Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011

SENATE BILL NO. 2160
(Senators Krebsbach, Flakoll, Mathern)
(Representatives Sanford, N. Johnson, Streyle)

AN ACT to create and enact subsection 4 to section 57-35.3-05 of the North Dakota Century Code, relating to a financial institutions tax credit for charitable gifts to qualified endowments by financial institutions; to amend and reenact sections 57-35.3-07 and 57-38-01.21 of the North Dakota Century Code, relating to the tax credit for charitable gifts, planned gifts, or endowments; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 4 to section 57-35.3-05 of the North Dakota Century Code is created and enacted as follows:

4. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit that may be claimed by a financial institution under this subsection for charitable gifts made in a taxable year may not exceed ten thousand dollars. For the purposes of the credit allowed in this subsection, subsections 1, 6, and 8 of section 57-38-01.21 apply. A charitable gift used as the basis for a credit claimed under this subsection may not be used as the basis for the claim of a credit under any other provision of this chapter.

SECTION 2. AMENDMENT. Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-07. Payment of tax.

Two-sevenths of the tax before credits allowed under section 57-35.3-05, less the ~~credit~~credits allowed under ~~subsection~~subsections 1 and 4 of section 57-35.3-05, must be paid to the commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Five-sevenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the commissioner on or before January fifteenth of the year after the return is due. Payment must be made by check, draft, or money order, payable to the commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.

SECTION 3. AMENDMENT. Section 57-38-01.21 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.21. ~~Planned~~Charitable gifts, planned gifts, and qualified endowments credit - Definitions.

1. For purposes of this section:

   a. "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.

   b. "Planned gift" means an irrevocable ~~contribution~~charitable gift to a North Dakota qualified nonprofit organization or qualified endowment held by or for a North Dakota qualified nonprofit organization, when the ~~contribution~~charitable gift 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~~charitable gift 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.

"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.

"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 nonprofit organization or 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.

"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.

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

(1) A qualified nonprofit organization; or

(2) A bank or trust company holding the fund on behalf of a qualified nonprofit organization.

d. "Qualified nonprofit organization" means a North Dakota incorporated or established tax-exempt organization under 26 U.S.C. 501(c) to which contributions qualify for federal charitable income tax deductions with an established business presence or situs in North Dakota.

2. a. An individual is allowed a tax credit against the tax imposed by section 57-38-30.3 in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the taxable year to a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for ~~contributions~~planned gifts made in a taxable year is ten thousand dollars for an individual, 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.

b. An individual is allowed a tax credit against the tax imposed by section 57-38-30.3 for making a charitable gift to a qualified endowment. The credit is equal to forty percent of the charitable gift. If an individual makes a single charitable gift to a qualified endowment, the charitable gift must be five thousand dollars or more to qualify for the credit. If an individual makes more than one charitable gift to the same qualified endowment, the aggregate amount of the charitable gifts made to that qualified endowment must be five thousand dollars or more to qualify for the credit. The maximum credit that may be claimed under this subsection for charitable gifts made in a taxable year is ten thousand dollars for an individual or twenty thousand dollars for married individuals filing a joint return. The tax credit allowed under this section may not exceed the taxpayer's income tax liability.

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 a charitable gift to a qualified endowment. The maximum credit that may be claimed by a corporation under this subsection for ~~contributions~~charitable gifts 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 to a qualified endowment. The maximum credit ~~allowed~~that may be claimed under this subsection for ~~contributions~~charitable gifts 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 57-38-30 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 a charitable gift to a qualified endowment by the entity during the taxable year. The maximum credit ~~allowed to~~that may be claimed by 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~~charitable gift 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~~charitable gift reduced federal taxable income.

7. ~~An~~The unused portion of a credit under this section may be carried forward for up to three taxable years.

8. If a ~~contribution~~charitable gift 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~~charitable gift 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~~charitable gift, and the partner, shareholder, or member is liable for the additional tax due.

9. A charitable gift used as the basis for a credit claimed under this section may not be used as the basis for the claim of a credit under any other provision of this chapter.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2160.

Senate Vote:	Yeas 45	Nays 0	Absent 2
House Vote:	Yeas 87	Nays 0	Absent 7

Secretary of the Senate

Received by the Governor at _____M. on _____, 2011.

Approved at _____M. on _____, 2011.

Governor

Filed in this office this _____day of _____, 2011,

at _____ o'clock _____M.

Secretary of State