

**Fifty-ninth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2391  
(Senators Sverson, Brown, Espegard, Grindberg, Nelson)  
(Representative Iverson)

AN ACT to create and enact a new section to chapter 57-38, a new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 2 of section 57-38-30.3, and a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to an income tax credit for individuals 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:
  - (1) A tax-exempt organization under 26 U.S.C. 501(c), to which contributions qualify for a federal charitable income tax deduction; and
  - (2) An organization that has an established business presence or situs in North Dakota.
- 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 North Dakota qualified nonprofit organization 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 used by the internal revenue service in determining federal charitable income tax deductions 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 North Dakota qualified nonprofit organization 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.
2. An individual 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 planned gifts made by the taxpayer during the year to any North Dakota 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. If this credit is claimed, the amount of the contribution upon which the credit is computed must be added to federal taxable income in computing North Dakota taxable income, but only to the extent that the contribution reduced federal taxable income.
  - 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 subdivision to subsection 1 of section 57-38-01.2 is created and enacted as follows:

Increased by the amount of the contribution upon which the credit under section 1 of this Act is computed, but only to the extent that the contribution reduced federal taxable income.

**SECTION 3.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Increased by the amount of the contribution upon which the credit under section 1 of this Act is computed, but only to the extent that the contribution reduced federal taxable income.

**SECTION 4.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

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

**SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2004, and applies to qualifying planned gifts made after July 31, 2005.

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President of the Senate

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Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2391.

Senate Vote:    Yeas    45        Nays    0        Absent    2

House Vote:    Yeas    86        Nays    8        Absent    0

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2005,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State