

**Sixtieth Legislative Assembly of North Dakota  
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2091  
(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact section 57-35.3-06, subsection 3 of section 57-38-31.1, subsection 2 of section 57-38-34, and section 57-38-63 of the North Dakota Century Code, relating to the due date for filing short period financial institutions tax and corporate income tax returns, composite returns filed by passthrough entities, and the due date for estimated tax payments by corporations for short-period tax years; and to provide an effective date.

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

**SECTION 1. 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. A return for a period of less than one year must be filed on or before April fifteenth, or on or before the date prescribed by the United States internal revenue service, whichever is later. 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. 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 2. AMENDMENT.** Subsection 3 of section 57-38-31.1 of the North Dakota Century Code is amended and reenacted as follows:

3. a. A passthrough entity shall withhold income tax, at the highest tax rate provided in section 57-38-30.3 for individuals, on the share of income of the entity distributed to each nonresident member and pay the withheld amount in the manner prescribed by the tax commissioner. The passthrough entity is liable to the state for the payment of the tax required to be withheld under this section and is not liable to any member for the amount withheld and paid over in compliance with this section. A member of a passthrough entity that is itself a passthrough entity (a lower-tier passthrough entity) is subject to this same requirement to withhold and pay over income tax on the share of income distributed by the lower-tier passthrough entity to each of its nonresident members. The tax commissioner shall apply tax withheld and paid over by a passthrough entity on distributions to a lower-tier passthrough entity to the withholding required of that lower-tier passthrough entity.
- b. At the time of a payment made under this section, a passthrough entity shall deliver to the tax commissioner a return upon a form prescribed by the tax commissioner showing the total amounts paid or credited to its nonresident members, the amount withheld in accordance with this section, and any other information the tax commissioner may require. A passthrough entity shall furnish to its nonresident

member annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax withheld on behalf of such member on a form prescribed by the tax commissioner.

- c. Notwithstanding subdivision a, a passthrough entity is not required to withhold tax for a nonresident member if:
- (1) The member has a pro rata or distributive share of income of the passthrough entity from doing business in, or deriving income from sources within, this state of less than one thousand dollars per annual accounting period;
  - (2) The tax commissioner has determined by rule, ruling, or instruction that the member's income is not subject to withholding;
  - (3) The member elects to have the tax due paid as part of a composite return filed by the passthrough entity under subsection 2; or
  - (4) The entity is a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code which is treated as a partnership for the purposes of the Internal Revenue Code and which has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the tax commissioner of each unitholder with an income in the state in excess of five hundred dollars.
- d. A passthrough entity failing to file a return, or failing to withhold or remit the tax withheld, as required by this section, is subject to the provisions of section 57-38-45.

**SECTION 3. AMENDMENT.** Subsection 2 of section 57-38-34 of the North Dakota Century Code is amended and reenacted as follows:

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. A return filed for a period of less than one year must be filed on or before April fifteenth, or on or before the date prescribed by the United States internal revenue service, whichever is later.

**SECTION 4. AMENDMENT.** Section 57-38-63 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-63. Due date for payment of estimated income tax.** A taxpayer shall pay no less than one-quarter of the estimated tax to the tax commissioner on April fifteenth, June fifteenth, and September fifteenth of the taxable year, and January fifteenth of the following taxable year; provided, that a taxpayer having a taxable year other than a calendar year shall pay the estimated tax on the fifteenth day of the fourth, sixth, and ninth months of the taxable year, and the fifteenth day of the first month of the following taxable year. In the case of a tax year that is for a period of less than one year, and the short tax year ends prior to any remaining due dates under this section, the final estimated tax payment is due on the fifteenth day of the last month of the short tax year. In the case of a tax year that is for a period of less than one hundred twenty days, no estimated tax payment is due.

**SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
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 Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2091.

Senate Vote:    Yeas    46        Nays    0        Absent    1

House Vote:    Yeas    89        Nays    0        Absent    5

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

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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