

**HOUSE BILL NO. 1203**

Introduced by

Representatives Keiser, Froseth

Senators Horne, Robinson

1 A BILL for an Act to amend and reenact section 57-38-01.21 of the North Dakota Century Code,  
2 relating to the income tax credit for charitable gifts; and to provide an effective date.

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

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

6 **57-38-01.21. Planned gifts and qualified endowments credit - Definitions.**

7 1. For purposes of this section:

8 a. "Board-designated endowment" means a permanent endowment established  
9 for a specific charitable, religious, educational, or eleemosynary purpose  
10 subject to use as designated by the board of directors of a qualified nonprofit  
11 organization or qualified endowment and comprised of net assets of the  
12 organization which are not restricted by donors.

13 ~~b.~~ "Permanent, irrevocable fund endowment" means a fund comprising cash,  
14 ~~securities, mutual funds, or other investment assets established to provide a~~  
15 permanent source of income for a specific charitable, religious, educational, or  
16 eleemosynary purpose and invested for the production or growth of income,  
17 or both, which may either be added to principal or expended.

18 ~~b.~~ c. "Planned gift" means an irrevocable contribution to a North Dakota qualified  
19 nonprofit organization or qualified endowment held by or for a North Dakota  
20 qualified nonprofit organization, when the contribution uses any of the  
21 following techniques that are authorized under the Internal Revenue Code:

- 22 (1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;  
23 (2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;  
24 (3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

- 1 (4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);  
2 (5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);  
3 (6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);  
4 (7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C.  
5 1011(b);  
6 (8) Charitable life estate agreements qualifying under 26 U.S.C.  
7 170(f)(3)(B); or  
8 (9) Paid-up life insurance policies meeting the requirements of 26 U.S.C.  
9 170.

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

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

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

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

- 1 e. ~~d.~~ "Qualified endowment" means a permanent, ~~irrevocable fund~~ endowment or  
2 board-designated endowment held by a North Dakota incorporated or  
3 established organization that is:
- 4 (1) A qualified nonprofit organization; or  
5 (2) A bank or trust company holding the fund on behalf of a qualified  
6 nonprofit organization.
- 7 e. ~~e.~~ "Qualified nonprofit organization" means a North Dakota incorporated or  
8 established tax-exempt organization under 26 U.S.C. 501(c) to which  
9 contributions qualify for federal charitable income tax deductions with an  
10 established business presence or situs in North Dakota.
- 11 2. An individual is allowed a tax credit against the tax imposed by section 57-38-29 or  
12 57-38-30.3 in an amount equal to forty percent of the present value of the  
13 aggregate amount of ~~the a~~ charitable gift portion of planned gifts made by the  
14 taxpayer during the year to a qualified nonprofit organization or qualified  
15 endowment. Only charitable gifts of one thousand dollars or more during the  
16 taxable year qualify for the tax credit under this subsection. The maximum credit  
17 that may be claimed under this subsection for contributions made in a taxable year  
18 is ten thousand dollars, or twenty thousand dollars for married individuals filing a  
19 joint return. The credit allowed under this section may not exceed the taxpayer's  
20 income tax liability.
- 21 3. A corporation is allowed a tax credit against the tax imposed by section 57-38-30  
22 and a financial institution is allowed a credit against the tax imposed by section  
23 57-35.3-03 in an amount equal to forty percent of a charitable gift to a qualified  
24 endowment. The maximum credit that may be claimed by a corporation under this  
25 subsection for contributions made in a taxable year is ten thousand dollars. The  
26 credit allowed under this section may not exceed the corporate taxpayer's income  
27 tax liability.
- 28 4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a  
29 charitable gift to a qualified endowment. The maximum credit allowed under this  
30 subsection for contributions made in a taxable year is ten thousand dollars. The  
31 allowable credit must be apportioned to the estate or trust and to its beneficiaries

- 1 on the basis of the income of the estate or trust allocable to each, and the  
2 beneficiaries may claim their share of the credit against the tax imposed by section  
3 57-38-29, 57-38-30, or 57-38-30.3. A beneficiary may claim the credit only in the  
4 beneficiary's taxable year in which the taxable year of the estate or trust ends.  
5 Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to  
6 their respective shares of the apportioned credit.
- 7 5. A partnership, subchapter S corporation, or limited liability company treated like a  
8 partnership is entitled to a credit in an amount equal to forty percent of a charitable  
9 gift to a qualified endowment by the entity during the taxable year. The maximum  
10 credit allowed to the entity under this subsection for charitable gifts and planned  
11 gifts made in a taxable year is ten thousand dollars. The credit determined at the  
12 entity level must be passed through to the partners, shareholders, or members in  
13 the same proportion that the charitable contributions attributable to the charitable  
14 gifts and planned gifts under this section are distributed to the partners,  
15 shareholders, or members. The partner, shareholder, or member may claim the  
16 credit only in the partner's, shareholder's, or member's taxable year in which the  
17 taxable year of the partnership, subchapter S corporation, or limited liability  
18 company ends. Subsections 6 and 7 apply to the partner, shareholder, or  
19 member.
- 20 6. The amount of the contribution upon which an allowable credit is computed must  
21 be added to federal taxable income in computing North Dakota taxable income in  
22 the taxable year in which the credit is first claimed, but only to the extent that the  
23 contribution reduced federal taxable income.
- 24 7. An unused credit may be carried forward for up to three taxable years.
- 25 8. If a contribution for which a credit was claimed is recovered by the taxpayer, an  
26 amount equal to the credit claimed in all taxable years must be added to the tax  
27 due on the income tax return filed for the taxable year in which the recovery  
28 occurs. For purposes of subsection 4, this subsection applies if the estate or trust  
29 recovers the contribution and the estate or trust and its beneficiaries are liable for  
30 the additional tax due with respect to their respective shares of the apportioned  
31 credit. For purposes of subsection 5, this subsection applies if the partnership,

1 subchapter S corporation, or limited liability company recovers the contribution,  
2 and the partner, shareholder, or member is liable for the additional tax due.

3 9. An organization that receives a charitable gift that qualifies for the credit under this  
4 section shall provide the donor a receipt that indicates whether the charitable gift  
5 has been deposited in a permanent endowment or board-designated endowment.

6 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
7 December 31, 2008.