

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

HOUSE BILL NO. 1124
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to create and enact a new subsection to section 57-38-01.8 of the North Dakota Century Code, relating to the individual income tax credit for installation of geothermal energy devices; to amend and reenact subsection 3 of section 57-35.3-05, section 57-35.3-07, subsections 1 and 6 of section 57-38-01.21, section 57-38-01.28, subsection 1 of section 57-38-01.31, section 57-38-29.3, subsections 2 and 3 of section 57-38-30.3, sections 57-38-59.2 and 57-38.4-01, and subsection 1 of section 57-38.4-02 of the North Dakota Century Code, relating to the tuition scholarship tax credit for financial institution tax purposes, the tax credit for planned gifts and qualified endowments, the marriage penalty tax credit, the employer tax credit for mobilized employees, the long-term care partnership plan insurance coverage tax credit, the qualified dividend and long-term capital gain income tax exclusion, return filing requirements for individuals, withholding on lottery winnings, and the use of the domestic disclosure spreadsheet for the water's edge method election for reporting income; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-35.3-05 of the North Dakota Century Code is amended and reenacted as follows:

3. 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 fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient. ~~The amount allowable as a credit under this subsection for any taxable year may not exceed five and seven-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.~~

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 ~~subsections~~subsections 1 and 3 of section 57-35.3-05, must be paid to the tax 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 tax 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 toin the manner prescribed by the tax commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.~~

SECTION 3. A new subsection to section 57-38-01.8 of the North Dakota Century Code is created and enacted as follows:

An individual taxpayer filing a North Dakota return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30.3 for the cost of a geothermal energy device installed after December 31, 2008, and before January 1, 2015, in a building or on property owned or leased by the taxpayer in North Dakota. The credit must be

in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal energy device.

SECTION 4. AMENDMENT. Subsections 1 and 6 of section 57-38-01.21 of the North Dakota Century Code are amended and reenacted as follows:

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 to a North Dakota qualified nonprofit organization or qualified endowment held by or for a 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 nonprofit organization or 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 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" 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.
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~~any taxable year in which the ~~credit is first claimed~~charitable gift reduces federal taxable income, but only to the extent that the contribution reduced federal taxable income.

SECTION 5. AMENDMENT. Section 57-38-01.28 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.28. Marriage penalty credit.

1. A married couple filing a joint return under section 57-38-30.3 is allowed a credit of not to exceed three hundred dollars per couple as determined under this section. The tax commissioner shall adjust the maximum amount of the credit under this subsection each taxable year at the time and rate adjustments are made to rate schedules under subdivision g of subsection 1 of section 57-38-30.3.
 2. The credit under this section is the difference between the tax on the couple's joint North Dakota taxable income under the rates and income levels in subdivision b of subsection 1 of section 57-38-30.3 and the sum of the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the earnedqualified income of the lesser-earning spouse, and the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the couple's joint North Dakota taxable income, minus the earnedqualified income of the lesser-earning spouse.
 3. ~~The tax commissioner shall prepare and make available to taxpayers a comprehensive table showing the credit under this section at brackets of earnings of the lesser-earning spouse and joint taxable income. The brackets of earnings may not be more than two thousand dollars.~~
 4. For a nonresident or part-year resident, the credit under this section must be adjusted based on the percentage calculated under subdivision f of subsection 1 of section 57-38-30.3.
- ~~5.4.~~ For purposes of this section:
- a. "EarnedQualifying income" means the sum of the following, to the extent included in North Dakota taxable income:
 - (1) Earned income as defined in section 32(c)(2) of the Internal Revenue Code;
 - (2) Income received from a retirement pension, profit-sharing, stock bonus, or annuity plan; and
 - (3) Social security benefits as defined in section 86(d)(1) of the Internal Revenue Code.
 - b. "EarnedQualifying income of the lesser-earning spouse" means the earnedqualifying income of the spouse with the lesser amount of earnedqualifying income for the taxable year minus the sum of:

- (1) The amount for one exemption under section 151(d) of the Internal Revenue Code; and
- (2) One-half of the amount of the standard deduction under section 63(c)(2)(A)(4) of the Internal Revenue Code.

SECTION 6. AMENDMENT. Subsection 1 of section 57-38-01.31 of the North Dakota Century Code is amended and reenacted as follows:

1. A taxpayer who is an employer in this state is entitled to a credit against tax liability as determined under ~~section 57-38-29, sections 57-38-30, or and 57-38-30.3~~ equal to twenty-five percent of the reduction in compensation that the taxpayer continues to pay during the taxable year to, or on behalf of, each employee of the taxpayer during the period that the employee is mobilized under title 10 of the United States Code as a member of a reserve or national guard component of the armed forces of the United States. The maximum credit allowed for each eligible employee is one thousand dollars. The amount of the tax credit may not exceed the amount of the taxpayer's state tax liability for the tax year and an excess credit may be carried forward for up to five taxable years. For the purposes of this subsection:
 - a. "Reduction in compensation" means the amount by which the pay received during the taxable year by the employee for service under title 10 of the United States Code is less than the total amount of salary and related retirement plan contributions that would have been paid by the taxpayer to the employee for the same time period had the employee not been mobilized.
 - b. "Related retirement plan contributions" means the portion of voluntary or matching contributions paid by the taxpayer into a defined contribution plan maintained by the taxpayer for the employee.

SECTION 7. AMENDMENT. Section 57-38-29.3 of the North Dakota Century Code is amended and reenacted as follows:

57-38-29.3. Credit for premiums for long-term care partnership plan insurance coverage.

A credit against an individual's tax liability under this chapter is provided to each taxpayer in the amount of the premiums paid during the taxable year by the taxpayer for qualified long-term care partnership plan insurance coverage for the taxpayer or the taxpayer's spouse, or both. The credit under this section for each insured individual may not exceed two hundred fifty dollars in any taxable year. ~~An individual who claims the credit under this section may not also claim the credit under section 57-38-29.2 for the same policy.~~ For purposes of this section, "qualified long-term care partnership plan" is one that:

1. Is a qualified long-term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986, with an issue date on or after the date specified in an approved medicaid state plan amendment that provides for the disregard of assets;
2. Meets the requirements of the long-term care insurance model regulations and the long-term care insurance model act promulgated by the national association of insurance commissioners as adopted as of October 2000, or the insurance commissioner certifies that the policy meets those requirements; and
3. Is purchased by an individual who:
 - a. Has not attained age sixty-one as of the date of purchase, if the policy provides compound annual inflation protection;
 - b. Has attained age sixty-one but has not attained age seventy-six as of the date of purchase, if the policy provides some level of inflation protection; or

- c. Has attained age seventy-six as of the date of purchase.

SECTION 8. AMENDMENT. Subsections 2 and 3 of section 57-38-30.3 of the North Dakota Century Code are amended and reenacted as follows:

- 2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
 - a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
 - d. Reduced by thirty percent of the:
 - (1) ~~The excess of the taxpayer's net long-term capital gain and qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008,~~ for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.
 - (2) The qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.
 - e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
 - f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
 - g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
 - h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
 - i. Reduced by interest and income from bonds issued under chapter 11-37.
 - j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human

organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:

- (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
 - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
 - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
- k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
 - l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
 - m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.
 - n. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.
 - o. Reduced by the amount of income of a taxpayer, who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources within the boundaries of any reservation in this state.
3. ~~Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter. The same filing status used when filing federal income tax returns must be used when filing state income tax returns.~~

SECTION 9. AMENDMENT. Section 57-38-59.2 of the North Dakota Century Code is amended and reenacted as follows:

57-38-59.2. Withholding of lottery winnings.

The North Dakota lottery shall deduct and withhold ~~five and fifty-four one-hundredths percent~~ at the highest marginal rate provided in section 57-38-30.3 of the total proceeds of state lottery winnings as North Dakota withholding tax if the winnings are subject to withholding. For purposes of this section, "winnings subject to withholding" means the proceeds in excess of five thousand dollars won from a

lottery game operated pursuant to chapter 53-12. Every person who receives a payment from the winnings that are subject to withholding shall furnish the lottery director with a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the recipient. The North Dakota lottery shall file returns as provided in section 57-38-60 and is liable for the payment of the tax required to be withheld but is not liable to any person for the amount of the payment.

SECTION 10. AMENDMENT. Section 57-38.4-01 of the North Dakota Century Code is amended and reenacted as follows:

57-38.4-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Affiliated corporation" means a parent corporation and any corporation of which more than fifty percent of the voting stock is owned directly or indirectly by the parent corporation or another member of the water's edge group.
2. ~~"Domestic disclosure spreadsheet" means a spreadsheet that fully discloses the income reported to each state, the state tax liability, the method used for apportioning or allocating income to the various states, and other information provided for by rules as may be necessary to determine the proper amount of tax due to each state and to identify the water's edge group.~~
3. "Existing corporation" means a corporation that filed a North Dakota income tax return for any year after taxable year 1979 or was a successor to or unitary with a corporation that filed a North Dakota income tax return for any year after taxable year 1979.
- 4.3. "Foreign dividends" means any dividend received by a member of the water's edge group from any affiliated corporation incorporated outside the fifty states and District of Columbia, including amounts included in income computed under sections 951 through 954 of the Internal Revenue Code.
- 5.4. "Income from 80/20 corporations" means net book income after taxes of a corporation which is incorporated in the United States and eligible to be included in the federal consolidated return and which has twenty percent or less of its property and payroll as determined by factoring under chapter 57-38.1 assigned to locations inside the fifty states and the District of Columbia. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.
- 6.5. "New corporation" means a corporation that has not filed an income tax return in North Dakota for any year after the tax year 1979. A new corporation does not include a corporation which is a successor to or which is affiliated with a corporation that filed an income tax return in North Dakota for any year after the tax year 1979. A new corporation does not include a business reorganization or acquisition, except a corporation with no previous activity in North Dakota which acquires an existing corporation and increases and maintains the threshold activity of the existing corporation by twenty-five percent or more shall be treated as a new corporation.
- 7.6. "Threshold activity" means the yearly average combined property and payroll in North Dakota of a corporation and its affiliates for the previous three years.
- 8.7. "Water's edge group" includes the following entities:
 - a. Any affiliated corporation incorporated in the United States or a possession of the United States, as described in sections 931 through 936 of the Internal Revenue Code. Corporations incorporated in the United States must be eligible to be included in a federal consolidated return and must have more than twenty percent of its property and

payroll, as determined by factoring under chapter 57-38.1, assigned to locations inside the fifty states, the District of Columbia, and possessions of the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.

- b. Domestic international sales corporations, as described in sections 991 through 994 of the Internal Revenue Code, and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code.
- c. Export trade corporations, as described in sections 970 through 972 of the Internal Revenue Code.
- d. Foreign corporations deriving gain or loss from a disposition of a United States real property interest to the extent recognized under section 897 of the Internal Revenue Code.
- e. Any corporation incorporated outside the United States if over fifty percent of its voting stock is owned directly or indirectly by an affiliated corporation and if more than twenty percent of the average of its payroll and property is assignable to a location within the United States.

9-8. "Worldwide combined report" means a combined report with respect to a unitary affiliated group irrespective of the country or countries in which any member of the affiliated group is incorporated or conducts business activity.

SECTION 11. AMENDMENT. Subsection 1 of section 57-38.4-02 of the North Dakota Century Code is amended and reenacted as follows:

- 1. A corporation electing to file using the water's edge method must comply with the following:
 - a. The election must be made on the return as originally and timely filed.
 - b. ~~The corporation may not reduce taxable income for federal taxes deducted under subdivision c of subsection 1 of section 57-38-01.3.~~
 - c. The water's edge election is binding for five consecutive taxable years after making the election.
 - d. ~~The corporation must file with the tax commissioner a domestic disclosure spreadsheet, after which the corporation must file a domestic disclosure spreadsheet only every third year while the election remains in effect.~~

SECTION 12. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1124.

House Vote: Yeas 90 Nays 0 Absent 4

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

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