

HOUSE BILL NO. 1086

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact subdivision g of subsection 2 of section 57-35.3-02,
2 sections 57-38-30.5 and 57-38-32, subdivision c of subsection 1 of section 57-38-35.2, and
3 section 57-38.1-17.1 of the North Dakota Century Code, relating to correction of statutory
4 references for financial institution tax purposes, references to base period research expenses
5 and the time period for claiming carryback for the research and experimental expenditure
6 income tax credit, the corporate income tax return filing requirement, calculation of interest on
7 refunds relating to the carryback of a tax credit, and the allocation of a gain or loss on the sale
8 of a partnership interest; and to provide an effective date.

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

10 **SECTION 1. AMENDMENT.** Subdivision g of subsection 2 of section 57-35.3-02 of the
11 North Dakota Century Code is amended and reenacted as follows:

12 g. An amount equal to the deduction for charitable contributions that would be
13 allowed for federal income tax purposes under section 170 of the Internal
14 Revenue Code if the percentage limitation of section 170(b)(2) of the Internal
15 Revenue Code was applied in all relevant taxable periods to taxable income,
16 rather than federal taxable income, but computed without regard to this
17 subdivision ~~and that portion of subdivision a that refers to subdivision g of~~
18 ~~subsection 1 of section 57-38-01.3.~~ However, no deduction is allowable for a
19 contribution if and to the extent that a credit is allowed for the contribution
20 under section 57-35.3-05;

21 **SECTION 2. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **57-38-30.5. Income tax credit for research and experimental expenditures.** A
2 taxpayer is allowed a credit against the tax imposed under section 57-38-29, 57-38-30, or
3 57-38-30.3 for conducting qualified research in this state.

4 1. The amount of the credit for taxpayers that earned or claimed a credit under this
5 section in taxable years beginning before January 1, 2007, is calculated as follows:

6 a. For the first taxable year beginning after December 31, 2006, the credit is
7 equal to twenty-five percent of the first one hundred thousand dollars of the
8 qualified research expenses for the taxable year in excess of the base ~~period~~
9 ~~research expenses~~ amount and equal to seven and one-half percent of all
10 qualified research expenses for the taxable year more than one hundred
11 thousand dollars in excess of the base ~~period research expenses~~ amount.

12 b. For the second taxable year beginning after December 31, 2006, the credit is
13 equal to twenty-five percent of the first one hundred thousand dollars of the
14 qualified research expenses for the taxable year in excess of the base ~~period~~
15 ~~research expenses~~ amount and equal to eleven percent of all qualified
16 research expenses for the taxable year more than one hundred thousand
17 dollars in excess of the base ~~period research expenses~~ amount.

18 c. For the third taxable year beginning after December 31, 2006, the credit is
19 equal to twenty-five percent of the first one hundred thousand dollars of the
20 qualified research expenses for the taxable year in excess of the base ~~period~~
21 ~~research expenses~~ amount and equal to fourteen and one-half percent of all
22 qualified research expenses for the taxable year more than one hundred
23 thousand dollars in excess of the base ~~period research expenses~~ amount.

24 d. For the fourth through the tenth taxable years beginning after December 31,
25 2006, the credit is equal to twenty-five percent of the first one hundred
26 thousand dollars of the qualified research expenses for the taxable year in
27 excess of the base ~~period research expenses~~ amount and equal to eighteen
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 amount.

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

- 1 3. For taxpayers that have not earned or claimed a credit under this section in taxable
2 years beginning before January 1, 2007, and which begin conducting qualified
3 research in North Dakota in any taxable year following the fourth taxable year
4 beginning after December 31, 2006, the amount of the credit is equal to twenty-five
5 percent of the first one hundred thousand dollars of the qualified research
6 expenses for the taxable year in excess of the ~~base period research expenses~~
7 amount and equal to eight percent of all qualified research expenses for the
8 taxable year more than one hundred thousand dollars in excess of the ~~base period~~
9 ~~research expenses~~ amount.
- 10 4. For purposes of this section:
- 11 a. "~~Base period research expenses amount~~" means ~~base period research~~
12 ~~expenses amount~~ as defined in section 41(c) of the Internal Revenue Code
13 [26 U.S.C. 41(c)], except it does not include research conducted outside the
14 state of North Dakota.
- 15 b. "Director" means the director of the department of commerce division of
16 economic development and finance.
- 17 c. "Primary sector business" means a qualified business that through the
18 employment of knowledge or labor adds value to a product, process, or
19 service.
- 20 d. "Qualified research" means qualified research as defined in section 41(d) of
21 the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include
22 research conducted outside the state of North Dakota.
- 23 e. "Qualified research and development company" means a taxpayer that is a
24 primary sector business with annual gross revenues of less than seven
25 hundred fifty thousand dollars and which has not conducted new research and
26 development in North Dakota.
- 27 f. "Qualified research expenses" means qualified research expenses as defined
28 in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it
29 does not include expenses incurred for basic research conducted outside the
30 state of North Dakota.

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

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

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

1 amount of the allowable credit must be determined at the passthrough entity level.
2 The total credit determined at the entity level must be passed through to the
3 partners, shareholders, or members in proportion to their respective interests in the
4 passthrough entity. An individual taxpayer may take the credit passed through
5 under this subsection against the individual's state income tax liability under
6 sections 57-38-29 and 57-38-30.

7 **SECTION 3. AMENDMENT.** Section 57-38-32 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-38-32. Duty of corporations to make returns.** Each corporation that receives
10 income from the sources designated in section ~~57-38-30~~ 57-38-14, whether or not required to
11 file an income tax return pursuant to the provisions of the United States Internal Revenue Code
12 of 1954, as amended, shall, unless exempted by the provisions of section 57-38-09, make a
13 return in such form as the tax commissioner may prescribe, stating specifically such facts as the
14 tax commissioner may require for the purpose of making any computation required by this
15 chapter. Any corporation which is required to file a state income tax return but not required to
16 compute a federal taxable income figure for federal income tax purposes is required to compute
17 such a federal taxable income figure using a pro forma return pursuant to the provisions of the
18 Internal Revenue Code of 1954, as amended, in order to determine a starting point for the
19 computation of state income tax. Any foreign loan and investment company engaged in
20 business in this state, and whose income in this state consists solely of income exempt from
21 taxation under this chapter, need not file an annual report unless specially requested to do so
22 by the tax commissioner, but may file in lieu thereof an affidavit claiming exemption under this
23 chapter. The return must be signed by the president, vice president, treasurer, assistant
24 treasurer, chief accounting officer, or any other officer duly authorized so to act and it and any
25 other declaration, statement, or document required to be made must contain or be verified by a
26 written declaration that it is made under the penalties of perjury. The tax commissioner may
27 prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic
28 means, including telecommunications, that shall have the same validity and consequence as
29 the actual signature and written declaration for a paper return.

30 **SECTION 4. AMENDMENT.** Subdivision c of subsection 1 of section 57-38-35.2 of the
31 North Dakota Century Code is amended and reenacted as follows:

1 c. Interest on refunds arising from net operating loss carrybacks ~~or~~, capital loss
2 carrybacks, or tax credit carrybacks accrues for payment from the due date of
3 the return for the year, determined without regard to extensions of the time for
4 filing, giving rise to the loss carryback, to the date of payment of the refund,
5 except that no interest accrues if the refund payment is made within forty-five
6 days of the date the amended return or claim is filed to claim the refund
7 attributable to the ~~net operating loss or capital loss~~ carryback.

8 **SECTION 5. AMENDMENT.** Section 57-38.1-17.1 of the North Dakota Century Code
9 is amended and reenacted as follows:

10 **57-38.1-17.1. Gain or loss on the sale of a partnership.** Gain or loss on the sale of a
11 partnership interest is allocable to this state in the ratio of the original cost of partnership
12 tangible property in the state to the original cost of partnership tangible property everywhere,
13 determined at the time of the sale. In the event that more than fifty percent of the value of the
14 assets of the partnership consist of intangibles, gain or loss from the sale of the partnership
15 interest is allocated to this state in accordance with the ratio of total North Dakota income to
16 total income of the partnership for its first full tax period immediately preceding the tax period of
17 the partnership during which the partnership interest was sold. This section applies to the
18 extent, that prior to the sale of the partnership interest, the partnership's income or loss
19 constituted nonbusiness income.

20 **SECTION 6. EFFECTIVE DATE.** Section 2 of this Act is effective for tax credits earned
21 after December 31, 2008. Section 4 is effective for amended returns filed after June 30, 2009.