70534.0300 **FIRST ENGROSSMENT**

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2363

Introduced by

Senators Horne, Flakoll, Mathern

Representatives N. Johnson, Kaldor, Kretschmar

A BILL for an Act to amend and reenact section 57-38-01.21 of the North Dakota Century Code, relating to an individual or corporate income tax credit for planned gifts to nonprofit organizations and contributions to qualified endowments held by nonprofit organizations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.21 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.21. Planned gifts <u>and qualified endowments</u> credit - Definitions. ~~For purposes of this section:~~

1. <u>For purposes of this section:</u>

   a. <u>"Permanent, irrevocable fund" means a fund comprising cash, securities, mutual funds, or other investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and invested for the production or growth of income, or both, which may either be added to principal or expended.</u>

   <u>b.</u> "Planned gift" means an irrevocable contribution to a <u>North Dakota qualified nonprofit organization or qualified endowment held by or for a</u> North Dakota qualified nonprofit organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

      (1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;

      (2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

      (3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

      (4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

      (5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

(6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or

(9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

"Planned gift" does not include a contribution using a charitable remainder unitrust or charitable remainder annuity trust unless the agreement provides that the trust may not terminate and beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of the date of death of the beneficiaries or five years from the date of the contribution.

"Planned gift" does not include a deferred charitable gift annuity unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the contribution.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified endowment sooner than the earlier of the date of death of the annuitant or annuitants or five years after the date of the contribution.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity is a qualified charitable gift annuity for federal income tax purposes.

~~b.~~ c. "Qualified ~~nonprofit organization~~ endowment" means a permanent, irrevocable fund held by a North Dakota incorporated or established organization that is:

(1) A ~~tax-exempt organization under 26 U.S.C. 501(c), to which contributions qualify for a federal charitable income tax deduction; and~~ qualified nonprofit organization; or

(2) ~~An organization that has an established business presence or situs in North Dakota~~ A bank or trust company holding the fund on behalf of a qualified nonprofit organization.

~~c.~~ ~~(1)~~ ~~A contribution using a technique described in paragraph 1 or 2 of subdivision a is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the North Dakota qualified nonprofit organization sooner than the earlier of:~~

~~(a)~~ ~~The date of death of the beneficiaries; or~~

~~(b)~~ ~~Five years from the date of the contribution.~~

~~(2)~~ ~~A contribution using the technique described in paragraph 7 of subdivision a is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the contribution.~~

~~(3)~~ ~~A contribution using a technique described in paragraph 6 or 7 of subdivision a is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the North Dakota qualified nonprofit organization sooner than the earlier of:~~

~~(a)~~ ~~The date of death of the annuitant or annuitants; or~~

~~(b)~~ ~~Five years after the date of the contribution.~~

~~(4)~~ ~~A contribution using a technique described in paragraph 6 or 7 of subdivision a is not a planned gift unless the annuity is a qualified charitable gift annuity.~~

d. "Qualified nonprofit organization" means a North Dakota incorporated or established tax-exempt organization under 26 U.S.C. 501(c) with an established business presence or situs in North Dakota.

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

~~a. If this credit is claimed, the amount of the contribution upon which the credit is computed must be added to federal taxable income in computing North Dakota taxable income, but only to the extent that the contribution reduced federal taxable income.~~

~~b. The credit must be applied to the tax year in which the contribution is made and any unused portion of the credit may be carried forward for up to two taxable years.~~

3. A corporation is allowed a tax credit against the tax imposed by section 57-38-30 in an amount equal to forty percent of the present value of the aggregate amount of the gift portion of planned gifts to a qualified endowment. The maximum credit that may be claimed by a corporation under this subsection for contributions made in a taxable year is ten thousand dollars. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability.

4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift, or forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts, made to a qualified nonprofit organization or qualified endowment. The maximum credit allowed under this subsection for contributions made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of

the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section 57-38-29, 57-38-30, or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.

5. A partnership, subchapter S corporation, or limited liability company treated like a partnership is entitled to a credit in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts, made to a qualified endowment by the entity during the taxable year. The maximum credit allowed to the entity under this subsection for charitable gifts and planned gifts made in a taxable year is ten thousand dollars. The credit determined at the entity level must be passed through to the partners, shareholders, or members in the same proportion that the charitable contributions attributable to the charitable gifts and planned gifts under this section are distributed to the partners, shareholders, or members. The partner, shareholder, or member may claim the credit only in the partner's, shareholder's, or member's taxable year in which the taxable year of the partnership, subchapter S corporation, or limited liability company ends. Subsections 6 and 7 apply to the partner, shareholder, or member.

6. The amount of the contribution upon which an allowable credit is computed must be added to federal taxable income in computing North Dakota taxable income in the taxable year in which the credit is first claimed, but only to the extent that the contribution reduced federal taxable income.

7. An unused credit may be carried forward for up to three taxable years.

8. If a contribution for which a credit was claimed is recovered by the taxpayer, an amount equal to the credit claimed in all taxable years must be added to the tax due on the income tax return filed for the taxable year in which the recovery occurs. For purposes of subsection 4, this subsection applies if the estate or trust recovers the contribution and the estate or trust and its beneficiaries are liable for the additional tax due with respect to their respective shares of the apportioned

credit. For purposes of subsection 5, this subsection applies if the partnership, subchapter S corporation, or limited liability company recovers the contribution, and the partner, shareholder, or member is liable for the additional tax due.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.