

September 2002

Introduced by

1 A BILL for an Act to amend and reenact subsections 1 and 2 of section 57-35.3-02,  
2 subsection 1 of section 57-38-01.3, and sections 57-38-30 and 57-38.4-02 of the North Dakota  
3 Century Code, relating to financial institutions taxes, the corporate income tax deduction for  
4 federal income taxes paid, and to change corporate income tax rates from graduated rates to a  
5 flat rate; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 57-35.3-02 of the North  
8 Dakota Century Code are amended and reenacted as follows:

- 9 1. In determining "taxable income" there must be added to federal taxable income:
- 10 a. The adjustments provided by subdivisions ~~d, e, and f~~ c, d, and g of  
11 subsection 1 of section 57-38-01.3;
- 12 b. Interest not subject to federal tax upon obligations of the state of North Dakota  
13 and its political subdivisions;
- 14 c. The amount of any charitable contribution deduction taken for federal income  
15 tax purposes under section 170 of the Internal Revenue Code;
- 16 d. In the case of a building and loan association or savings and loan association,  
17 the amount of any bad debt reserve deduction taken for federal income tax  
18 purposes under section 585 of the Internal Revenue Code; and
- 19 e. Dividends paid by a federal reserve bank to the extent not subject to federal  
20 tax.
- 21 2. In determining "taxable income" there must be subtracted from federal taxable  
22 income:
- 23 a. The adjustments provided by ~~subdivisions b, c, and h~~ subdivision b of  
24 subsection 1 of section 57-38-01.3;

- 1           b. In the case of a financial institution described in subdivision a of subsection 2  
2           of section 57-35.3-01, the adjustment provided by subdivision g of  
3           subsection 1 of section 57-38-01.3;
- 4           c. In the case of a building and loan association or savings and loan association  
5           that uses the bad debt reserve method under section 585 of the Internal  
6           Revenue Code to account for bad debts for federal income tax purposes, an  
7           amount equal to the deduction for bad debts that would have been allowed  
8           under section 166(a) of the Internal Revenue Code if a deduction had not  
9           been claimed under section 585 or 593;
- 10          d. The amount of any adjustments taken into account for federal income tax  
11          purposes under section 593(g) of the Internal Revenue Code;
- 12          e. The amount of any interest and expenses relating to income not taxable for  
13          federal income tax purposes if the income is taxable under sections  
14          57-35.3-01 through 57-35.3-12 and the interest and expenses were  
15          disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal  
16          Revenue Code in computing federal taxable income;
- 17          f. The amount of any wage and salary expenses disallowed as deductions  
18          under section 280C(a) of the Internal Revenue Code in computing federal  
19          taxable income;
- 20          g. An amount equal to the deduction for charitable contributions that would be  
21          allowed for federal income tax purposes under section 170 of the Internal  
22          Revenue Code if the percentage limitation of section 170(b)(2) of the Internal  
23          Revenue Code was applied in all relevant taxable periods to taxable income,  
24          rather than federal taxable income, but computed without regard to this  
25          subdivision and that portion of subdivision a that refers to subdivision g of  
26          subsection 1 of section 57-38-01.3. However, no deduction is allowable for a  
27          contribution if and to the extent that a credit is allowed for the contribution  
28          under section 57-35.3-05; ~~and~~
- 29          h. The amount of net income not allocated and apportioned to this state under  
30          sections 57-35.3-13 through 57-35.3-17, but only to the extent that the  
31          amount of net income not allocated and apportioned to this state under those

1 sections is not included in any adjustment made pursuant to the preceding  
2 subdivisions-; and

3 i. The amount of federal income tax liability for the same taxable year for which  
4 North Dakota taxable income is being determined, to the extent that the  
5 federal taxes are computed upon income that becomes part of North Dakota  
6 taxable income.

7 **SECTION 2. AMENDMENT.** Subsection 1 of section 57-38-01.3 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9 1. The taxable income of a corporation as computed pursuant to the provisions of the  
10 Internal Revenue Code of 1954, as amended, must be:

11 a. Reduced by any interest received from obligations of the United States that is  
12 included in taxable income or in the computation thereof on the federal return.

13 b. Reduced by any other income included in the taxable income, or in the  
14 computation thereof, on the federal return which is exempt from taxation by  
15 this state because of the provisions of the Constitution of North Dakota or the  
16 Constitution of the United States.

17 c. ~~Reduced by the amount of federal income tax liability, as computed under~~  
18 ~~chapter 1 of the Internal Revenue Code of 1986, as amended, for the same~~  
19 ~~taxable year for which the North Dakota return is being filed, to the extent that~~  
20 ~~the taxes are computed upon income which becomes a part of the North~~  
21 ~~Dakota taxable income. Provided, that no adjustment to federal income~~  
22 ~~taxes, paid or accrued, is required because of allowable deductions to federal~~  
23 ~~taxable income made under the cost recovery provisions of subdivision b of~~  
24 ~~subsection 5 of section 57-38-01. Federal income taxes for prior periods~~  
25 ~~assessed against the taxpayer by reason of audit or other adjustment by the~~  
26 ~~internal revenue service, or voluntary disclosure by the taxpayer, are not~~  
27 ~~deductible except in the period in which income so taxed was reported or~~  
28 ~~reportable or in which an adjustment was required but only after an~~  
29 ~~adjustment is made by or with the office of the state tax commissioner. A~~  
30 ~~refund of federal income tax must be reported and included in North Dakota~~  
31 ~~taxable income in the year in which the tax was originally deducted. Income~~

- 1                    ~~must be further reduced by federal alternative minimum tax when a federal~~  
2                    ~~credit for prior year minimum tax is taken. This reduction is limited to federal~~  
3                    ~~alternative minimum tax previously disallowed in computing North Dakota~~  
4                    ~~taxable income and may not exceed North Dakota taxable income computed~~  
5                    ~~before the North Dakota net operating loss deduction. Any excess may be~~  
6                    ~~carried forward to the next taxable year a federal credit for prior year minimum~~  
7                    ~~tax is taken.~~
- 8                    ~~e.~~ Increased by the amount of any income taxes, including income taxes of  
9                    foreign countries, or franchise or privilege taxes measured by income, to the  
10                    extent that such taxes were deducted to determine federal taxable income.
- 11                    ~~e.~~ d. Increased by the amount of any interest and dividends from foreign securities  
12                    and from securities of state and their political subdivisions exempt from  
13                    federal income tax, provided that interest upon obligations of the state of  
14                    North Dakota or any of its political subdivisions may not be included.
- 15                    ~~f.~~ e. Reduced by the amount of net income not allocated and apportioned to this  
16                    state under the provisions of chapter 57-38.1, but only to the extent that the  
17                    amount of net income not allocated and apportioned to this state under the  
18                    provisions of that chapter is not included in any adjustment made pursuant to  
19                    the preceding subdivisions.
- 20                    ~~g.~~ f. Reduced by dividends or income received by any person from stock or  
21                    interest in any corporation, the income of which has been assessed and paid  
22                    by a corporation under this chapter or sections 57-35.3-01 through  
23                    57-35.3-12, received by the taxpayer and included in the gross income within  
24                    the income year if such corporation has reported the name and address of  
25                    each person owning stock and the amount of dividends or income paid each  
26                    such person during the year, but when only part of the income of any  
27                    corporation has been assessed and income tax paid under this chapter or  
28                    sections 57-35.3-01 through 57-35.3-12, only a corresponding part of the  
29                    dividends or income received therefrom may be deducted.
- 30                    ~~h.~~ ~~Repealed by S.L. 1999, ch. 487, § 3.~~

1           i- g.   Increased by the amount of any special deductions and net operating loss  
2                   deductions to the extent that these items were deducted in determining  
3                   federal taxable income.

4           j- h.   Reduced by dividends paid, as defined in section 561 of the Internal Revenue  
5                   Code of 1986, as amended, by a regulated investment company or a fund of a  
6                   regulated investment company as defined in section 851(a) or 851(g) of the  
7                   Internal Revenue Code of 1986, as amended, except that the deduction for  
8                   dividends paid is not allowed with respect to dividends attributable to any  
9                   income that is not subject to taxation under this chapter when earned by the  
10                  regulated investment company. Sections 852(b)(7) and 855 of the Internal  
11                  Revenue Code of 1986, as amended, apply for computing the deduction for  
12                  dividends paid. A regulated investment company is not allowed a deduction  
13                  for dividends received as defined in sections 243 through 245 of the Internal  
14                  Revenue Code of 1986, as amended.

15                  Provided, however, that each adjustment in the above subdivisions authorized  
16                  under law is allowed only to the extent that the adjustment is allocated and  
17                  apportioned to North Dakota income.

18                  **SECTION 3. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is  
19                  amended and reenacted as follows:

20                  **57-38-30. Imposition and rate of tax on corporations.** A Except as provided in  
21                  subsection 3 of section 57-38.4-02, a tax is hereby imposed upon the taxable income of every  
22                  domestic and foreign corporation received from the sources described in sections 57-38-12,  
23                  57-38-13, and 57-38-14, which must be levied, collected, and paid annually as in this chapter  
24                  provided:

- 25                  1.   a.   ~~For the first three thousand dollars of taxable income, at the rate of three~~  
26                          ~~percent.~~  
27                          b.   ~~On all taxable income above three thousand dollars and not in excess of eight~~  
28                          ~~thousand dollars, at the rate of four and one half percent.~~  
29                          e.   ~~On all taxable income above eight thousand dollars and not in excess of~~  
30                          ~~twenty thousand dollars, at the rate of six percent.~~

- 1           d. ~~On all taxable income above twenty thousand dollars, and not in excess of~~  
2           ~~thirty thousand dollars, at the rate of seven and one half percent.~~
- 3           e. ~~On all taxable income above thirty thousand dollars, and not in excess of fifty~~  
4           ~~thousand dollars, at the rate of nine percent.~~
- 5           f. ~~On all taxable income above fifty thousand dollars, at the rate of ten and~~  
6           ~~one half percent. The tax imposed on corporations by this chapter is imposed~~  
7           ~~on taxable income at the rate of six and eighty-four hundredths percent.~~
- 8           2. A corporation that has paid North Dakota alternative minimum tax in years  
9           beginning before January 1, 1991, may carry over any alternative minimum tax  
10           credit remaining to the extent of the regular income tax liability of the corporation  
11           for a period not to exceed four taxable years.

12           **SECTION 4. AMENDMENT.** Section 57-38.4-02 of the North Dakota Century Code is  
13           amended and reenacted as follows:

14           **57-38.4-02. Water's edge election.** A corporation required to file a worldwide unitary  
15           combined report must do so unless it elects to apportion its income using the water's edge  
16           method.

- 17           1. A corporation electing to file using the water's edge method must comply with the  
18           following:
- 19           a. The election must be made on the return as originally and timely filed.
- 20           b. ~~The corporation may not reduce taxable income for federal taxes deducted~~  
21           ~~under subdivision c of subsection 1 of section 57-38-01.3.~~
- 22           e. The water's edge election is binding for five consecutive taxable years after  
23           making the election.
- 24           e. c. The corporation must file with the tax commissioner a domestic disclosure  
25           spreadsheet, after which the corporation must file a domestic disclosure  
26           spreadsheet only every third year while the election remains in effect.
- 27           2. All corporations electing the water's edge method must include the income and  
28           apportionment factors of the water's edge group. Foreign dividends and income  
29           from 80/20 corporations must be included as follows:
- 30           a. An existing corporation must include fifty percent of foreign dividends and  
31           sixty percent of income from 80/20 corporations. However, an existing

1 corporation that increases and maintains a threshold activity by twenty-five  
2 percent or more, but not by business reorganization or acquisition, is only  
3 required to include thirty percent of foreign dividends and thirty percent of  
4 income from 80/20 corporations.

5 b. A new corporation must include thirty percent of foreign dividends and thirty  
6 percent of income from 80/20 corporations.

7 c. For taxable years beginning after December 31, 1994, all corporations making  
8 the water's edge election may reduce the inclusion to include thirty percent of  
9 foreign dividends and thirty percent of income from 80/20 corporations.

10 3. Notwithstanding subsection 1 of section 57-38-30, a tax is imposed upon the  
11 taxable income of a corporation electing to file using the water's edge method, to  
12 be levied, collected, and paid annually as provided in chapter 57-38, at the rate of  
13 nine and nine-tenths percent.

14 **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
15 December 31, 2002.