

SENATE BILL NO. 2091

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact section 57-35.3-06, subsection 3 of section 57-38-31.1,
2 subsection 2 of section 57-38-34, and section 57-38-63 of the North Dakota Century Code,
3 relating to the due date for filing short period financial institutions tax and corporate income tax
4 returns, composite returns filed by passthrough entities, and the due date for estimated tax
5 payments by corporations for short-period tax years; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Section 57-35.3-06 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-35.3-06. Tax return.** On or before April fifteenth of each year, the taxpayer shall file
10 with the commissioner, on forms or in a manner prescribed by the commissioner, a report in
11 writing under oath showing the amount of taxable income of the financial institution for the
12 preceding calendar year. A return for a period of less than one year must be filed on or before
13 April fifteenth, or on or before the date prescribed by the United States internal revenue service,
14 whichever is later. If required by the commissioner, the return must be accompanied by a true
15 copy of the federal income tax return of the taxpayer or by equivalent information in the form
16 and manner prescribed by the commissioner. A true copy of the federal income tax return must
17 be furnished to the commissioner by the taxpayer at any time after the taxpayer has filed the
18 return required by this section if required by the commissioner before the expiration of the
19 applicable period for assessment of additional tax liability under section 57-38-38. The
20 commissioner may prescribe alternative methods for signing, subscribing, or verifying a return
21 filed by electronic means, including telecommunications, that has the same validity and
22 consequence as the actual signature and written declaration for a paper return. The
23 commissioner may grant a reasonable extension of time for filing a return under the standards
24 and terms applicable to other corporations under section 57-38-34.

1 **SECTION 2. AMENDMENT.** Subsection 3 of section 57-38-31.1 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 3. a. A passthrough entity shall withhold income tax, at the highest tax rate
4 provided in section 57-38-30.3 for individuals, on the share of income of the
5 entity distributed to each nonresident member and pay the withheld amount in
6 the manner prescribed by the tax commissioner. The passthrough entity is
7 liable to the state for the payment of the tax required to be withheld under this
8 section and is not liable to any member for the amount withheld and paid over
9 in compliance with this section. A member of a passthrough entity that is itself
10 a passthrough entity (a lower-tier passthrough entity) is subject to this same
11 requirement to withhold and pay over income tax on the share of income
12 distributed by the lower-tier passthrough entity to each of its nonresident
13 members. The tax commissioner shall apply tax withheld and paid over by a
14 passthrough entity on distributions to a lower-tier passthrough entity to the
15 withholding required of that lower-tier passthrough entity.

16 b. At the time of a payment made under this section, a passthrough entity shall
17 deliver to the tax commissioner a return upon a form prescribed by the tax
18 commissioner showing the total amounts paid or credited to its nonresident
19 members, the amount withheld in accordance with this section, and any other
20 information the tax commissioner may require. A passthrough entity shall
21 furnish to its nonresident member annually, but not later than the fifteenth day
22 of the third month after the end of its taxable year, a record of the amount of
23 tax withheld on behalf of such member on a form prescribed by the tax
24 commissioner.

25 c. Notwithstanding subdivision a, a passthrough entity is not required to withhold
26 tax for a nonresident member if:

27 (1) The member has a pro rata or distributive share of income of the
28 passthrough entity from doing business in, or deriving income from
29 sources within, this state of less than one thousand dollars per annual
30 accounting period;

- 1 (2) The tax commissioner has determined by rule, ruling, or instruction that
2 the member's income is not subject to withholding;
- 3 (3) The member elects to have the tax due paid as part of a composite
4 return filed by the passthrough entity under subsection 2; or
- 5 (4) The entity is a publicly traded partnership as defined by section 7704(b)
6 of the Internal Revenue Code which is treated as a partnership for the
7 purposes of the Internal Revenue Code and which has agreed to file an
8 annual information return reporting the name, address, taxpayer
9 identification number, and other information requested by the tax
10 commissioner of each unitholder with an income in the state in excess
11 of five hundred dollars.
- 12 d. A passthrough entity failing to file a return, or failing to withhold or remit the
13 tax withheld, as required by this section, is subject to the provisions of
14 section 57-38-45.

15 **SECTION 3. AMENDMENT.** Subsection 2 of section 57-38-34 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 2. Returns made on the basis of the calendar year must be filed on or before the
18 fifteenth day of April following the close of the calendar year and returns made on
19 the basis of a fiscal year must be filed on or before the fifteenth day of the fourth
20 month following the close of the fiscal year. A return filed for a period of less than
21 one year must be filed on or before April fifteenth, or on or before the date
22 prescribed by the United States internal revenue service, whichever is later.

23 **SECTION 4. AMENDMENT.** Section 57-38-63 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **57-38-63. Due date for payment of estimated income tax.** A taxpayer shall pay no
26 less than one-quarter of the estimated tax to the tax commissioner on April fifteenth, June
27 fifteenth, and September fifteenth of the taxable year, and January fifteenth of the following
28 taxable year; provided, that a taxpayer having a taxable year other than a calendar year shall
29 pay the estimated tax on the fifteenth day of the fourth, sixth, and ninth months of the taxable
30 year, and the fifteenth day of the first month of the following taxable year. In the case of a tax
31 year that is for a period of less than one year, and the short tax year ends prior to any

1 remaining due dates under this section, the final estimated tax payment is due on the fifteenth
2 day of the last month of the short tax year. In the case of a tax year that is for a period of less
3 than one hundred twenty days, no estimated tax payment is due.

4 **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
5 December 31, 2006.