

**SECOND ENGROSSMENT
with House Amendments
REENGROSSED SENATE BILL NO. 2364**

Introduced by

Senators Laffen, Cook, Sitte

Representatives Brabandt, Delmore, Ruby

1 A BILL for an Act to create and enact two new sections to chapter 57-38, subsections 7 and 8 to
2 section 57-38-34, subsection 11 to section 57-38-38, and subsection 16 to section 57-38-40 of
3 the North Dakota Century Code, relating to a corporate income tax credit, utilization of net
4 operating losses and credit carryforwards, the time for filing of returns for certain corporations,
5 interest on tax when the time for filing a return is extended, refunds of tax for certain
6 corporations, and audits of certain corporations; to amend and reenact subsection 5 of section
7 11-37-08, subsection 8 of section 40-63-01, subsection 5 of section 40-63-04, section 40-63-06,
8 subsections 3 and 4 of section 40-63-07, subsection 3 of section 57-38-01.3, subsections 5 and
9 7 of section 57-38-01.32, and subdivisions c and f of subsection 2 of section 57-38-30.3 of the
10 North Dakota Century Code, relating to subjecting financial institutions to the corporate income
11 tax, adjustments for net operating losses, bonds and other obligations of a commerce authority,
12 creation of renaissance zones, the housing incentive fund tax credit, computation of farm
13 income, and income associated with losses passed through to a financial institution; to repeal
14 chapter 57-35.3 of the North Dakota Century Code, relating to elimination of the financial
15 institutions tax; and to provide an effective date.

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

17 **SECTION 1. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota Century
18 Code is amended and reenacted as follows:

19 5. Bonds issued by a commerce authority under this section are declared to be issued for
20 an essential public government purpose, and together with interest and income on the
21 bonds, are exempt from all individual and corporate taxes imposed under sections
22 ~~57-35.3-03~~, 57-38-30, and 57-38-30.3.

23 **SECTION 2. AMENDMENT.** Subsection 8 of section 40-63-01 of the North Dakota Century
24 Code is amended and reenacted as follows:

1 8. "Taxpayer" means an individual, corporation, ~~financial institution~~, or trust subject to the
2 taxes imposed by chapter ~~57-35.3~~ or 57-38 and includes a partnership, subchapter S
3 corporation, limited partnership, limited liability company, or any other passthrough
4 entity.

5 **SECTION 3. AMENDMENT.** Subsection 5 of section 40-63-04 of the North Dakota Century
6 Code is amended and reenacted as follows:

7 5. The exemptions provided by this section do not eliminate any duty to file a return or to
8 report income as required under chapter ~~57-35.3~~ or 57-38.

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

11 **40-63-06. Historic preservation and renovation tax credit.**

12 A credit against state tax liability as determined under sections ~~57-35.3-03~~, 57-38-30, and
13 57-38-30.3 is allowed for investments in the historic preservation or renovation of property
14 within the renaissance zone. The amount of the credit is twenty-five percent of the amount
15 invested, up to a maximum of two hundred fifty thousand dollars. The credit may be claimed in
16 the year in which the preservation or renovation is completed. Any excess credit may be carried
17 forward for a period of up to five taxable years.

18 **SECTION 5. AMENDMENT.** Subsection 3 of section 40-63-07 of the North Dakota Century
19 Code is amended and reenacted as follows:

20 3. A renaissance fund organization is exempt from any tax imposed by chapter ~~57-35.3~~
21 or 57-38. An exemption under this section may be passed through to any shareholder,
22 partner, and owner if the renaissance fund organization is a passthrough entity for tax
23 purposes. A corporation or ~~financial institution~~ entitled to the exemption provided by
24 this subsection shall file required returns and report income to the tax commissioner
25 as required by the provisions of those chapters as if the exemption did not exist. If an
26 employer, this subsection does not exempt a renaissance fund organization from
27 complying with the income tax withholding laws.

28 **SECTION 6. AMENDMENT.** Subsection 4 of section 40-63-07 of the North Dakota Century
29 Code is amended and reenacted as follows:

30 4. A credit against state tax liability as determined under section ~~57-35.3-03~~, 57-38-30, or
31 57-38-30.3 is allowed for investments in a renaissance fund organization. The amount

1 of the credit is fifty percent of the amount invested in the renaissance fund
2 organization during the taxable year. Any amount of credit which exceeds a taxpayer's
3 tax liability for the taxable year may be carried forward for up to five taxable years after
4 the taxable year in which the investment was made.

5 **SECTION 7. AMENDMENT.** Subsection 3 of section 57-38-01.3 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 3. The sum calculated pursuant to subsection 1 must be reduced by the amount of any
8 net operating loss that is attributable to North Dakota sources, including a net
9 operating loss calculated under chapter 57-35.3 for tax years beginning before
10 January 1, 2013. If the net operating loss that is attributable to North Dakota sources
11 exceeds the sum calculated pursuant to subsection 1, the excess may be carried
12 forward for the same time period that an identical federal net operating loss may be
13 carried forward. If a corporation uses an apportionment formula to determine the
14 amount of income that is attributable to North Dakota, the corporation must use the
15 same formula to determine the amount of net operating loss that is attributable to
16 North Dakota. In addition, no deduction may be taken for a carryforward when
17 determining the amount of net operating loss that is attributable to North Dakota
18 sources.

19 **SECTION 8. AMENDMENT.** Subsection 5 of section 57-38-01.32 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 5. The aggregate amount of tax credits allowed to all eligible contributors is limited to
22 fifteen million dollars per biennium. ~~This limitation applies to all contributions for which~~
23 ~~tax credits are claimed under section 57-35.3-05 and this section.~~

24 **SECTION 9. AMENDMENT.** Subsection 7 of section 57-38-01.32 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 7. To receive the tax credit provided under this section, a taxpayer shall claim the credit
27 on the taxpayer's state income ~~or financial institutions~~ tax return in the manner
28 prescribed by the tax commissioner and file with the return a copy of the form issued
29 by the housing finance agency under subsection 6.

30 **SECTION 10.** A new section to chapter 57-38 of the North Dakota Century Code is created
31 and enacted as follows:

1 **Financial institutions - Net operating losses -Credit carryovers.**

2 1. A subchapter S corporation that was a financial institution under chapter 57-35.3 may
3 elect to be treated as a taxable corporation under chapter 57-38. If an election is made
4 under this section, the election:

5 a. Must be made in the form and manner prescribed by the tax commissioner on the
6 return filed for the tax year beginning on January 1, 2013, or the return filed for
7 the short period required under section 15 of this Act; and

8 b. Is binding until the earlier of:

9 (1) The end of the tax year for which the taxpayer reports a tax liability after tax
10 credits; or

11 (2) The beginning of the tax year for which the taxpayer elects to be recognized
12 as a subchapter S corporation under section 57-38-01.4.

13 2. If an election is made under this section, the following apply:

14 a. A subchapter S corporation may not file a consolidated return.

15 b. Any unused credit carryovers earned by a financial institution under chapter
16 57-35.3 for tax years beginning before January 1, 2013, may be carried forward
17 in the same number of years the financial institution would have been entitled
18 under chapter 57-35.3.

19 c. Any unused net operating losses incurred by a financial institution under chapter
20 57-35.3 for tax years beginning before January 1, 2013, may be carried forward
21 for the same number of years the financial institution would have been entitled
22 under chapter 57-35.3.

23 **SECTION 11.** A new section to chapter 57-38 of the North Dakota Century Code is created
24 and enacted as follows:

25 **Corporate credit for contributions to rural leadership North Dakota.**

26 There is allowed a credit against the tax imposed by section 57-38-30 in an amount equal to
27 fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable
28 year for tuition scholarships for participation in rural leadership North Dakota conducted through
29 the North Dakota state university extension service. Contributions by a taxpayer may be
30 earmarked for use by a designated recipient.

1 **SECTION 12. AMENDMENT.** Subdivision c of subsection 2 of section 57-38-30.3 of the
2 North Dakota Century Code is amended and reenacted as follows:

3 c. Reduced by the amount equal to the earnings that are passed through to a
4 taxpayer in connection with an allocation and apportionment to North Dakota
5 under ~~chapter 57-35.3~~section 7 of this Act.

6 **SECTION 13. AMENDMENT.** Subdivision f of subsection 2 of section 57-38-30.3 of the
7 North Dakota Century Code is amended and reenacted as follows:

8 f. Increased by an amount equal to the losses that are passed through to a
9 taxpayer in connection with an allocation and apportionment to North Dakota
10 under ~~chapter 57-35.3~~section 7 of this Act.

11 **SECTION 14.** Subsection 7 to section 57-38-34 of the North Dakota Century Code is
12 created and enacted as follows:

13 7. For a person that was subject to the tax under chapter 57-35.3 for the calendar year
14 ending December 31, 2012, payment of the tax under this chapter is due six months
15 after the due date of the return as required under this section. The provisions of
16 subdivision a of subsection 1 of section 57-38-45 do not apply to the tax due under
17 this subsection. This subsection applies to the first tax year beginning after
18 December 31, 2012.

19 **SECTION 15.** Subsection 8 to section 57-38-34 of the North Dakota Century Code is
20 created and enacted as follows:

21 8. A person that previously reported under chapter 57-35.3 on a calendar year basis and
22 files its federal income tax return on a fiscal year basis must file a short period return
23 for the period beginning January 1, 2013, and ending on the last day of the tax year in
24 calendar year 2013.

25 **SECTION 16.** Subsection 11 to section 57-38-38 of the North Dakota Century Code is
26 created and enacted as follows:

27 11. This section applies if additional tax would be due under the provisions of chapter
28 57-35.3 in effect for taxable years beginning before January 1, 2013.

29 **SECTION 17.** Subsection 16 to section 57-38-40 of the North Dakota Century Code is
30 created and enacted as follows:

1 16. A person that would have been entitled to a credit or refund under chapter 57-35.3 for
2 a taxable year beginning before January 1, 2013, may file a claim for refund or credit
3 of an overpayment of tax.

4 **SECTION 18. REPEAL.** Chapter 57-35.3 of the North Dakota Century Code is repealed.

5 **SECTION 19. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
6 December 31, 2012.