Fifty-ninth
Legislative Assembly
of North Dakota

# SENATE BILL NO. 2391

Introduced by

Senators Syverson, Brown, Espegard, Grindberg, Nelson

Representative Iverson

A BILL for an Act to create and enact a new section to chapter 57-38 and a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to an income tax credit for individuals, estates, and trusts for planned gifts to qualified North Dakota nonprofit organizations; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Planned gifts credit - Definitions.** For purposes of this section:

1. a. "Planned gift" means an irrevocable contribution to 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.

b. "Qualified nonprofit organization" means a North Dakota incorporated or established organization that is a:

(1) Tax-exempt organization under 26 U.S.C. 501(c)(3); or

(2) Bank, trust company, or other trustee that is holding the fund on behalf of a tax-exempt organization.

c. (1) A contribution using a technique described in paragraph 1 or 2 of subdivision a is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of:

(a) The date of death of the beneficiaries; or

(b) Five years from the date of the contribution.

(2) A contribution using the technique described in paragraph 7 of subdivision a is not a planned gift 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 adopted by rule by the tax commissioner in effect on the date of the contribution.

(3) A contribution using a technique described in paragraph 6 or 7 of subdivision a is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified endowment sooner than the earlier of:

(a) The date of death of the annuitant or annuitants; or

(b) Five years after the date of the contribution.

(4) A contribution using a technique described in paragraph 6 or 7 of subdivision a is not a planned gift unless the annuity is a qualified charitable gift annuity.

d. The tax commissioner shall utilize life expectancy tables that are derived from the actuarial tables contained in the most recent publication 1457 by the internal revenue service.

2. A taxpayer is allowed a tax credit against the taxes imposed by section 57-38-29 or 57-38-30.3 in an amount equal to twenty percent of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified nonprofit organization. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is five thousand dollars. The credit allowed under this section may not exceed the taxpayer's income tax liability.

a. The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the amount of the contribution upon which the amount of the credit was computed as a deduction under this chapter.

b. The credit must be applied to the tax year in which the contribution is made and any unused portion of the credit may be carried forward for up to two taxable years.

**SECTION 2.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the credit provided under section 1 of this Act.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2004.