

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2374

Introduced by

Senators Wardner, Flakoll, O'Connell

Representatives Belter, Carlson, Froelich

1 A BILL for an Act to amend and reenact subsection 2 of section 57-35.3-01, subsections 1 and
2 2 of section 57-35.3-02, sections 57-35.3-03, 57-35.3-05, 57-35.3-08, 57-35.3-12, subsection 1
3 of section 57-38-01.3, and section 57-38-30 of the North Dakota Century Code, relating to the
4 definition of financial institutions for financial institutions tax purposes, the financial institutions
5 tax and corporate income tax deduction for federal income taxes paid, and to change financial
6 institutions tax and corporate income tax rates; to repeal sections 57-35.3-07, 57-35.3-09,
7 57-35.3-10, and 57-35.3-11, and chapter 57-38.4 of the North Dakota Century Code, relating to
8 payment and distribution of the financial institution tax, and the water's edge method of
9 reporting income for corporate income tax purposes; to provide a continuing appropriation; and
10 to provide an effective date.

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

12 **SECTION 1. AMENDMENT.** Subsection 2 of section 57-35.3-01 of the North Dakota
13 Century Code is amended and reenacted as follows:

- 14 2. "Financial institution" means:
- 15 a. A corporation or other business entity registered under state law as a bank
16 holding company, registered under the Bank Holding Company Act of 1956,
17 as amended [Pub. L. 84-240; 70 Stat. 133; 12 U.S.C. 1841 et seq.], or
18 registered as a savings and loan holding company under the National
19 Housing Act, as amended [Pub. L. 73-847; 48 Stat. 1246; 12 U.S.C. 1701
20 et seq.];
- 21 b. A national bank organized and existing as a national bank association
22 pursuant to the provisions of the National Bank Act [1864 ch. 106, § 5;
23 13 Stat. 100; 12 U.S.C. 21 et seq.];

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- 1 c. A savings association or federal savings bank as defined in the Federal
2 Deposit Insurance Act [Pub. L. 81-967; 64 Stat. 873; 12 U.S.C. 1813(b)(1)];
- 3 d. A bank or thrift institution incorporated or organized under the laws of any
4 state;
- 5 e. A trust company organized under the laws of any state, the United States, a
6 dependency or insular possession of the United States, or a foreign country;
- 7 f. A corporation organized under the provisions of Public Law No. 63-6, § 25A
8 [38 Stat. 273; 12 U.S.C. 611 to 631];
- 9 g. An agency or branch of a foreign depository as defined in Public Law
10 No. 95-369 [92 Stat. 607; 12 U.S.C. 3101];
- 11 h. A production credit association organized under the Farm Credit Act of 1933
12 [Pub. L. 73-98; 48 Stat. 257; 12 U.S.C. 1131 et seq.], all of the stock of which
13 held by the federal production credit corporation has been retired;
- 14 ~~i. A corporation the voting stock of which is more than fifty percent owned,
15 directly or indirectly, by any person or business entity described in
16 subdivisions a through h other than an insurance company taxable under
17 section 26.1-03-17 or a corporation taxable under chapter 57-38;~~
- 18 ~~j. A corporation or other business entity that derives more than fifty percent of
19 its total gross income for financial accounting purposes from finance leases.
20 For purposes of this subdivision, a "finance lease" means any lease
21 transaction that is the functional equivalent of an extension of credit and
22 which transfers substantially all of the benefits and risks incident to the
23 ownership of property. The phrase includes any "direct financing lease" or
24 "leverage lease" that meets the criteria of financial accounting standards
25 board statement no. 13, "accounting for leases", or any other lease that is
26 accounted for as a financing by a lessor under generally accepted accounting
27 principles. For the classification under this subdivision to apply:~~
- 28 ~~(1) The average of the gross income in the current tax year and
29 immediately preceding two tax years must satisfy the more than fifty
30 percent requirement; and~~

- 1 (2) ~~Gross income from incidental or occasional transactions must be~~
2 ~~disregarded; or~~
- 3 k. ~~Any other person or business entity, other than an insurance company~~
4 ~~taxable under section 26.1-03-17, a real estate broker, a securities dealer, or~~
5 ~~a person or entity taxable under chapter 57-38, which derives more than fifty~~
6 ~~percent of its gross income from activities that a person described in~~
7 ~~subdivisions b through h and j is authorized to transact. For the purpose of~~
8 ~~this subsection, the computation of gross income does not include income~~
9 ~~from nonrecurring, extraordinary items.~~
- 10 ~~The commissioner may exclude any person from the application of subdivision k~~
11 ~~upon that person proving, by clear and convincing evidence, that the~~
12 ~~income producing activity of that person is not in substantial competition with those~~
13 ~~persons described in subdivisions b through h and j.~~

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

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

3 **SECTION 3. AMENDMENT.** Section 57-35.3-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-35.3-03. Imposition and basis of tax.** An annual tax is imposed upon each
6 financial institution for the grant to it of the privilege of transacting, or for the actual transacting
7 by it, of business within this state during any part of each tax year. The tax is based upon and
8 measured by the taxable income of the financial institution for the calendar year. ~~The rate of~~
9 ~~tax is seven percent of taxable income, but the amount of tax may not be less than fifty dollars.~~
10 computed at the following rates:

- 11 1. For the first three thousand dollars of taxable income, at the rate of two and
12 five-tenths percent.
- 13 2. On all taxable income above three thousand dollars and not in excess of eight
14 thousand dollars, at the rate of four percent.
- 15 3. On all taxable income above eight thousand dollars and not in excess of twenty
16 thousand dollars, at the rate of five and five-tenths percent.
- 17 4. On all taxable income above twenty thousand dollars, at the rate of five and
18 nine-tenths percent.

19 **SECTION 4. AMENDMENT.** Section 57-35.3-05 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-35.3-05. Credits.**

- 22 1. a. There is allowed a credit against the tax imposed by sections 57-35.3-01
23 through 57-35.3-12 in an amount equal to fifty percent of the aggregate
24 amount of charitable contributions made by the taxpayer during the taxable
25 year to nonprofit private institutions of higher education located within the
26 state or to the North Dakota independent college fund. The amount allowable
27 as a credit under this subdivision for any taxable year may not exceed ~~five~~
28 ~~and seven tenths~~ twenty percent of the tax before credits allowed under this
29 section, or two thousand five hundred dollars, whichever is less.
- 30 b. There is allowed a credit against the tax imposed by sections 57-35.3-01
31 through 57-35.3-12 in an amount equal to fifty percent of the aggregate

1 amount of charitable contributions made by the taxpayer during the taxable
2 year to nonprofit private institutions of secondary education located within the
3 state. The amount allowable as a credit under this subdivision for any taxable
4 year may not exceed ~~five and seven tenths~~ twenty percent of the tax before
5 credits allowed under this section, or two thousand five hundred dollars,
6 whichever is less.

7 c. For the purpose of this subsection, the term "nonprofit private institution of
8 higher education" means only a nonprofit private educational institution
9 located in North Dakota which normally maintains a regular faculty and
10 curriculum and which normally has a regularly organized body of students in
11 attendance at the place where its educational activities are carried on, and
12 which regularly offers education at a level above the twelfth grade. The term
13 "nonprofit private institution of secondary education" means only a nonprofit
14 private educational institution located in North Dakota which normally
15 maintains a regular faculty and curriculum approved by the department of
16 public instruction and which normally has a regularly organized body of
17 students in attendance at the place where its educational activities are carried
18 on, and which regularly offers education to students in the ninth through
19 twelfth grades.

20 d. For the purposes of this subsection, a taxpayer may elect to treat a
21 contribution as made in the preceding taxable year if the contribution and
22 election are made not later than the time prescribed for filing the return for the
23 taxable year.

24 ~~2. a. There is allowed a credit against the tax imposed by sections 57-35.3-01~~
25 ~~through 57-35.3-12 in an amount equal to any overpayment of tax paid~~
26 ~~pursuant to chapter 57-35 or 57-35.1, for a taxable year beginning before~~
27 ~~January 1, 1997, to the extent that the overpayment would have been an~~
28 ~~allowable deduction from tax payable for the current taxable year, under~~
29 ~~section 57-35-12 or 57-35.1-07, if chapters 57-35 and 57-35.1 applied to the~~
30 ~~current taxable year. The amount allowable as a credit under this subsection~~

1 for any taxable year may not exceed five-sevenths of the tax before credits
2 allowed under this section.

3 b. ~~For purposes of determining distributions to and from the counties under~~
4 ~~section 57-35.3-09:~~

5 (1) ~~The balance in the financial institution tax distribution fund and the~~
6 ~~amount of the payment received by each county from the state shall be~~
7 ~~determined as if any credit allowed under subdivision a had not been~~
8 ~~claimed and the full amount of the tax otherwise due had been timely~~
9 ~~paid;~~

10 (2) ~~The credited amount must be deducted from the distributions that~~
11 ~~would otherwise be made to and from the county that received the tax~~
12 ~~overpayment until the sum of the deductions equals the credit; and~~

13 (3) ~~The deductions from distributions made by a county to each distributee~~
14 ~~must be proportionate to the overpayment of tax received by each~~
15 ~~distributee.~~

16 **SECTION 5. AMENDMENT.** Section 57-35.3-08 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **57-35.3-08. Disposition of tax revenues - Allocation to counties - Financial**
19 **institutions tax fund - Continuing appropriation.** ~~The commissioner shall deposit the~~
20 ~~portion of the tax payable in the year the return is due in the general fund of the state treasury~~
21 ~~and shall deposit the portion of the tax payable in the year after the return is due in the financial~~
22 ~~institution tax distribution fund of the state treasury, which is hereby created. Interest, penalty,~~
23 ~~and late tax payments attributable to each portion of the tax must be deposited in the~~
24 ~~appropriate fund. The taxes collected under this chapter of up to seven million dollars per~~
25 ~~taxable year must be deposited in a special fund in the state treasury, the financial institutions~~
26 ~~tax fund. Tax revenues under this chapter exceeding seven million dollars in a taxable year~~
27 ~~must be deposited in the state general fund. The tax commissioner shall certify to the state~~
28 ~~treasurer the amount to be distributed to each county based on the following formula.~~
29 ~~Seventy-five percent of the total must be distributed based on the relative amount that each~~
30 ~~county received in financial institutions tax revenue in calendar year 2000 and twenty-five~~
31 ~~percent must be distributed based on the county's percentage of the state's population as~~

1 determined by the most recent federal decennial county census. The balance of the financial
2 institutions tax fund, not exceeding seven million dollars per taxable year, is appropriated as a
3 standing and continuing appropriation to the tax commissioner for distribution to the counties
4 under this section. If financial institutions tax revenues available for distribution in a taxable
5 year are less than seven million dollars, there is appropriated as a standing and continuing
6 appropriation from the state general fund the amount that, when added to financial institutions
7 tax revenues available for allocation from the financial institutions tax fund for the taxable year,
8 results in distribution of seven million dollars to counties per taxable year. On or before the first
9 day of March of each year, the tax commissioner shall certify for payment to the state treasurer
10 an amount determined to be due each county. The state treasurer shall remit the certified
11 amount to the county treasurers according to the certification made by the tax commissioner
12 under this section not later than the tenth working day in March of each year.

13 **SECTION 6. AMENDMENT.** Section 57-35.3-12 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **57-35.3-12. Applicable provisions of chapter 57-38 relating to administration,**
16 **interest, and penalties.** The provisions of section 57-38-33, subsection 1 of section 57-38-34,
17 sections 57-38-34.4, 57-38-35.1, 57-38-35.2, 57-38-37, 57-38-38, 57-38-39, 57-38-40,
18 57-38-40.1, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-48, 57-38-49, 57-38-50, 57-38-51,
19 57-38-53, 57-38-54, 57-38-56, and 57-38-57, insofar as consistent therewith, govern the
20 administration of sections 57-35.3-01 through 57-35.3-12. For this purpose, the term
21 "corporation", as used in the sections listed in this section, includes a financial institution.

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

- 24 1. The taxable income of a corporation as computed pursuant to the provisions of the
25 Internal Revenue Code of 1954, as amended, must be:
- 26 a. Reduced by any interest received from obligations of the United States that is
27 included in taxable income or in the computation thereof on the federal return.
 - 28 b. Reduced by any other income included in the taxable income, or in the
29 computation thereof, on the federal return which is exempt from taxation by
30 this state because of the provisions of the Constitution of North Dakota or the
31 Constitution of the United States.

- 1 c. ~~Reduced by the amount of federal income tax liability, as computed under~~
2 ~~chapter 1 of the Internal Revenue Code of 1986, as amended, for the same~~
3 ~~taxable year for which the North Dakota return is being filed, to the extent that~~
4 ~~the taxes are computed upon income which becomes a part of the North~~
5 ~~Dakota taxable income. Provided, that no adjustment to federal income~~
6 ~~taxes, paid or accrued, is required because of allowable deductions to federal~~
7 ~~taxable income made under the cost recovery provisions of subdivision b of~~
8 ~~subsection 5 of section 57-38-01. Federal income taxes for prior periods~~
9 ~~assessed against the taxpayer by reason of audit or other adjustment by the~~
10 ~~internal revenue service, or voluntary disclosure by the taxpayer, are not~~
11 ~~deductible except in the period in which income so taxed was reported or~~
12 ~~reportable or in which an adjustment was required but only after an~~
13 ~~adjustment is made by or with the office of the state tax commissioner. A~~
14 ~~refund of federal income tax must be reported and included in North Dakota~~
15 ~~taxable income in the year in which the tax was originally deducted. Income~~
16 ~~must be further reduced by federal alternative minimum tax when a federal~~
17 ~~credit for prior year minimum tax is taken. This reduction is limited to federal~~
18 ~~alternative minimum tax previously disallowed in computing North Dakota~~
19 ~~taxable income and may not exceed North Dakota taxable income computed~~
20 ~~before the North Dakota net operating loss deduction. Any excess may be~~
21 ~~carried forward to the next taxable year a federal credit for prior year~~
22 ~~minimum tax is taken.~~
- 23 d. Increased by the amount of any income taxes, including income taxes of
24 foreign countries, or franchise or privilege taxes measured by income, to the
25 extent that such taxes were deducted to determine federal taxable income.
- 26 e. d. Increased by the amount of any interest and dividends from foreign securities
27 and from securities of state and their political subdivisions exempt from
28 federal income tax, provided that interest upon obligations of the state of
29 North Dakota or any of its political subdivisions may not be included.
- 30 f. e. Reduced by the amount of net income not allocated and apportioned to this
31 state under the provisions of chapter 57-38.1, but only to the extent that the

1 amount of net income not allocated and apportioned to this state under the
2 provisions of that chapter is not included in any adjustment made pursuant to
3 the preceding subdivisions.

4 ~~g.~~ f. Reduced by dividends or income received by any person from stock or
5 interest in any corporation, the income of which has been assessed and paid
6 by a corporation under this chapter or sections 57-35.3-01 through
7 57-35.3-12, received by the taxpayer and included in the gross income within
8 the income year if such corporation has reported the name and address of
9 each person owning stock and the amount of dividends or income paid each
10 such person during the year, but when only part of the income of any
11 corporation has been assessed and income tax paid under this chapter or
12 sections 57-35.3-01 through 57-35.3-12, only a corresponding part of the
13 dividends or income received therefrom may be deducted.

14 ~~h.~~ ~~Repealed by S.L. 1999, ch. 487, § 3.~~

15 ~~i.~~ g. Increased by the amount of any special deductions and net operating loss
16 deductions to the extent that these items were deducted in determining
17 federal taxable income.

18 ~~j.~~ h. Reduced by dividends paid, as defined in section 561 of the Internal Revenue
19 Code of 1986, as amended, by a regulated investment company or a fund of
20 a regulated investment company as defined in section 851(a) or 851(g) of the
21 Internal Revenue Code of 1986, as amended, except that the deduction for
22 dividends paid is not allowed with respect to dividends attributable to any
23 income that is not subject to taxation under this chapter when earned by the
24 regulated investment company. Sections 852(b)(7) and 855 of the Internal
25 Revenue Code of 1986, as amended, apply for computing the deduction for
26 dividends paid. A regulated investment company is not allowed a deduction
27 for dividends received as defined in sections 243 through 245 of the Internal
28 Revenue Code of 1986, as amended.

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

1 **SECTION 8. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-38-30. Imposition and rate of tax on corporations.** A tax is hereby imposed upon
4 the taxable income of every domestic and foreign corporation received from the sources
5 described in sections 57-38-12, 57-38-13, and 57-38-14, which must be levied, collected, and
6 paid annually as in this chapter provided:

- 7 1. a. For the first three thousand dollars of taxable income, at the rate of ~~three~~ two
8 and six-tenths percent.
9 b. On all taxable income above three thousand dollars and not in excess of eight
10 thousand dollars, at the rate of four and ~~one-half~~ one-tenths percent.
11 c. On all taxable income above eight thousand dollars and not in excess of
12 twenty thousand dollars, at the rate of ~~six~~ five and six-tenths percent.
13 d. On all taxable income above twenty thousand dollars, and not in excess of
14 thirty thousand dollars, at the rate of ~~seven~~ six and ~~one-half~~ four-tenths
15 percent.
16 e. On all taxable income above thirty thousand dollars, ~~and not in excess of fifty~~
17 ~~thousand dollars,~~ at the rate of ~~nine~~ seven and two-tenths percent.
18 f. ~~On all taxable income above fifty thousand dollars, at the rate of ten and~~
19 ~~one-half percent.~~
20 2. A corporation that has paid North Dakota alternative minimum tax in years
21 beginning before January 1, 1991, may carry over any alternative minimum tax
22 credit remaining to the extent of the regular income tax liability of the corporation
23 for a period not to exceed four taxable years.

24 **SECTION 9. REPEAL.** Sections 57-35.3-07, 57-35.3-09, 57-35.3-10, 57-35.3-11, and
25 chapter 57-38.4 of the North Dakota Century Code are repealed.

26 **SECTION 10. EFFECTIVE DATE.** This Act is effective for taxable years beginning
27 after December 31, 2002.