

September 2002

Introduced by

1 A BILL for an Act to amend and reenact section 10-06.1-22, subsection 2 of section 10-30.1-01,
2 subsection 4 of section 10-33-124, section 40-63-06, subsection 5 of section 40-63-07, sections
3 57-35.3-02, 57-35.3-06, 57-38-01, and 57-38-01.1, subdivision i of subsection 1 of section
4 57-38-01.2, subsections 1 and 2 of section 57-38-01.7, section 57-38-01.17, subsection 5 of
5 section 57-38-04, sections 57-38-07.1 and 57-38-34, subsection 2 of section 57-38-38,
6 subsection 12 of section 57-38-40, sections 57-38-44, 57-38-45, 57-38-62, and 57-38.1-17.2 of
7 the North Dakota Century Code, relating to elimination of the corporate income tax; to repeal
8 sections 57-38-01.3, 57-38-01.4, 57-38-07.2, 57-38-11, 57-38-12, 57-38-13, 57-38-14,
9 57-38-30, 57-38-30.1, 57-38-30.5, 57-38-32, 57-38-64, and 57-38.1-17.3 and chapter 57-38.4
10 of the North Dakota Century Code, relating to the corporate income tax; to provide for
11 application; and to provide an effective date.

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

13 **SECTION 1. AMENDMENT.** Section 10-06.1-22 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **10-06.1-22. Tax commissioner to compare returns and reports.** Each year the tax
16 commissioner shall select at random at least five percent of the income tax returns filed by
17 ~~corporations or~~ limited liability companies which report on income from farming or ranching
18 operations and shall compare such returns with the annual report required to be filed with the
19 secretary of state by section 10-06.1-17 and shall forward any apparent violations to the
20 attorney general and the governor.

21 **SECTION 2. AMENDMENT.** Subsection 2 of section 10-30.1-01 of the North Dakota
22 Century Code is amended and reenacted as follows:

23 2. "Taxpayer" includes any individual, ~~corporation,~~ or fiduciary subject to a tax or a
24 duty to file a tax return imposed by chapter 57-38.

1 **SECTION 3. AMENDMENT.** Subsection 4 of section 10-33-124 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 4. a. An individual ~~or a corporation that~~ who buys membership in, or pays dues or
4 contributes to, a nonprofit development corporation is entitled to an income
5 tax credit equal to twenty-five percent of the amount paid.
- 6 b. This credit may not be claimed by an individual who elects to file an income
7 tax return under section 57-38-30.3 ~~or by a corporation that is recognized as a~~
8 ~~subchapter S corporation under section 57-38-01.4.~~
- 9 c. No taxpayer is entitled to more than two thousand dollars in total income tax
10 credits under this section.
- 11 d. The amount of the credit under this section in excess of the taxpayer's income
12 tax liability may be carried forward for up to seven taxable years.

13 **SECTION 4. AMENDMENT.** Section 40-63-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **40-63-06. Historic preservation and renovation tax credit.** A credit against state tax
16 liability as determined under sections 57-35.3-03, 57-38-29, ~~57-38-30~~, and 57-38-30.3 is
17 allowed for investments in the historic preservation or renovation of property within the
18 renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to
19 a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in
20 which the preservation or renovation is completed. Any excess credit may be carried forward
21 for a period of up to five taxable years.

22 **SECTION 5. AMENDMENT.** Subsection 5 of section 40-63-07 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 24 5. A credit against state tax liability as determined under section 57-35.3-03,
25 57-38-29, ~~57-38-30~~, or 57-38-30.3 is allowed for investments in a renaissance fund
26 organization. The amount of the credit is fifty percent of the amount invested in the
27 renaissance fund organization during the taxable year. Any amount of credit which
28 exceeds a taxpayer's tax liability for the taxable year may be carried forward for up
29 to five taxable years after the taxable year in which the investment was made.

30 **SECTION 6. AMENDMENT.** Section 57-35.3-02 of the North Dakota Century Code is
31 amended and reenacted as follows:

57-35.3-02. Taxable income.

1. In determining "taxable income" there must be added to federal taxable income:

a. ~~The following adjustments provided by subdivisions d, e, and i of subsection 1 of section 57-38-01.3:~~

(1) The amount of any income taxes, including income taxes of foreign countries, or franchise or privilege taxes measured by income, to the extent that such taxes were deducted to determine federal taxable income;

(2) The amount of any interest and dividends from foreign securities and from securities of states and their political subdivisions exempt from federal income tax, provided that interest upon obligations of the state of North Dakota or any of its political subdivisions may not be included; and

(3) The amount of any special deductions and net operating loss deductions to the extent that these items were deducted in determining federal taxable income;

b. Interest not subject to federal tax upon obligations of the state of North Dakota and its political subdivisions;

c. The amount of any charitable contribution deduction taken for federal income tax purposes under section 170 of the Internal Revenue Code;

d. In the case of a building and loan association or savings and loan association, the amount of any bad debt reserve deduction taken for federal income tax purposes under section 585 of the Internal Revenue Code; and

e. Dividends paid by a federal reserve bank to the extent not subject to federal tax.

2. In determining "taxable income" there must be subtracted from federal taxable income:

a. ~~The following adjustments provided by subdivisions b, c, and h of subsection 1 of section 57-38-01.3:~~

(1) Any income included in the taxable income, or in the computation thereof, on the federal return which is exempt from taxation by this state

- 1 because of the provisions of the Constitution of North Dakota or the
2 Constitution of the United States; and
- 3 (2) The amount of federal income tax liability, as computed under chapter 1
4 of the Internal Revenue Code of 1986, as amended, for the same
5 taxable year for which the North Dakota return is being filed, to the
6 extent that the taxes are computed upon income which becomes a part
7 of the North Dakota taxable income. Provided, that no adjustment to
8 federal income taxes, paid or accrued, is required because of allowable
9 deductions to federal taxable income made under the cost recovery
10 provisions of subdivision b of subsection 5 of section 57-38-01. Federal
11 income taxes for prior periods assessed against the taxpayer by reason
12 of audit or other adjustment by the internal revenue service, or
13 voluntary disclosure by the taxpayer, are not deductible except in the
14 period in which income so taxed was reported or reportable or in which
15 an adjustment was required but only after an adjustment is made by or
16 with the office of the state tax commissioner. A refund of federal
17 income tax must be reported and included in North Dakota taxable
18 income in the year in which the tax was originally deducted. Income
19 must be further reduced by federal alternative minimum tax when a
20 federal credit for prior year minimum tax is taken. This reduction is
21 limited to federal alternative minimum tax previously disallowed in
22 computing North Dakota taxable income and may not exceed North
23 Dakota taxable income computed before the North Dakota net
24 operating loss deduction. Any excess may be carried forward to the
25 next taxable year a federal credit for prior year minimum tax is taken;
- 26 b. In the case of a financial institution described in subdivision a of subsection 2
27 of section 57-35.3-01, the ~~adjustment provided by subdivision g of~~
28 ~~subsection 1 of section 57-38-01.3~~ dividends or income received by any
29 person from stock or interest in any corporation, the income of which has
30 been assessed and paid by a corporation under this chapter, received by the
31 taxpayer and included in the gross income within the income year if such

corporation has reported the name and address of each person owning stock and the amount of dividends or income paid each such person during the year, but when only part of the income of any corporation has been assessed and tax paid under this chapter, only a corresponding part of the dividends or income received therefrom may be deducted;

- c. In the case of a building and loan association or savings and loan association that uses the bad debt reserve method under section 585 of the Internal Revenue Code to account for bad debts for federal income tax purposes, an amount equal to the deduction for bad debts that would have been allowed under section 166(a) of the Internal Revenue Code if a deduction had not been claimed under section 585 or 593;
- d. The amount of any adjustments taken into account for federal income tax purposes under section 593(g) of the Internal Revenue Code;
- e. The amount of any interest and expenses relating to income not taxable for federal income tax purposes if the income is taxable under sections 57-35.3-01 through 57-35.3-12 and the interest and expenses were disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal Revenue Code in computing federal taxable income;
- f. The amount of any wage and salary expenses disallowed as deductions under section 280C(a) of the Internal Revenue Code in computing federal taxable income;
- g. An amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under section 170 of the Internal Revenue Code if the percentage limitation of section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable periods to taxable income, rather than federal taxable income, but computed without regard to this subdivision ~~and that portion of subdivision a that refers to subdivision g of subsection 1 of section 57-38-01-3.~~ However, no deduction is allowable for a contribution if and to the extent that a credit is allowed for the contribution under section 57-35.3-05; and

h. The amount of net income not allocated and apportioned to this state under sections 57-35.3-13 through 57-35.3-17, but only to the extent that the amount of net income not allocated and apportioned to this state under those sections is not included in any adjustment made pursuant to the preceding subdivisions.

3. A net operating loss for any prior taxable period, attributable to North Dakota sources, must be allowed as a deduction from the sum otherwise calculated under this section to the extent that it exceeds the taxable income for each of the prior taxable years to which the loss may be carried under sections 57-35.3-01 through 57-35.3-12 or under prior chapters 57-35, 57-35.1, or 57-35.2, or prior provisions governing corporations under chapter 57-38, governing the taxation of the taxpayer. Net operating losses may be carried forward for the same time period as federal net operating losses may be carried forward. If a financial institution uses an apportionment formula in the loss year to determine the amount of income or loss that is attributable to North Dakota sources, the amount of the North Dakota loss so determined is the net operating loss attributable to North Dakota sources for purposes of this subsection. No deduction may be taken for a carryforward when determining the amount of net operating loss that is attributable to North Dakota sources. No net operating loss carryback deduction is allowed.

4. The commissioner may adopt rules to prevent requiring income that had been previously taxed under sections 57-35.3-01 through 57-35.3-12, or prior law governing the taxation of financial institutions, from being taxed again because of the provisions of sections 57-35.3-01 through 57-35.3-12 and to adopt rules to prevent any income from becoming exempt from taxation because of sections 57-35.3-01 through 57-35.3-12 if it would otherwise have been subject to taxation under sections 57-35.3-01 through 57-35.3-12.

5. If it appears to the commissioner that the segregation of assets shown by any return made under sections 57-35.3-01 through 57-35.3-12 does not properly reflect the taxpayer's activity or business done, or the income earned from the taxpayer's activity or from business done in this state, because of the character of

the taxpayer's business and the character and location of its assets, the commissioner may equitably adjust the tax.

SECTION 7. AMENDMENT. Section 57-35.3-06 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-06. Tax return. On or before April fifteenth of each year, the taxpayer shall file with the commissioner, on forms or in a manner prescribed by the commissioner, a report in writing under oath showing the amount of taxable income of the financial institution for the preceding calendar year. If required by the commissioner, the return must be accompanied by a true copy of the federal income tax return of the taxpayer or by equivalent information in the form and manner prescribed by the commissioner. A true copy of the federal income tax return must be furnished to the commissioner by the taxpayer at any time after the taxpayer has filed the return required by this section if required by the commissioner before the expiration of ~~the applicable period for assessment of additional tax liability under section 57-38-38~~ six years after the due date of the return or the filing date of the return, whichever is later. The commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that has the same validity and consequence as the actual signature and written declaration for a paper return. The commissioner may grant a reasonable extension of time for filing a return ~~under the standards and terms applicable to other corporations under section 57-38-34.~~

SECTION 8. AMENDMENT. Section 57-38-01 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chronically mentally ill" means a person who, as a result of a mental disorder, exhibits emotional or behavioral functioning which is so impaired as to interfere substantially with the person's capacity to remain in the community without verified supportive treatment or services of a long-term or indefinite duration. This mental disability must be severe and persistent, resulting in a long-term limitation of the person's functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment, and recreation.

2. ~~"Corporation" includes associations, business trusts, joint stock companies, and insurance companies.~~

~~3.~~ "Developmental disability" has the same meaning as defined in section 25-01.2-01.

~~4.~~ ~~"Domestic" when applied to a corporation means created or organized under the laws of North Dakota.~~

~~5.~~ 3. "Federal Internal Revenue Code of 1954, as amended", "United States Internal Revenue Code of 1954, as amended", and "Internal Revenue Code of 1954, as amended", mean the United States Internal Revenue Code of 1986, as amended.

Reference to the Internal Revenue Code of 1954, as amended, includes a

reference to the United States Internal Revenue Code of 1986, as amended, and

reference to the United States Internal Revenue Code of 1986, as amended,

includes a reference to the provisions of law formerly known as the Internal

Revenue Code of 1954, as amended.

a. Except that the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, are not adopted in those instances when the minimum investment by the lessor is less than one hundred percent for the purpose of computing North Dakota taxable income for individuals, estates, and trusts, ~~and corporations~~ for taxable years beginning on or after January 1, 1983.

Therefore, federal taxable income must be increased, or decreased, as the case may be, to reflect the adoption or nonadoption of the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, and such adjustments must be made before computing income subject to apportionment.

b. Provided, that one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1982, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1985, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1983, may be deducted from federal taxable income in each of the next two years beginning after December 31, 1987, and one-half of the amount not

1 allowed as an accelerated cost recovery system depreciation deduction for
2 the taxable year beginning after December 31, 1984, may be deducted from
3 federal taxable income in each of the next two taxable years beginning after
4 December 31, 1989. All such adjustments must be made before computing
5 income subject to apportionment.

6 c. Provided, that the depreciation adjustments allowed in subdivision b shall be
7 limited to those eligible assets acquired during taxable years beginning after
8 December 31, 1982. Acquisitions made before taxable years beginning
9 January 1, 1983, must be depreciated pursuant to the methods permissible
10 under Internal Revenue Code provisions in effect prior to January 1, 1981.

11 ~~d. Except that for purposes of applying the Internal Revenue Code of 1954, as~~
12 ~~amended, with respect to actual distributions made after December 31, 1984,~~
13 ~~by a domestic international sales corporation, or former domestic international~~
14 ~~sales corporation, which was a domestic international sales corporation on~~
15 ~~December 31, 1984, any accumulated domestic international sales~~
16 ~~corporation income of a domestic international sales corporation, or former~~
17 ~~domestic international sales corporation, which is derived before January 1,~~
18 ~~1985, may not be treated as previously taxed income.~~

19 ~~6. "Foreign" when applied to a corporation means created or organized outside of~~
20 ~~North Dakota.~~

21 ~~7.~~ 4. "Mental disorder" means a substantial disorder of the person's emotional
22 processes, thought, cognition, or memory. Mental disorder is distinguished from:
23 a. Conditions which are primarily those of drug abuse, alcoholism, or mental
24 retardation, unless in addition to one or more of these conditions, the person
25 has a mental disorder.
26 b. The declining mental abilities that accompany impending death.
27 c. Character and personality disorders characterized by lifelong and deeply
28 ingrained antisocial behavior patterns, including sexual behaviors which are
29 abnormal and prohibited by statute, unless the behavior results from a mental
30 disorder.

- 1 ~~8.~~ 5. "Person" includes individuals, fiduciaries, partnerships, ~~corporations~~, and limited
2 liability companies.
- 3 ~~9.~~ 6. "Qualified investment fund" means any regulated investment company as defined
4 under the Internal Revenue Code, which for the calendar year in which the
5 distribution is paid:
- 6 a. Has investments in interest-bearing obligations issued by or on behalf of this
7 state, any political subdivision of this state, or the United States government;
8 and
- 9 b. Has provided the tax commissioner with a detailed schedule of the assets
10 contained in its investment portfolio and a schedule of the income attributable
11 to each asset in its investment portfolio for the calendar year.
- 12 ~~10.~~ 7. "Resident" applies only to natural persons and includes, for the purpose of
13 determining liability for the tax imposed by this chapter upon or with reference to
14 the income of any income year, any person domiciled in the state of North Dakota
15 and any other person who maintains a permanent place of abode within the state
16 and spends in the aggregate more than seven months of the income year within
17 the state. A full-time active duty member of the armed forces assigned to a military
18 installation in this state, or the spouse of such a person, is not a "resident" of this
19 state for purposes of this chapter simply by reason of having voted in an election in
20 this state.
- 21 ~~11.~~ 8. "Tax commissioner" means the state tax commissioner.
- 22 ~~12.~~ 9. "Taxable income" in the case of individuals, estates, and trusts, ~~and corporations~~
23 means the taxable income as computed for an individual, estate, or trust, ~~or~~
24 ~~corporation~~ for federal income tax purposes under the United States Internal
25 Revenue Code of 1954, as amended, plus or minus such adjustments as may be
26 provided by this act and chapter or other provisions of law. Except as otherwise
27 expressly provided, "taxable income" does not include any amount computed for
28 federal alternative minimum tax purposes.
- 29 ~~13.~~ 10. "Taxpayer" includes any individual, ~~corporation~~, or fiduciary subject to a tax
30 imposed by this chapter.

14. 11. Any term, as used in this code, as it pertains to the filing and reporting of income, deductions, or exemptions or the paying of North Dakota income tax, has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or contemplated.

SECTION 9. AMENDMENT. Section 57-38-01.1 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.1. Declaration of legislative intent. It is the intent of the legislative assembly to simplify the state income tax laws and to demonstrate that federal legislation is not necessary to deal with certain interstate tax problems, by adopting the federal definition of taxable income as the starting point for the computation of state income tax by all taxpayers and providing the necessary adjustments thereto to substantially preserve and maintain existing exemptions and deductions. ~~It is the further intent of the legislative assembly to eliminate double taxation of the earnings of small corporations by recognizing a subchapter S election when made for federal income tax purposes.~~

SECTION 10. AMENDMENT. Subdivision i of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is amended and reenacted as follows:

- i. Reduced by any dividends or income, up to a maximum of fifteen thousand dollars, received from stock or interest in any corporation and included in the adjusted gross income as computed for federal income tax purposes when ~~the income of such corporation has been assessed and tax paid by the corporation under this chapter or sections 57-35.3-01 through 57-35.3-12 and such dividends or income was received by the taxpayer as income during the income year~~ if such corporation has reported the name and address of each North Dakota resident owning stock and the amount of dividends or income paid each such person during the year; ~~provided, that when only part of the income of any corporation shall have been assessed and corporation income tax paid thereon under this chapter or sections 57-35.3-01 through 57-35.3-12, only a corresponding part of the dividends or income received therefrom and included in federal adjusted gross income shall be subtracted.~~ The commissioner is hereby authorized to prescribe rules and regulations to

1 implement this subdivision to avoid injustice to taxpayers, to prevent
2 duplication of deductions, and to eliminate taxation of income not fairly and
3 properly taxable under this chapter.

4 **SECTION 11. AMENDMENT.** Subsections 1 and 2 of section 57-38-01.7 of the North
5 Dakota Century Code are amended and reenacted as follows:

- 6 1. At the election of the taxpayer, there must be allowed, subject to the applicable
7 limitations provided in this subsection, as a credit against the income tax imposed
8 by this chapter for the taxable year, an amount equal to fifty percent of the
9 aggregate amount of charitable contributions made by the taxpayer during the year
10 to nonprofit private institutions of higher education located within the state or to the
11 North Dakota independent college fund.

12 ~~a. In the case of a taxpayer other than a corporation, the~~ The amount allowable
13 as a credit under this subsection for any taxable year may not exceed forty
14 percent of the taxpayer's total income tax under this chapter for the year, or
15 two hundred fifty dollars, whichever is less.

16 ~~b. In the case of a corporation, the amount allowable as a credit under this~~
17 ~~subsection for any taxable year may not exceed twenty percent of the~~
18 ~~corporation's total income tax under this chapter for the year, or two thousand~~
19 ~~five hundred dollars, whichever is less.~~

- 20 2. At the election of the taxpayer, there must be allowed, subject to the applicable
21 limitations provided in this subsection, as a credit against the income tax imposed
22 by this chapter for the taxable year, an amount equal to fifty percent of the
23 aggregate amount of charitable contributions made by the taxpayer during the year
24 directly to nonprofit private institutions of secondary education, located within the
25 state.

26 ~~a. In the case of a taxpayer other than a corporation, the~~ The amount allowable
27 as a credit under this subsection for any taxable year may not exceed forty
28 percent of the taxpayer's total income tax under this chapter for the year, or
29 two hundred fifty dollars, whichever is less.

30 ~~b. In the case of a corporation, the amount allowable as a credit under this~~
31 ~~subsection for any taxable year may not exceed twenty percent of the~~

corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

SECTION 12. AMENDMENT. Section 57-38-01.17 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.17. Credit for investments in development corporations. An individual, estate, or trust, ~~or corporation~~ is allowed, as a credit against a tax otherwise due under section 57-38-29 ~~or 57-38-30~~, the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 10-33-124.

SECTION 13. AMENDMENT. Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Whenever a trade or business is carried on partly within and partly without this state by a nonresident of this state, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of ~~corporations~~ taxpayers doing business within and without this state.

SECTION 14. AMENDMENT. Section 57-38-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-38-07.1. Taxation of ~~two or more member~~ limited liability companies. For purposes of this chapter, a limited liability company ~~having two or more members that is formed under either the laws of this state or under similar laws of another state, and that is considered to be a partnership for federal income tax purposes~~, is considered to be a partnership and the members must be considered to be partners. ~~A limited liability company having two or more members that is not treated as a partnership for federal income tax purposes must be treated as a corporation for state tax purposes.~~

SECTION 15. AMENDMENT. Section 57-38-34 of the North Dakota Century Code is amended and reenacted as follows:

57-38-34. Time and place of filing returns - Interest on tax when time for filing is extended.

1. Returns must be in such form as the tax commissioner from time to time may prescribe and may include the requirement that a copy of the taxpayer's federal income tax return or a portion thereof or information reflected thereon be attached

to, furnished with, or included in the taxpayer's state income tax return. The taxpayer's state income tax return must contain a method for the taxpayer to identify the school district in which the taxpayer resides and must be filed with the tax commissioner's office in Bismarck, North Dakota. The tax commissioner shall prepare blank forms for use in making returns and shall cause them to be distributed throughout this state, but failure to receive or secure a form does not relieve a taxpayer from making a return.

2. Returns made on the basis of the calendar year must be filed on or before the fifteenth day of April following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the fourth month following the close of the fiscal year.

~~3. Returns for cooperatives, domestic international sales corporations, and foreign sales corporations, however, made on the basis of the calendar year must be filed on or before the fifteenth day of September following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the ninth month following the close of the fiscal year.~~

~~4.~~ Returns for exempt organizations required to report unrelated business taxable income under subsection 2 of section 57-38-09 made on the basis of the calendar year must be filed on or before the fifteenth day of May following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the fifth month following the close of the fiscal year.

~~5.~~ 4. A taxpayer actively serving in the armed forces or merchant marine, outside the boundaries of the United States, may defer the filing of an income tax return and the payment of the income tax until such time as the federal income tax return is required to be filed at which time the state income tax return, with payment of tax, will also be due. No interest or penalty accrues to the date of such filing.

~~6.~~ 5. The tax commissioner may grant a reasonable extension of time for filing a return when, in the judgment of the tax commissioner, good cause exists.

SECTION 16. AMENDMENT. Subsection 2 of section 57-38-38 of the North Dakota Century Code is amended and reenacted as follows:

2. For taxable years beginning before January 1, 1991, as to any ~~corporation or other~~ person whose principal place for managing or directing a business is outside North Dakota, the tax commissioner has six years after the due date of the return or six years after the return was filed, whichever period expires later, to audit the return of the ~~corporation or other~~ person and assess any additional tax found due. Effective for the taxable years beginning after December 31, 1990, and before January 1, 1993, the tax commissioner has five years to audit the return of the ~~corporation or other~~ person and assess any additional tax found due. Effective for taxable years beginning after December 31, 1992, and before January 1, 1995, the time period for assessment under this subsection is four years. Effective for taxable years beginning after December 31, 1994, the time period for assessment under this subsection is three years.

SECTION 17. AMENDMENT. Subsection 12 of section 57-38-40 of the North Dakota Century Code is amended and reenacted as follows:

12. The tax commissioner shall reconsider the denial of the claim for credit or refund after the filing of a protest. The reconsideration may include the further examination by the tax commissioner or the authorized representative of the tax commissioner of a taxpayer's books, papers, records, or memoranda, ~~including corporate minutes and committee notes.~~

SECTION 18. AMENDMENT. Section 57-38-44 of the North Dakota Century Code is amended and reenacted as follows:

57-38-44. Tax a personal debt. Every tax imposed by this chapter, and all increases, interest, and penalties thereon, becomes, from the time it is due and payable, a personal debt from the person ~~or corporation~~ liable to pay the same to this state.

SECTION 19. AMENDMENT. Section 57-38-45 of the North Dakota Century Code is amended and reenacted as follows:

57-38-45. Interest and penalties.

1. In addition to other increases to tax and penalty prescribed in this chapter, a taxpayer is subject to interest as follows:
 - a. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest on the tax at the rate of twelve percent

per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.

- b. If any amount of tax imposed by this chapter, including tax withheld by an employer, is not paid on or before the due date or extended due date for the payment, there must be added to the tax interest at the rate of one percent per month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid excepting the month in which the return was required to be filed or the tax became due.
- c. If upon audit an additional tax is found to be due, there must be added to the additional tax due interest at the rate of one percent of the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
- d. If the mathematical verification of a taxpayer's return results in additional tax due, there must be added to the additional tax interest at the rate of one percent of the additional tax due for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
- e. If a deficiency is determined for a tax period for which there was an overpayment that was applied to the following tax period's estimated tax under subsection 6 of section 57-38-62, interest accrues with respect to the amount of the deficiency that is equal to or less than the amount of the overpayment applied from the estimated tax payment date to which the overpayment was applied.
- f. If a deficiency is determined for a tax period for which there was an overpayment of estimated tax that was refunded, interest accrues, with respect to the amount of the deficiency which is equal to or less than the amount of the overpayment of estimated tax refunded, from the date of payment of the refund.

- 1 2. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to
2 penalties as follows:
- 3 a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall
4 fail to pay the amount shown as tax due on any return, including tax withheld
5 by an employer, filed on or before the due date or extended due date
6 prescribed therefor, there shall be added to the tax a penalty of five percent
7 thereof, or five dollars, whichever is greater.
- 8 b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall
9 fail to file a return, including the employer's withheld tax return, on or before
10 the due date or extended due date prescribed therefor, there shall be added a
11 penalty equal to five percent of the tax required to be reported, or five dollars,
12 whichever is greater, if the failure is for not more than one month, counting
13 each fraction of a month as an entire month, with an additional five percent for
14 each additional month or fraction thereof during which the failure continues,
15 not exceeding twenty-five percent in the aggregate.
- 16 c. If upon audit of a taxpayer's return, including tax withheld by an employer, an
17 additional tax is found to be due, there shall be added to the tax penalty as
18 prescribed in subdivision a or b.
- 19 d. If the mathematical verification of a taxpayer's return, including tax withheld by
20 an employer, results in additional tax due, there shall be added to the tax
21 penalty as prescribed in subdivision a or b.
- 22 e. The provisions of subdivision a, b, c, or d do not apply to the extent it has
23 been determined that the taxpayer has offsetting overpayments of income
24 taxes which have not been refunded.
- 25 3. Any person including any ~~officer or employee of any corporation or any~~ member or
26 employee of any partnership or any member, employee, governor, or manager of a
27 limited liability company who, with intent to evade any requirement of this chapter,
28 shall fail to pay any tax, or to make, sign, or verify any return, or to supply any
29 information required by law, or under the provisions of this chapter, or who with like
30 intent shall make, render, sign, or verify any false or fraudulent information, shall
31 be liable to a penalty of not more than one thousand dollars to be recovered by the

attorney general, in the name of the state, by action in any court of competent jurisdiction. Such person shall also be guilty of a class A misdemeanor.

4. In case any person ~~or any corporation~~ fails to pay any tax, addition to tax, interest, or penalty imposed by this chapter, the attorney general shall bring action for the recovery of the amount of the tax, addition to tax, interest, or penalty which may be due, in the name of the state, in any court of competent jurisdiction.

5. The tax commissioner may for good cause shown waive all or any part of any civil penalty or interest that attached pursuant to the provisions of this chapter.

6. If any taxpayer who has failed to file a return and has been notified by the tax commissioner of the delinquency, refuses or neglects within thirty days after such notice to file a proper return, the tax commissioner shall determine the income of such taxpayer according to the best information available, and shall assess the tax at not more than double the amount so determined. The appropriate interest and penalty prescribed in subsections 1 and 2 shall also be added.

~~7. If any corporation fails to file an income tax return as required by section 57-38-32 on the date prescribed in section 57-38-34, and after thirty days' notice to file is given by the tax commissioner, the tax commissioner may assess a penalty of up to five hundred dollars for each failure to file.~~

SECTION 20. AMENDMENT. Section 57-38-62 of the North Dakota Century Code is amended and reenacted as follows:

57-38-62. Payment of estimated income tax.

1. An individual, estate, or trust that is subject to section 6654 of the Internal Revenue Code relating to a failure to pay federal estimated income tax shall, at the time prescribed in this chapter, pay estimated tax for the current taxable year. Notwithstanding any other provision of this section, an individual, estate, or trust whose net tax liability for the preceding taxable year was less than five hundred dollars is not required to pay estimated tax for the current taxable year. Married individuals who file a joint federal income tax return and are subject to section 6654 of the Internal Revenue Code must each be deemed to be subject to the federal provision. If payment of estimated tax is required, the individual, estate, or trust shall, at the time prescribed in this chapter, pay the lesser of the following:

- 1 a. An amount which, when added to the taxpayer's withholding, equals ninety
- 2 percent of the taxpayer's current taxable year's net tax liability.
- 3 b. An amount which, when added to the taxpayer's withholding, equals one
- 4 hundred percent of the taxpayer's net tax liability for the immediately
- 5 preceding taxable year.
- 6 (1) This subdivision does not apply to any taxpayer who was not required
- 7 by this chapter to file a return for the immediately preceding taxable
- 8 year, to an individual who moved into this state during the immediately
- 9 preceding taxable year, or to an estate or trust that was not in existence
- 10 for the entire immediately preceding taxable year. The amount under
- 11 this subdivision must be deemed to be equal to the amount in
- 12 subdivision a if this part applies.
- 13 (2) In order to satisfy the requirements of this subdivision, married
- 14 individuals who are required to file separate state returns for the current
- 15 taxable year but who were required to file a joint state return for the
- 16 immediately preceding taxable year must each be required to pay
- 17 estimated tax in an amount which, when added to the individual's
- 18 withholding, equals the net tax liability which would have been
- 19 computed for the immediately preceding taxable year if separate state
- 20 returns had been required to be filed.
- 21 (3) In order to satisfy the requirements of this subdivision, married
- 22 individuals who are required to file a joint state return for the current
- 23 taxable year but were required to file separate state returns for the
- 24 immediately preceding taxable year must be required to pay estimated
- 25 tax in an amount which, when added to their withholding, equals the
- 26 sum of their separate net tax liabilities for the immediately preceding
- 27 taxable year.
- 28 2. ~~A corporation shall, at the time prescribed in this chapter, pay estimated tax for the~~
- 29 ~~current taxable year if the corporation's estimated tax can reasonably be expected~~
- 30 ~~to exceed five thousand dollars and if the corporation's net tax liability for the~~
- 31 ~~immediately preceding taxable year exceeded five thousand dollars. If payment of~~

estimated tax is required, the corporation shall, at the time prescribed in this chapter, pay the lesser of the following:

- a. ~~Ninety percent of the corporation's current taxable year's net tax liability.~~
- b. ~~One hundred percent of the corporation's net tax liability for the immediately preceding taxable year.~~

3. The provisions of section 57-38-45, except those provisions relating to the imposition of a penalty, apply in case of nonpayment, late payment, or underpayment of estimated tax. For purposes of applying the interest provisions of section 57-38-45, interest accrues on a per annum basis from the due date of an installment to the fifteenth day of the fourth month following the end of the current taxable year or, with respect to any portion of the estimated tax required to be paid, the date on which the portion thereof is paid, whichever date is earlier.

~~Notwithstanding the other provisions of this section, no interest is due if the estimated tax paid on or before each due date under section 57-38-63 by a corporation is based on the annualized or adjusted seasonal method under section 6655 of the Internal Revenue Code.~~ Notwithstanding the other provisions of this section, no interest is due if the estimated tax of an individual, estate, or trust is less than five hundred dollars per income tax return filed.

4. 3. For purposes of this section, "estimated tax" means the amount that a taxpayer estimates to be income tax under this chapter for the current taxable year less the amount of any credits allowable, including tax withheld.

5. 4. For purposes of this section, "net tax liability" means the amount of income tax computed for the taxable year as shown on the return less the amount of any credits allowable except tax withheld and estimated tax paid.

6. 5. An individual ~~or corporation~~ may apply a tax overpayment from a preceding taxable year as an estimated tax payment on the individual's ~~or corporation's~~ behalf for the taxable year succeeding the overpayment. The individual ~~or corporation~~ may elect to apply the overpayment to specific estimated tax installments. If the individual ~~or corporation~~ does not specify the installment period toward which the overpayment is to be applied, the individual ~~or corporation~~ must be considered to have elected to

1 apply the overpayment toward the first required estimated tax installment for the
2 succeeding taxable year.

3 **SECTION 21. AMENDMENT.** Section 57-38.1-17.2 of the North Dakota Century Code
4 is amended and reenacted as follows:

5 **57-38.1-17.2. Taxation of ~~two or more member~~ limited liability companies.** For
6 purposes of this chapter, a limited liability company ~~having two or more members that is formed~~
7 ~~under either the laws of this state or under similar laws of another state and that is considered~~
8 ~~to be a partnership for federal income tax purposes~~ is considered to be a partnership and the
9 members must be considered to be partners. ~~A limited liability company having two or more~~
10 ~~members that is not treated as a partnership for federal income tax purposes must be treated~~
11 ~~as a corporation for state tax purposes.~~

12 **SECTION 22. REPEAL.** Sections 57-38-01.3, 57-38-01.4, 57-38-07.2, 57-38-11,
13 57-38-12, 57-38-13, 57-38-14, 57-38-30, 57-38-30.1, 57-38-30.5, 57-38-32, 57-38-64, and
14 57-38.1-17.3 and chapter 57-38.4 of the North Dakota Century Code are repealed.

15 **SECTION 23. EFFECTIVE DATE - APPLICATION.** This Act is effective for taxable
16 years beginning after December 31, 2002, and for taxable years beginning before January 1,
17 2003, the provisions of law amended or repealed by this Act remain effective as they existed
18 before the effective date of this Act.