taxpayer during the year to nonprofit private institutions of higher education  
30 located within the state or to the North Dakota independent college fund.

- 1           a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a~~  
2           credit under this subsection for any taxable year may not exceed forty percent  
3           of the taxpayer's total income tax under this chapter for the year, or two  
4           hundred fifty dollars, whichever is less.
- 5           b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this  
6           subsection for any taxable year may not exceed twenty percent of the  
7           corporation's total income tax under this chapter for the year, or two thousand  
8           five hundred dollars, whichever is less.
- 9           2. At the election of the taxpayer, there must be allowed, subject to the applicable  
10          limitations provided in this subsection, as a credit against the income tax ~~imposed~~  
11          by this chapter liability under section 57-38-30 for the taxable year, an amount  
12          equal to fifty percent of the aggregate amount of charitable contributions made by  
13          the taxpayer during the year directly to nonprofit private institutions of secondary  
14          education, located within the state.
- 15          a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a~~  
16          credit under this subsection for any taxable year may not exceed forty percent  
17          of the taxpayer's total income tax under this chapter for the year, or two  
18          hundred fifty dollars, whichever is less.
- 19          b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this  
20          subsection for any taxable year may not exceed twenty percent of the  
21          corporation's total income tax under this chapter for the year, or two thousand  
22          five hundred dollars, whichever is less.

23           **SECTION 8. AMENDMENT.** Subsections 1 and 4 of section 57-38-01.8 of the North  
24    Dakota Century Code are amended and reenacted as follows:

- 25           1. ~~Any~~ A taxpayer filing a North Dakota income tax return pursuant to the provisions  
26           of this chapter may claim a credit against the tax liability under section 57-38-30 for  
27           the cost of a geothermal, solar, wind, or biomass energy device installed before  
28           January 1, 2011, in a building or on property owned or leased by the taxpayer in  
29           North Dakota. The credit provided in this section for a device installed before  
30           January 1, 2001, must be in an amount equal to five percent per year for three  
31           years, and for a device installed after December 31, 2000, must be in an amount

1 equal to three percent per year for five years of the actual cost of acquisition and  
2 installation of the geothermal, solar, wind, or biomass energy device and must be  
3 subtracted from any income tax liability of the taxpayer as determined pursuant to  
4 the provisions of this chapter.

5 4. A partnership, subchapter S corporation, limited partnership, limited liability  
6 company, or any other passthrough entity that installs a geothermal, solar, wind, or  
7 biomass energy device in a building or on property owned or leased by the  
8 passthrough entity must be considered to be the taxpayer for purposes of this  
9 section, and the amount of the credit allowed with respect to the entity's  
10 investments must be determined at the passthrough entity level. The amount of  
11 the total credit determined at the entity level must be passed through to the  
12 corporate partners, shareholders, or members in proportion to their respective  
13 interests in the passthrough entity.

14 **SECTION 9. AMENDMENT.** Section 57-38-01.14 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **57-38-01.14. No gain recognized on property subject to eminent domain sale or**  
17 **transfer.** If any private property, through the exercise of eminent domain, is involuntarily  
18 converted into property of either like or unlike kind, no gain, either ordinary or capital, may be  
19 recognized for corporate income tax purposes.

20 **SECTION 10. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code  
21 is amended and reenacted as follows:

22 **57-38-01.16. Income tax credit for employment of developmentally disabled or**  
23 **chronically mentally ill persons.** ~~Any~~ A taxpayer filing an income tax return under this  
24 chapter, ~~except a return on which liability is determined under section 57-38-30.3,~~ may claim a  
25 credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to  
26 a developmentally disabled or chronically mentally ill employee. The credit allowed under this  
27 section equals five percent of up to six thousand dollars in wages paid during the first twelve  
28 months of employment by the taxpayer for each developmentally disabled or chronically  
29 mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable  
30 year may be considered for purposes of this section. An employee of a subcontractor is  
31 considered an employee of the contractor to the extent of any wages paid under the contract.

1           The total of credits allowed under this section may not exceed fifty percent of the  
2 taxpayer's liability under this chapter.

3           **SECTION 11. AMENDMENT.** Section 57-38-01.17 of the North Dakota Century Code  
4 is amended and reenacted as follows:

5           **57-38-01.17. Credit for investments in development corporations.** ~~An individual,~~  
6 ~~estate, trust, or~~ A corporation is allowed, as a credit against a tax otherwise due under section  
7 ~~57-38-29 or~~ 57-38-30, the credit for buying membership in, or paying dues or contributions to, a  
8 certified nonprofit development corporation as provided in section 10-33-124.

9           **SECTION 12. AMENDMENT.** Subsection 1 of section 57-38-01.20 of the North Dakota  
10 Century Code is amended and reenacted as follows:

11           1. An individual is entitled to a credit against the tax imposed under section ~~57-38-29~~  
12 ~~or~~ 57-38-30.3 in the amount of qualified care expenses under this section paid by  
13 the individual for the care of a qualifying family member during the taxable year.

14           **SECTION 13. AMENDMENT.** Subsections 2 and 4 of section 57-38-01.21 of the North  
15 Dakota Century Code are amended and reenacted as follows:

16           2. An individual is allowed a tax credit against the tax imposed by section ~~57-38-29 or~~  
17 57-38-30.3 in an amount equal to forty percent of the present value of the  
18 aggregate amount of the charitable gift portion of planned gifts made by the  
19 taxpayer during the year to a qualified nonprofit organization or qualified  
20 endowment. The maximum credit that may be claimed under this subsection for  
21 contributions made in a taxable year is ten thousand dollars, or twenty thousand  
22 dollars for married individuals filing a joint return. The credit allowed under this  
23 section may not exceed the taxpayer's income tax liability.

24           4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a  
25 charitable gift to a qualified endowment. The maximum credit allowed under this  
26 subsection for contributions made in a taxable year is ten thousand dollars. The  
27 allowable credit must be apportioned to the estate or trust and to its beneficiaries  
28 on the basis of the income of the estate or trust allocable to each, and the  
29 beneficiaries may claim their share of the credit against the tax imposed by section  
30 ~~57-38-29, 57-38-30, or~~ 57-38-30.3. A beneficiary may claim the credit only in the  
31 beneficiary's taxable year in which the taxable year of the estate or trust ends.

1           Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to  
2           their respective shares of the apportioned credit.

3           **SECTION 14. AMENDMENT.** Section 57-38-01.22 of the North Dakota Century Code  
4 is amended and reenacted as follows:

5           **57-38-01.22. Income tax credit for blending of biodiesel fuel.** A fuel supplier  
6 licensed pursuant to section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against  
7 tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of five  
8 cents per gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as  
9 B5. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by  
10 the American society for testing and materials. The credit under this section may not exceed  
11 the taxpayer's liability as determined under this chapter for the taxable year and each year's  
12 unused credit amount may be carried forward for up to five taxable years.

13           A partnership, subchapter S corporation, limited partnership, limited liability company, or  
14 any other passthrough entity entitled to the credit under this section must be considered to be  
15 the taxpayer for purposes of this section, and the amount of the credit allowed must be  
16 determined at the passthrough entity level. The amount of the total credit determined at the  
17 entity level must be passed through to the partners, shareholders, or members in proportion to  
18 their respective interests in the passthrough entity.

19           **SECTION 15. AMENDMENT.** Section 57-38-01.23 of the North Dakota Century Code  
20 is amended and reenacted as follows:

21           **57-38-01.23. Income tax credit for biodiesel sales equipment costs.** A seller of  
22 biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~,  
23 57-38-30, or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel fuel  
24 seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility,  
25 licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two  
26 percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel" means fuel  
27 meeting the specifications adopted by the American society for testing and materials. The  
28 credit under this section may not exceed a taxpayer's liability as determined under this chapter  
29 for the taxable year and each year's unused credit amount may be carried forward for up to five  
30 taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in the cumulative amount  
31 of credits under this section for all taxable years. A biodiesel fuel seller may not claim a credit

1 under this section for any taxable year before the taxable year in which the facility begins selling  
2 biodiesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs  
3 incurred before the taxable year sales begin may be claimed for purposes of the credit under  
4 this section for taxable years on or after the taxable year sales of biodiesel fuel begin.

5 A partnership, subchapter S corporation, limited partnership, limited liability company, or  
6 any other passthrough entity entitled to the credit under this section must be considered to be  
7 the taxpayer for purposes of this section, and the amount of the credit allowed must be  
8 determined at the passthrough entity level. The amount of the total credit determined at the  
9 entity level must be passed through to the partners, shareholders, or members in proportion to  
10 their respective interests in the passthrough entity.

11 **SECTION 16. AMENDMENT.** Section 57-38-01.24 of the North Dakota Century Code  
12 is amended and reenacted as follows:

13 **57-38-01.24. Internship employment tax credit.**

14 1. A taxpayer that is an employer within this state is entitled to a credit as determined  
15 under this section against state income tax liability under section ~~57-38-29~~,  
16 57-38-30; or 57-38-30.3 for qualified compensation paid to an intern employed in  
17 this state by the taxpayer. To qualify for the credit under this section, the internship  
18 program must meet the following qualifications:

- 19 a. The intern must be an enrolled student in an institution of higher education or  
20 vocational technical education program who is seeking a degree or a  
21 certification of completion in a major field of study closely related to the work  
22 experience performed for the taxpayer;
- 23 b. The internship must be taken for academic credit or count toward the  
24 completion of a vocational technical education program;
- 25 c. The intern must be supervised and evaluated by the taxpayer; and
- 26 d. The internship position must be located in this state.

27 2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend  
28 or salary paid to a college intern employed by the taxpayer. A taxpayer may not  
29 receive more than three thousand dollars in total credits under this section for all  
30 taxable years combined.



- 1           a. The tax credit under this section applies to a stipend or salary for not more  
2           than five interns employed at the same time.
- 3           b. A partnership, subchapter S corporation, or limited liability company that for  
4           tax purposes is treated like a partnership that is entitled to the credit under  
5           this section must be considered to be the taxpayer for purposes of calculating  
6           the credit. The amount of the allowable credit must be determined at the  
7           passthrough entity level. The total credit determined at the entity level must  
8           be passed through to the partners, shareholders, or members in proportion to  
9           their respective interests in the passthrough entity.

10           **SECTION 17. AMENDMENT.** Section 57-38-01.25 of the North Dakota Century Code  
11 is amended and reenacted as follows:

12           **57-38-01.25. Workforce recruitment credit for hard-to-fill employment positions.**

13 A taxpayer that is an employer in this state is entitled to a credit as determined under this  
14 section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for  
15 costs the taxpayer incurred during the tax year to recruit and hire employees for hard-to-fill  
16 employment positions within this state for which the annual salary for the position meets or  
17 exceeds the state average wage.

- 18           1. The amount of the credit to which a taxpayer is entitled is five percent of the salary  
19           paid for the first twelve consecutive months to the employee hired for the  
20           hard-to-fill employment position. To qualify for the credit under this section, the  
21           employee must be employed by the taxpayer in the hard-to-fill employment position  
22           for twelve consecutive months.
- 23           2. For purposes of this section:
- 24           a. "Extraordinary recruitment methods" means using all of the following:
- 25               (1) A person with the exclusive business purpose of recruiting employees  
26               and for which a fee is charged by that recruiter.
- 27               (2) An advertisement in a professional trade journal, magazine, or other  
28               publication, the main emphasis of which is providing information to a  
29               particular trade or profession.
- 30               (3) A web site, the sole purpose of which is to recruit employees and for  
31               which a fee is charged by the web site.

- 1                   (4)    Payment of a signing bonus, moving expenses, or nontypical fringe  
2   benefits.
- 3                   b.    "Hard-to-fill employment position" means a job that requires the employer to  
4   use extraordinary recruitment methods and for which the employer's  
5   recruitment efforts for the specific position have been unsuccessful for six  
6   consecutive calendar months.
- 7                   c.    "State average wage" means one hundred twenty-five percent of the state  
8   average wage published annually by job service North Dakota and which is in  
9   effect at the time the employee is hired.
- 10                3.    The taxpayer may claim the credit in the first tax year beginning after the employee  
11   hired for the hard-to-fill position has completed the employee's first twelve  
12   consecutive months of employment in the hard-to-fill position with the taxpayer.
- 13                4.    The credit under this section may not exceed a taxpayer's liability for the taxable  
14   year as determined under this chapter. Any amount of unused credit may be  
15   carried forward for up to four taxable years after the taxable year in which the credit  
16   could initially be claimed.
- 17                5.    A partnership, subchapter S corporation, or limited liability company that for tax  
18   purposes is treated like a partnership that is entitled to the credit under this section  
19   must be considered to be the taxpayer for purposes of this section and the amount  
20   of the credit allowed must be determined at the passthrough entity level. The  
21   amount of the total credit determined at the passthrough entity level must be  
22   allowed to the members in proportion to their respective interests in the  
23   passthrough entity.

24                **SECTION 18. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code  
25 is amended and reenacted as follows:

26                **57-38-01.26. Angel fund investment tax credit.** A taxpayer is entitled to a credit  
27 against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for an  
28 investment made in an angel fund that is incorporated in this state. The angel fund must be in  
29 compliance with the securities laws of this state for the investment to qualify for the tax credit  
30 under this section. The amount of the credit to which a taxpayer is entitled is forty-five percent  
31 of the amount invested by the taxpayer in an angel fund during the taxable year. The

1 aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five  
2 thousand dollars. To be eligible for the credit, the investment must be at risk in the angel fund  
3 for at least three years. Investments placed in escrow do not qualify for the credit. The credit  
4 must be claimed in the taxable year in which the investment in the angel fund was received by  
5 the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the  
6 amount of credit determined under this section exceeds the liability for tax under this chapter,  
7 the excess may be carried forward to each of the four succeeding taxable years. A taxpayer  
8 claiming a credit under this section may not claim any credit available to the taxpayer as a  
9 result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or  
10 57-38.6.

11 **SECTION 19. AMENDMENT.** Subsection 6 of section 57-38-01.27 of the North Dakota  
12 Century Code is amended and reenacted as follows:

13 6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax  
14 liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 equal to  
15 twenty percent of the taxpayer's new investment and new employment in the  
16 microbusiness during the taxable year. A taxpayer may not obtain more than ten  
17 thousand dollars in credits under this section over any combination of taxable  
18 years.

19 **SECTION 20. AMENDMENT.** Subsection 1 of section 57-38-01.29 of the North Dakota  
20 Century Code is amended and reenacted as follows:

21 1. In addition to any other credit or deduction allowed by law for a homeowner, an  
22 individual is entitled to a credit against the tax imposed under section ~~57-38-29~~ or  
23 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of  
24 property taxes or mobile home taxes that became due during the income tax  
25 taxable year and are paid which were levied against the individual's homestead in  
26 this state. For purposes of this section, "property taxes" does not include any  
27 special assessments.

28 **SECTION 21. AMENDMENT.** Subsection 1 of section 57-38-01.30 of the North Dakota  
29 Century Code is amended and reenacted as follows:

30 1. In addition to any other credit or deduction allowed by law for a property owner, an  
31 individual or corporation is entitled to a credit against the tax imposed under

1 section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for taxable years 2007 and 2008 in the  
2 amount of ten percent of property taxes or mobile home taxes that became due  
3 during the income tax taxable year and are paid which were levied against  
4 commercial property in this state. For purposes of this section, "property taxes"  
5 does not include any special assessments.

6 a. The amount of the credit under this section may not exceed one thousand  
7 dollars for any taxpayer.

8 b. The amount of the credit under this section may not exceed the taxpayer's tax  
9 liability under this chapter.

10 c. The amount of the credit under this section may not exceed one thousand  
11 dollars for married persons filing a joint return or five hundred dollars for a  
12 single individual or married individual filing separate returns.

13 **SECTION 22. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **57-38-30.3. ~~Simplified method of computing~~ Individual, estate, and trust income**  
16 **tax.**

17 1. A tax is hereby imposed for each taxable year upon income earned or received in  
18 that taxable year by every resident and nonresident individual, estate, and trust. A  
19 taxpayer computing the tax under this section is only eligible for those adjustments  
20 or credits that are specifically provided for in this section. Provided, that for  
21 purposes of this section, any person required to file a state income tax return under  
22 this chapter, but who has not computed a federal taxable income figure, shall  
23 compute a federal taxable income figure using a pro forma return in order to  
24 determine a federal taxable income figure to be used as a starting point in  
25 computing state income tax under this section. The tax for individuals is equal to  
26 North Dakota taxable income multiplied by the rates in the applicable rate schedule  
27 in subdivisions a through d corresponding to an individual's filing status used for  
28 federal income tax purposes. For an estate or trust, the schedule in subdivision e  
29 must be used for purposes of this subsection.

30 a. Single, other than head of household or surviving spouse.

Sixty-first  
Legislative Assembly

1	If North Dakota taxable income is:	The tax is equal to:
2	Not over <del>\$27,050</del> <u>\$33,950</u>	<del>2.40%</del> <u>2.099%</u>
3	Over <del>\$27,050</del> <u>\$33,950</u> but not over	<del>\$568.05</del> <u>\$712.61</u> plus 3.92% of amount
4	<del>\$65,550</del> <u>\$82,250</u>	over <del>\$27,050</del> <u>\$33,950</u>
5	Over <del>\$65,550</del> <u>\$82,250</u> but not over	<del>\$2,077.25</del> <u>\$2,605.97</u> plus 4.34% of amount
6	<del>\$136,750</del> <u>\$171,550</u>	over <del>\$65,550</del> <u>\$82,250</u>
7	Over <del>\$136,750</del> <u>\$171,550</u> but not over	<del>\$5,167.33</del> <u>\$6,481.59</u> plus 5.04% of amount
8	<del>\$297,350</del> <u>\$372,950</u>	over <del>\$136,750</del> <u>\$171,550</u>
9	Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$13,261.57</del> <u>\$16,632.15</u> plus 5.54% of amount
10		over <del>\$297,350</del> <u>\$372,950</u>

b. Married filing jointly and surviving spouse.

12	If North Dakota taxable income is:	The tax is equal to:
13	Not over <del>\$45,200</del> <u>\$56,750</u>	<del>2.40%</del> <u>2.099%</u>
14	Over <del>\$45,200</del> <u>\$56,750</u> but not over	<del>\$949.20</del> <u>\$1,191.18</u> plus 3.92% of amount
15	<del>\$109,250</del> <u>\$137,050</u>	over <del>\$45,200</del> <u>\$56,750</u>
16	Over <del>\$109,250</del> <u>\$137,050</u> but not over	<del>\$3,459.96</del> <u>\$4,338.94</u> plus 4.34% of amount
17	<del>\$166,500</del> <u>\$208,850</u>	over <del>\$109,250</del> <u>\$137,050</u>
18	Over <del>\$166,500</del> <u>\$208,850</u> but not over	<del>\$5,944.61</del> <u>\$7,455.06</u> plus 5.04% of amount
19	<del>\$297,350</del> <u>\$372,950</u>	over <del>\$166,500</del> <u>\$208,850</u>
20	Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$12,539.45</del> <u>\$15,725.70</u> plus 5.54% of amount
21		over <del>\$297,350</del> <u>\$372,950</u>

c. Married filing separately.

23	If North Dakota taxable income is:	The tax is equal to:
24	Not over <del>\$22,600</del> <u>\$28,375</u>	<del>2.40%</del> <u>2.099%</u>
25	Over <del>\$22,600</del> <u>\$28,375</u> but not over	<del>\$474.60</del> <u>\$595.59</u> plus 3.92% of amount
26	<del>\$54,625</del> <u>\$68,525</u>	over <del>\$22,600</del> <u>\$28,375</u>
27	Over <del>\$54,625</del> <u>\$68,525</u> but not over	<del>\$1,729.98</del> <u>\$2,169.47</u> plus 4.34% of amount
28	<del>\$83,250</del> <u>\$104,425</u>	over <del>\$54,625</del> <u>\$68,525</u>
29	Over <del>\$83,250</del> <u>\$104,425</u> but not over	<del>\$2,972.31</del> <u>\$3,727.53</u> plus 5.04% of amount
30	<del>\$148,675</del> <u>\$186,475</u>	over <del>\$83,250</del> <u>\$104,425</u>
31	Over <del>\$148,675</del> <u>\$186,475</u>	<del>\$6,269.73</del> <u>\$7,862.85</u> plus 5.54% of amount

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1		over <del>\$148,675</del> <u>\$186,475</u>
2	d. Head of household.	
3	If North Dakota taxable income is:	The tax is equal to:
4	Not over <del>\$36,250</del> <u>\$45,500</u>	<del>2.40%</del> <u>2.099%</u>
5	Over <del>\$36,250</del> <u>\$45,500</u> but not over	<del>\$761.25</del> <u>\$955.05</u> plus 3.92% of amount
6	<del>\$93,650</del> <u>\$117,450</u>	over <del>\$36,250</del> <u>\$45,500</u>
7	Over <del>\$93,650</del> <u>\$117,450</u> but not over	<del>\$3,011.33</del> <u>\$3,775.49</u> plus 4.34% of amount
8	<del>\$151,650</del> <u>\$190,200</u>	over <del>\$93,650</del> <u>\$117,450</u>
9	Over <del>\$151,650</del> <u>\$190,200</u> but not over	<del>\$5,528.53</del> <u>\$6,932.84</u> plus 5.04% of amount
10	<del>\$297,350</del> <u>\$372,950</u>	over <del>\$151,650</del> <u>\$190,200</u>
11	Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$12,871.81</del> <u>\$16,143.44</u> plus 5.54% of amount
12		over <del>\$297,350</del> <u>\$372,950</u>

13 e. Estates and trusts.

14	If North Dakota taxable income is:	The tax is equal to:
15	Not over <del>\$1,800</del> <u>\$2,300</u>	<del>2.40%</del> <u>2.099%</u>
16	Over <del>\$1,800</del> <u>\$2,300</u> but not over	<del>\$37.80</del> <u>\$48.28</u> plus 3.92% of amount
17	<del>\$4,250</del> <u>\$5,350</u>	over <del>\$1,800</del> <u>\$2,300</u>
18	Over <del>\$4,250</del> <u>\$5,350</u> but not over	<del>\$133.84</del> <u>\$167.84</u> plus 4.34% of amount
19	<del>\$6,500</del> <u>\$8,200</u>	over <del>\$4,250</del> <u>\$5,350</u>
20	Over <del>\$6,500</del> <u>\$8,200</u> but not over	<del>\$231.49</del> <u>\$291.53</u> plus 5.04% of amount
21	<del>\$8,900</del> <u>\$11,150</u>	over <del>\$6,500</del> <u>\$8,200</u>
22	Over <del>\$8,900</del> <u>\$11,150</u>	<del>\$352.45</del> <u>\$440.21</u> plus 5.54% of amount
23		over <del>\$8,900</del> <u>\$11,150</u>

24 f. For an individual who is not a resident of this state for the entire year, or for a  
25 nonresident estate or trust, the tax is equal to the tax otherwise computed  
26 under this subsection multiplied by a fraction in which:

- 27 (1) The numerator is the federal adjusted gross income allocable and  
28 apportionable to this state; and
- 29 (2) The denominator is the federal adjusted gross income from all sources  
30 reduced by the net income from the amounts specified in subdivisions a  
31 and b of subsection 2.

- 1                   In the case of married individuals filing a joint return, if one spouse is a  
2                   resident of this state for the entire year and the other spouse is a nonresident  
3                   for part or all of the tax year, the tax on the joint return must be computed  
4                   under this subdivision.
- 5                   g. For taxable years beginning after December 31, 2001, the tax commissioner  
6                   shall prescribe new rate schedules that apply in lieu of the schedules set forth  
7                   in subdivisions a through e. The new schedules must be determined by  
8                   increasing the minimum and maximum dollar amounts for each income  
9                   bracket for which a tax is imposed by the cost-of-living adjustment for the  
10                  taxable year as determined by the secretary of the United States treasury for  
11                  purposes of section 1(f) of the United States Internal Revenue Code of 1954,  
12                  as amended. For this purpose, the rate applicable to each income bracket  
13                  may not be changed, and the manner of applying the cost-of-living adjustment  
14                  must be the same as that used for adjusting the income brackets for federal  
15                  income tax purposes.
- 16                  2. For purposes of this section, "North Dakota taxable income" means the federal  
17                  taxable income of an individual, estate, or trust as computed under the Internal  
18                  Revenue Code of 1986, as amended, adjusted as follows:
- 19                  a. Reduced by interest income from obligations of the United States and income  
20                  exempt from state income tax under federal statute or United States or North  
21                  Dakota constitutional provisions.
- 22                  b. Reduced by the portion of a distribution from a qualified investment fund  
23                  described in section 57-38-01 which is attributable to investments by the  
24                  qualified investment fund in obligations of the United States, obligations of  
25                  North Dakota or its political subdivisions, and any other obligation the interest  
26                  from which is exempt from state income tax under federal statute or United  
27                  States or North Dakota constitutional provisions.
- 28                  c. Reduced by the amount equal to the earnings that are passed through to a  
29                  taxpayer in connection with an allocation and apportionment to North Dakota  
30                  under chapter 57-35.3.

- 1           d.   Reduced by thirty percent of the excess of the taxpayer's net long-term capital  
2           gain for the taxable year over the net short-term capital loss for that year, as  
3           computed for purposes of the Internal Revenue Code of 1986, as amended.  
4           The adjustment provided by this subdivision is allowed only to the extent the  
5           net long-term capital gain is allocated to this state.
- 6           e.   Increased by the amount of a lump sum distribution for which income  
7           averaging was elected under section 402 of the Internal Revenue Code of  
8           1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the  
9           taxpayer received the lump sum distribution while a nonresident of this state  
10          and the distribution is exempt from taxation by this state under federal law.
- 11          f.   Increased by an amount equal to the losses that are passed through to a  
12          taxpayer in connection with an allocation and apportionment to North Dakota  
13          under chapter 57-35.3.
- 14          g.   Reduced by the amount received by the taxpayer as payment for services  
15          performed when mobilized under title 10 United States Code federal service  
16          as a member of the national guard or reserve member of the armed forces of  
17          the United States. This subdivision does not apply to federal service while  
18          attending annual training, basic military training, or professional military  
19          education.
- 20          h.   Reduced by income from a new and expanding business exempt from state  
21          income tax under section 40-57.1-04.
- 22          i.   Reduced by interest and income from bonds issued under chapter 11-37.
- 23          j.   Reduced by up to ten thousand dollars of qualified expenses that are related  
24          to a donation by a taxpayer or a taxpayer's dependent, while living, of one or  
25          more human organs to another human being for human organ transplantation.  
26          A taxpayer may claim the reduction in this subdivision only once for each  
27          instance of organ donation during the taxable year in which the human organ  
28          donation and the human organ transplantation occurs but if qualified  
29          expenses are incurred in more than one taxable year, the reduction for those  
30          expenses must be claimed in the year in which the expenses are incurred.
- 31          For purposes of this subdivision:



- 1                   (1) "Human organ transplantation" means the medical procedure by which  
2                   transfer of a human organ is made from the body of one person to the  
3                   body of another person.
- 4                   (2) "Organ" means all or part of an individual's liver, pancreas, kidney,  
5                   intestine, lung, or bone marrow.
- 6                   (3) "Qualified expenses" means lost wages not compensated by sick pay  
7                   and unreimbursed medical expenses as defined for federal income tax  
8                   purposes, to the extent not deducted in computing federal taxable  
9                   income, whether or not the taxpayer itemizes federal income tax  
10                  deductions.
- 11                 k. Increased by the amount of the contribution upon which the credit under  
12                  section 57-38-01.21 is computed, but only to the extent that the contribution  
13                  reduced federal taxable income.
- 14                 l. Reduced by the amount of any payment received by a veteran or beneficiary  
15                  of a veteran under section 37-28-03 or 37-28-04.
- 16                 m. Reduced by the amount received by a taxpayer that was paid by an employer  
17                  under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to  
18                  hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only  
19                  to the extent the amount received by the taxpayer is included in federal  
20                  taxable income. The reduction applies only if the employer is entitled to the  
21                  credit under section 57-38-01.25. The taxpayer must attach a statement from  
22                  the employer in which the employer certifies that the employer is entitled to  
23                  the credit under section 57-38-01.25 and which specifically identified the type  
24                  of payment and the amount of the exemption under this section.
- 25                 n. Reduced by the amount up to a maximum of five thousand dollars, or ten  
26                  thousand dollars if a joint return is filed, for contributions made under a higher  
27                  education savings plan administered by the Bank of North Dakota, pursuant to  
28                  section 6-09-38.
- 29                 o. Reduced by the amount of income of a taxpayer, who resides within the  
30                  boundaries of any reservation in this state and who is an enrolled member of

- 1                   a federally recognized Indian tribe, from activities or sources within the  
2                   boundaries of any reservation in this state.
- 3           3. Married individuals filing a joint federal income tax return shall file a joint state  
4           income tax return if the return is filed under this section. If separate federal income  
5           tax returns are filed, one spouse's state income tax return may be filed under this  
6           section and the other spouse's income tax return may be filed under the other  
7           provisions of this chapter.
- 8           4. a. A resident individual, estate, or trust is entitled to a credit against the tax  
9           imposed under this section for the amount of income tax paid by the taxpayer  
10           for the taxable year by another state or territory of the United States or the  
11           District of Columbia on income derived from sources in those jurisdictions that  
12           is also subject to tax under this section.
- 13           b. For an individual, estate, or trust that is a resident of this state for the entire  
14           taxable year, the credit allowed under this subsection may not exceed an  
15           amount equal to the tax imposed under this section multiplied by a ratio equal  
16           to federal adjusted gross income derived from sources in the other jurisdiction  
17           divided by federal adjusted gross income less the amounts under  
18           subdivisions a and b of subsection 2.
- 19           c. For an individual, estate, or trust that is a resident of this state for only part of  
20           the taxable year, the credit allowed under this subsection may not exceed the  
21           lesser of the following:
- 22           (1) The tax imposed under this chapter multiplied by a ratio equal to federal  
23           adjusted gross income derived from sources in the other jurisdiction  
24           received while a resident of this state divided by federal adjusted gross  
25           income derived from North Dakota sources less the amounts under  
26           subdivisions a and b of subsection 2.
- 27           (2) The tax paid to the other jurisdiction multiplied by a ratio equal to  
28           federal adjusted gross income derived from sources in the other  
29           jurisdiction received while a resident of this state divided by federal  
30           adjusted gross income derived from sources in the other states.

- 1           d.    The tax commissioner may require written proof of the tax paid to another  
2                    state. The required proof must be provided in a form and manner as  
3                    determined by the tax commissioner.
- 4           5.    Individuals, estates, or trusts that file an amended federal income tax return  
5                    changing their federal taxable income figure for a year for which an election to file  
6                    state income tax returns has been made under this section shall file an amended  
7                    state income tax return to reflect the changes on the federal income tax return.
- 8           6.    The tax commissioner may prescribe procedures and guidelines to prevent  
9                    requiring income that had been previously taxed under this chapter from becoming  
10                   taxed again because of the provisions of this section and may prescribe  
11                   procedures and guidelines to prevent any income from becoming exempt from  
12                   taxation because of the provisions of this section if it would otherwise have been  
13                   subject to taxation under the provisions of this chapter.
- 14          7.    A taxpayer filing a return under this section is entitled to the following tax credits:  
15                   a.    Family care tax credit under section 57-38-01.20.  
16                   b.    Renaissance zone tax credits under sections 40-63-04, 40-63-06, and  
17                    40-63-07.  
18                   c.    Agricultural business investment tax credit under section 57-38.6-03.  
19                   d.    Seed capital investment tax credit under section 57-38.5-03.  
20                   e.    Planned gift tax credit under section 57-38-01.21.  
21                   f.    Biodiesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.  
22                   g.    Internship employment tax credit under section 57-38-01.24.  
23                   h.    Workforce recruitment credit under section 57-38-01.25.  
24                   i.    Angel fund investment tax credit under section 57-38-01.26.  
25                   j.    Microbusiness tax credit under section 57-38-01.27.  
26                   k.    Marriage penalty credit under section 57-38-01.28.  
27                   l.    Homestead income tax credit under section 57-38-01.29.  
28                   m.    Commercial property income tax credit under section 57-38-01.30.  
29                   n.    Research and experimental expenditures under section 57-38-30.5.
- 30          8.    A taxpayer filing a return under this section is entitled to the exemption provided  
31                    under section 40-63-04.

- 1           9.   a.   If an individual taxpayer engaged in a farming business elects to average farm  
2                           income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301],  
3                           the taxpayer may elect to compute tax under this subsection. If an election to  
4                           compute tax under this subsection is made, the tax imposed by subsection 1  
5                           for the taxable year must be equal to the sum of the following:
- 6                           (1)   The tax computed under subsection 1 on North Dakota taxable income  
7   reduced by elected farm income.
- 8                           (2)   The increase in tax imposed by subsection 1 which would result if North  
9   Dakota taxable income for each of the three prior taxable years were  
10    increased by an amount equal to one-third of the elected farm income.  
11   However, if other provisions of this chapter other than this section were  
12   used to compute the tax for any of the three prior years, the same  
13   provisions in effect for that prior tax year must be used to compute the  
14   increase in tax under this paragraph. For purposes of applying this  
15   paragraph to taxable years beginning before January 1, 2001, the  
16   increase in tax must be determined by recomputing the tax in the  
17   manner prescribed by the tax commissioner.
- 18           b.   For purposes of this subsection, "elected farm income" means that portion of  
19                           North Dakota taxable income for the taxable year which is elected farm  
20                           income as defined in section 1301 of the Internal Revenue Code of 1986  
21                           [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion  
22                           claimed under subdivision d of subsection 2 that is attributable to a net  
23                           long-term capital gain included in elected farm income.
- 24           c.   The reduction in North Dakota taxable income under this subsection must be  
25                           taken into account for purposes of making an election under this subsection  
26                           for any subsequent taxable year.
- 27           d.   The tax commissioner may prescribe rules, procedures, or guidelines  
28                           necessary to administer this subsection.
- 29        10.   The tax commissioner may prescribe tax tables, to be used in computing the tax  
30                           according to subsection 1, if the amounts of the tax tables are based on the tax  
31                           rates set forth in subsection 1. If prescribed by the tax commissioner, the tables

1 must be followed by every individual, estate, or trust determining a tax under this  
2 section.

3 **SECTION 23. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **57-38-30.5. Income tax credit for research and experimental expenditures.** A  
6 taxpayer is allowed a credit against the tax imposed under section ~~57-38-29~~, 57-38-30; or  
7 57-38-30.3 for conducting qualified research in this state.

- 8 1. The amount of the credit for taxpayers that earned or claimed a credit under this  
9 section in taxable years beginning before January 1, 2007, is calculated as follows:
- 10 a. For the first taxable year beginning after December 31, 2006, the credit is  
11 equal to twenty-five percent of the first one hundred thousand dollars of the  
12 qualified research expenses for the taxable year in excess of the base period  
13 research expenses and equal to seven and one-half percent of all qualified  
14 research expenses for the taxable year more than one hundred thousand  
15 dollars in excess of the base period research expenses.
- 16 b. For the second taxable year beginning after December 31, 2006, the credit is  
17 equal to twenty-five percent of the first one hundred thousand dollars of the  
18 qualified research expenses for the taxable year in excess of the base period  
19 research expenses and equal to eleven percent of all qualified research  
20 expenses for the taxable year more than one hundred thousand dollars in  
21 excess of the base period research expenses.
- 22 c. For the third taxable year beginning after December 31, 2006, the credit is  
23 equal to twenty-five percent of the first one hundred thousand dollars of the  
24 qualified research expenses for the taxable year in excess of the base period  
25 research expenses and equal to fourteen and one-half percent of all qualified  
26 research expenses for the taxable year more than one hundred thousand  
27 dollars in excess of the base period research expenses.
- 28 d. For the fourth through the tenth taxable years beginning after December 31,  
29 2006, the credit is equal to twenty-five percent of the first one hundred  
30 thousand dollars of the qualified research expenses for the taxable year in  
31 excess of the base period research expenses and equal to eighteen percent

- 1 of all qualified research expenses for the taxable year more than one hundred  
2 thousand dollars in excess of the base period research expenses.
- 3 e. For the eleventh taxable year beginning after December 31, 2006, and for  
4 each subsequent taxable year in which the taxpayer conducts qualified  
5 research in this state, the credit is equal to twenty-five percent of the first one  
6 hundred thousand dollars of the qualified research expenses for the taxable  
7 year in excess of the base period research expenses and equal to eight  
8 percent of all qualified research expenses for the taxable year more than one  
9 hundred thousand dollars in excess of the base period research expenses.
- 10 f. The maximum annual credit a taxpayer may obtain under this section is two  
11 million dollars. Any credit amount earned in the taxable year in excess of two  
12 million dollars may not be carried back or forward as provided in subsection 7.
- 13 2. For taxpayers that have not earned or claimed a credit under this section in taxable  
14 years beginning before January 1, 2007, and which begin conducting qualified  
15 research in North Dakota in any of the first four taxable years beginning after  
16 December 31, 2006, the amount of the credit is equal to twenty-five percent of the  
17 first one hundred thousand dollars of the qualified research expenses for the  
18 taxable year in excess of the base period research expenses and equal to twenty  
19 percent of all qualified research expenses for the taxable year more than one  
20 hundred thousand dollars in excess of the base period research expenses.
- 21 a. This rate applies through the tenth taxable year beginning after December 31,  
22 2006.
- 23 b. For the eleventh taxable year beginning after December 31, 2006, and for  
24 each subsequent taxable year in which the taxpayer conducts qualified  
25 research in this state, the credit is equal to twenty-five percent of the first one  
26 hundred thousand dollars of the qualified research expenses for the taxable  
27 year in excess of the base period research expenses and equal to eight  
28 percent of all qualified research expenses for the taxable year more than one  
29 hundred thousand dollars in excess of the base period research expenses.
- 30 3. For taxpayers that have not earned or claimed a credit under this section in taxable  
31 years beginning before January 1, 2007, and which begin conducting qualified

1 research in North Dakota in any taxable year following the fourth taxable year  
2 beginning after December 31, 2006, the amount of the credit is equal to twenty-five  
3 percent of the first one hundred thousand dollars of the qualified research  
4 expenses for the taxable year in excess of the base period research expenses and  
5 equal to eight percent of all qualified research expenses for the taxable year more  
6 than one hundred thousand dollars in excess of the base period research  
7 expenses.

8 4. For purposes of this section:

9 a. "Base period research expenses" means base period research expenses as  
10 defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)],  
11 except it does not include research conducted outside the state of North  
12 Dakota.

13 b. "Director" means the director of the department of commerce division of  
14 economic development and finance.

15 c. "Primary sector business" means a qualified business that through the  
16 employment of knowledge or labor adds value to a product, process, or  
17 service.

18 d. "Qualified research" means qualified research as defined in section 41(d) of  
19 the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include  
20 research conducted outside the state of North Dakota.

21 e. "Qualified research and development company" means a taxpayer that is a  
22 primary sector business with annual gross revenues of less than seven  
23 hundred fifty thousand dollars and which has not conducted new research and  
24 development in North Dakota.

25 f. "Qualified research expenses" means qualified research expenses as defined  
26 in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it  
27 does not include expenses incurred for basic research conducted outside the  
28 state of North Dakota.

29 5. The credit allowed under this section for the taxable year may not exceed the  
30 liability for tax under this chapter.

- 1           6. In the case of a taxpayer that is a partner in a partnership or a member in a limited  
2 liability company, the credit allowed for the taxable year may not exceed an  
3 amount separately computed with respect to the taxpayer's interest in the trade,  
4 business, or entity equal to the amount of tax attributable to that portion of the  
5 taxpayer's taxable income which is allocable or apportionable to the taxpayer's  
6 interest in the trade, business, or entity.
- 7           7. Except as provided in subsection 1, if the amount of the credit determined under  
8 this section for any taxable year exceeds the limitation under subsection 5, the  
9 excess may be used as a research credit carryback to each of the three preceding  
10 taxable years and a research credit carryover to each of the fifteen succeeding  
11 taxable years. The entire amount of the excess unused credit for the taxable year  
12 must be carried first to the earliest of the taxable years to which the credit may be  
13 carried and then to each successive year to which the credit may be carried and  
14 the amount of the unused credit which may be added under this subsection may  
15 not exceed the taxpayer's liability for tax less the research credit for the taxable  
16 year.
- 17          8. A taxpayer that is certified as a qualified research and development company by  
18 the director may elect to sell, transfer, or assign all or part of the unused tax credit  
19 earned under this section. The director shall certify whether a taxpayer that has  
20 requested to become a qualified research and development company meets the  
21 requirements of subsection 4. The director shall establish the necessary forms and  
22 procedures for certifying qualifying research and development companies. The  
23 director shall issue a certification letter to the taxpayer and the tax commissioner.  
24 A tax credit can be sold, transferred, or assigned subject to the following:
- 25          a. A taxpayer's total credit assignment under this section may not exceed one  
26 hundred thousand dollars over any combination of taxable years.
- 27          b. If the taxpayer elects to assign or transfer an excess credit under this  
28 subsection, the tax credit transferor and the tax credit purchaser jointly shall  
29 file with the tax commissioner a copy of the purchase agreement and a  
30 statement containing the names, addresses, and taxpayer identification  
31 numbers of the parties to the transfer, the amount of the credit being



- 1 transferred, the gross proceeds received by the transferor, and the taxable  
2 year or years for which the credit may be claimed. The taxpayer and the  
3 purchaser also shall file a document allowing the tax commissioner to disclose  
4 tax information to either party for the purpose of verifying the correctness of  
5 the transferred tax credit. The purchase agreement, supporting statement,  
6 and waiver must be filed within thirty days after the date the purchase  
7 agreement is fully executed.
- 8 c. The purchaser of the tax credit shall claim the credit beginning with the  
9 taxable year in which the credit purchase agreement was fully executed by  
10 the parties. A purchaser of a tax credit under this section has only such rights  
11 to claim and use the credit under the terms that would have applied to the tax  
12 credit transferor, except the credit purchaser may not carry back the credit as  
13 otherwise provided in this section. This subsection does not limit the ability of  
14 the tax credit purchaser to reduce the tax liability of the purchaser, regardless  
15 of the actual tax liability of the tax credit transferor.
- 16 d. The original purchaser of the tax credit may not sell, assign, or otherwise  
17 transfer the credit purchased under this section.
- 18 e. If the amount of the credit available under this section is changed as a result  
19 of an amended return filed by the transferor, or as the result of an audit  
20 conducted by the internal revenue service or the tax commissioner, the  
21 transferor shall report to the purchaser the adjusted credit amount within thirty  
22 days of the amended return or within thirty days of the final determination  
23 made by the internal revenue service or the tax commissioner. The tax credit  
24 purchaser shall file amended returns reporting the additional tax due or  
25 claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax  
26 commissioner may audit these returns and assess or issue refunds, even  
27 though other time periods prescribed in these sections may have expired for  
28 the purchaser.
- 29 f. Gross proceeds received by the tax credit transferor must be assigned to  
30 North Dakota. The amount assigned under this subsection cannot be

- 1 reduced by the taxpayer's income apportioned to North Dakota or any North  
2 Dakota net operating loss of the taxpayer.
- 3 g. The tax commissioner has four years after the date of the credit assignment to  
4 audit the returns of the credit transferor and the purchaser to verify the  
5 correctness of the amount of the transferred credit and if necessary assess  
6 the credit purchaser if additional tax is found due. This subdivision does not  
7 limit or restrict any other time period prescribed in this chapter for the  
8 assessment of tax.
- 9 h. The tax commissioner may adopt rules to permit verification of the validity and  
10 timeliness of the transferred tax credit.
- 11 9. If a taxpayer acquires or disposes of the major portion of a trade or business or the  
12 major portion of a separate unit of a trade or business in a transaction with another  
13 taxpayer, the taxpayer's qualified research expenses and base period must be  
14 adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code  
15 [26 U.S.C. 41(f)(3)].
- 16 10. If a taxpayer entitled to the credit provided by this section is a member of a group  
17 of corporations filing a North Dakota consolidated tax return using the combined  
18 reporting method, the credit may be claimed against the aggregate North Dakota  
19 tax liability of all the corporations included in the North Dakota consolidated return.  
20 This section does not apply to tax credits received or purchased under  
21 subsection 8.
- 22 11. An individual, estate, or trust that purchases a credit under this section is entitled to  
23 claim the credit against state income tax liability under section ~~57-38-29~~ or  
24 57-38-30.3.
- 25 12. A partnership, subchapter S corporation, limited partnership, limited liability  
26 company, or any other passthrough entity entitled to the credit under this section  
27 must be considered to be the taxpayer for purposes of calculating the credit. The  
28 amount of the allowable credit must be determined at the passthrough entity level.  
29 The total credit determined at the entity level must be passed through to the  
30 partners, shareholders, or members in proportion to their respective interests in the  
31 passthrough entity. An individual taxpayer may take the credit passed through

1 under this subsection against the individual's state income tax liability under  
2 ~~sections 57-38-29 and 57-38-30~~ section 57-38-30.3.

3 **SECTION 24. AMENDMENT.** Section 57-38-31 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **57-38-31. Duty of individuals and fiduciaries to make return.**

- 6 1. Every resident individual, every fiduciary for a resident individual, estate, or trust,  
7 who is required by the provisions of the United States Internal Revenue Code of  
8 1954, as amended, to file a federal income tax return, and every individual or  
9 fiduciary who receives income derived from sources in this state, shall file an  
10 income tax return with the state tax commissioner in such form as the  
11 commissioner may prescribe. Any person who is required to file a state income tax  
12 return but not required to compute a federal taxable income figure for federal  
13 income tax purposes is required to compute such a federal taxable income figure  
14 using a pro forma return pursuant to the provisions of the Internal Revenue Code  
15 of 1954, as amended, in order to determine a starting point for the computation of  
16 state income tax. Any person required to file an income tax return pursuant to the  
17 provisions of the United States Internal Revenue Code of 1954, as amended, with  
18 respect to income that is exempt from taxation under this chapter either because it  
19 cannot be constitutionally taxed or because it is exempt by any provision of law  
20 shall file a return prescribed by the tax commissioner in such form as will permit  
21 computation of the tax liability under this chapter on only that part of the income  
22 which is subject to taxation pursuant to the provisions of this chapter; provided, that  
23 such person elects to use that form of return rather than any other form of return  
24 that may be prescribed. The return must be signed by the person required to make  
25 it and must contain a written declaration that it is made and subscribed under  
26 penalties of perjury.
- 27 ~~2. The same filing status and deduction method used by a husband and wife when~~  
28 ~~filing federal income tax returns must be used when filing state income tax returns.~~
- 29 ~~3.~~ 3. If the taxpayer is unable to make the taxpayer's own return, the return must be  
30 made by a duly authorized agent or by a guardian or other person charged with the  
31 care of the person or property of the taxpayer.

- 1       4- 3. Every fiduciary subject to taxation under the provisions of this chapter shall make a  
2           return for the individual, estate, or trust for which the fiduciary acts; the return must  
3           be signed by the person required to make it and must contain a written declaration  
4           that it is made and subscribed under penalties of perjury.
- 5       5- 4. The return made by a fiduciary must state such facts as the tax commissioner may  
6           prescribe.
- 7       6- 5. A fiduciary required to make a return under this chapter is subject to all of the  
8           provisions of the chapter which apply to an individual.
- 9       7- 6. If required by the tax commissioner, the return must be accompanied by a true  
10          copy of the federal income tax return of the taxpayer or by equivalent information in  
11          the form and manner prescribed by the tax commissioner. A true copy of the  
12          federal income tax return of the taxpayer or equivalent information must be  
13          furnished to the tax commissioner by the taxpayer or fiduciary at any time after  
14          filing of the return required by this chapter if so required by the tax commissioner.
- 15      8- 7. The tax commissioner may prescribe alternative methods for signing, subscribing,  
16          or verifying a return filed by electronic means, including telecommunications, that  
17          shall have the same validity and consequence as the actual signature and written  
18          declaration for a paper return.

19           **SECTION 25. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21           **57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified  
22 investment in a qualified business, the taxpayer is entitled to a credit against state income tax  
23 liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

- 24           1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the  
25           amount invested by the taxpayer in qualified businesses during the taxable year.
- 26           2. The maximum annual credit a taxpayer may claim under this section is not more  
27           than one hundred twelve thousand five hundred dollars. This subsection may not  
28           be interpreted to limit additional investment by a taxpayer for which that taxpayer is  
29           not applying for a credit.

- 1           3. Any amount of credit under subsection 1 not allowed because of the limitation in  
2           subsection 2 may be carried forward for up to four taxable years after the taxable  
3           year in which the investment was made.
- 4           4. A passthrough entity that invests in a qualified business must be considered to be  
5           the taxpayer for purposes of the investment limitations in this section and the  
6           amount of the credit allowed with respect to a passthrough entity's investment in a  
7           qualified business must be determined at the passthrough entity level. The amount  
8           of the total credit determined at the passthrough entity level must be allowed to the  
9           members in proportion to their respective interests in the passthrough entity.
- 10          5. An investment made in a qualified business from the assets of a retirement plan is  
11          deemed to be the retirement plan participant's investment for the purpose of this  
12          chapter if a separate account is maintained for the plan participant and the  
13          participant directly controls where the account assets are invested.
- 14          6. The investment must be made on or after the certification effective date and must  
15          be at risk in the business to be eligible for the tax credit under this section. An  
16          investment for which a credit is received under this section must remain in the  
17          business for at least three years. Investments placed in escrow do not qualify for  
18          the credit.
- 19          7. The entire amount of an investment for which a credit is claimed under this section  
20          must be expended by the qualified business for plant, equipment, research and  
21          development, marketing and sales activity, or working capital for the qualified  
22          business.
- 23          8. A taxpayer who owns a controlling interest in the qualified business or who  
24          receives more than fifty percent of the taxpayer's gross annual income from the  
25          qualified business is not entitled to a credit under this section. A member of the  
26          immediate family of a taxpayer disqualified by this subsection is not entitled to the  
27          credit under this section. For purposes of this subsection, "immediate family"  
28          means the taxpayer's spouse, parent, sibling, or child or the spouse of any such  
29          person.
- 30          9. The tax commissioner may disallow any credit otherwise allowed under this section  
31          if any representation by a business in the application for certification as a qualified

1 business proves to be false or if the taxpayer or qualified business fails to satisfy  
2 any conditions under this section or any conditions consistent with this section  
3 otherwise determined by the tax commissioner. The commissioner has four years  
4 after the due date of the return or after the return was filed, whichever period  
5 expires later, to audit the credit and assess additional tax that may be found due to  
6 failure to comply with the provisions of this chapter. The amount of any credit  
7 disallowed by the tax commissioner that reduced the taxpayer's income tax liability  
8 for any or all applicable tax years, plus penalty and interest as provided under  
9 section 57-38-45, must be paid by the taxpayer.

10 10. An angel fund that invests in a qualified business must be considered to be the  
11 taxpayer for purposes of the investment limitations in this section. The amount of  
12 the credit allowed with respect to an angel fund's investment in a qualified business  
13 must be determined at the angel fund level. The amount of the total credit  
14 determined at the angel fund level must be allowed to the investors in the angel  
15 fund in proportion to the investor's respective interests in the fund. An angel fund  
16 that is subject to the tax imposed under chapter 57-38 is not eligible for the  
17 investment tax credit under this chapter.

18 **SECTION 26. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a  
21 qualified investment in a qualified business, the taxpayer is entitled to a credit against state  
22 income tax liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

- 23 1. The amount of the credit to which a taxpayer is entitled is thirty percent of the  
24 amount invested by the taxpayer in qualified businesses during the taxable year.
- 25 2. The maximum annual credit a taxpayer may obtain under this section is fifty  
26 thousand dollars and no taxpayer may obtain more than two hundred fifty thousand  
27 dollars in credits under this section over any combination of taxable years. This  
28 subsection may not be interpreted to limit additional investment by a taxpayer for  
29 which that taxpayer is not applying for a credit.
- 30 3. The credit under this section may not exceed the liability for tax under chapter  
31 57-38. If the amount of credit under this section exceeds the liability for tax, the

- 1 excess may be carried forward for up to ten taxable years after the taxable year in  
2 which the investment was made.
- 3 4. A partnership, subchapter S corporation, limited liability company that for tax  
4 purposes is treated like a partnership, or any other passthrough entity that invests  
5 in a qualified business must be considered to be the taxpayer for purposes of the  
6 investment limitations in this section and, except for the tax liability limitation under  
7 subsection 2, the amount of the credit allowed with respect to the passthrough  
8 entity's investment in a qualified business must be determined at the passthrough  
9 entity level. The amount of the total credit determined at the passthrough entity  
10 level must be allowed to the passthrough entity's owners, in proportion to their  
11 respective ownership interests in the passthrough entity.
- 12 5. An investment made in a qualified business from the assets of a retirement plan is  
13 deemed to be the retirement plan participant's investment for the purposes of this  
14 chapter if a separate account is maintained for the plan participant and the  
15 participant directly controls where the account assets are invested.
- 16 6. The investment must be made on or after the certification effective date and must  
17 be at risk in the business to be eligible for the tax credit under this section. A  
18 qualified investment must be in the form of a purchase of ownership interests or  
19 the right to receive payment of dividends from the business. An investment for  
20 which a credit is received under this section must remain in the business for at  
21 least three years. An investment placed in escrow does not qualify for the credit.
- 22 7. The entire amount of an investment for which a credit is claimed under this section  
23 must be expended by the qualified business for plant, equipment, research and  
24 development, marketing and sales activity, or working capital for the qualified  
25 business. Real property that qualifies as an investment must be used in, and be  
26 an integral part of, the qualified business's North Dakota business operations.
- 27 8. If the investment is a contribution of real property:
- 28 a. The value of the contribution may not exceed the appraised value as  
29 established by a licensed or certified appraiser licensed or certified under the  
30 requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06,  
31 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.

- 1           b. The value of the contribution must be approved by the governing body of the  
2           qualified business applying the valuation standards set forth in subsection 3 of  
3           section 10-19.1-63.
- 4           c. The qualified business receiving the contribution of real property shall provide  
5           to the tax commissioner a copy of the appraised valuation, a copy of the  
6           governing body's resolution approving the value of the contribution, and a  
7           copy of the statement of full consideration within thirty days after the  
8           instrument transferring title to the real property is recorded with the register of  
9           deeds as provided in chapter 47-19.
- 10          d. A taxpayer making a contribution of real property is entitled to the tax credit in  
11          the taxable year in which the instrument transferring title to the real property is  
12          recorded with the register of deeds as provided in chapter 47-19.
- 13          9. The tax commissioner may disallow any credit otherwise allowed under this section  
14          if any representation by a business in the application for certification as a qualified  
15          business proves to be false or if the taxpayer or qualified business fails to satisfy  
16          any conditions under this section or any conditions consistent with this section  
17          otherwise determined by the tax commissioner. The amount of any credit  
18          disallowed by the tax commissioner that reduced the taxpayer's income tax liability  
19          for any or all applicable tax years, plus penalty and interest provided under section  
20          57-38-45, must be paid by the taxpayer.

21           **SECTION 27. REPEAL.** Sections 57-38-01.2, 57-38-01.18, 57-38-06.1, 57-38-29,  
22 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota  
23 Century Code are repealed.

24           **SECTION 28. EFFECTIVE DATE.** This Act is effective for taxable years beginning  
25 after December 31, 2008.