

April 18, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1250

In lieu of the amendments adopted by the Senate as printed on pages 1102-1113 and pages \_\_\_\_\_ of the Senate Journal, House Bill No. 1250 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 57-20-07.2, three new sections to chapter 57-38, a new subdivision to subsection 7 of section 57-38-30.3, subsections 7 and 8 to section 57-38-34, subsection 11 to section 57-38-38, and subsection 16 to section 57-38-40 of the North Dakota Century Code, relating to corporate and individual income tax credits and transition of financial institutions to corporate income tax treatment; to amend and reenact subsection 5 of section 11-37-08, subsection 8 of section 40-63-01, subsection 5 of section 40-63-04, section 40-63-06, subsections 3 and 4 of section 40-63-07, sections 57-20-09 and 57-20-21.1, subsection 3 of section 57-38-01.3, subsection 3 of section 57-38-01.26, subsections 5 and 7 of section 57-38-01.32, subdivisions c, d, and f of subsection 2 of section 57-38-30.3, and section 57-39.2-26.1 of the North Dakota Century Code, relating to authorized investments of an angel fund for income tax credit purposes, transition of financial institutions to corporate income tax treatment, income tax credits and exclusions, and allocation to political subdivisions from the state aid distribution fund; to repeal chapter 57-35.3 of the North Dakota Century Code, relating to elimination of the financial institutions tax; to provide for a report; to provide an appropriation; and to provide an effective date.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. A credit against state tax liability as determined under section ~~57-35.3-03, 57-38-30, or 57-38-30.3~~ is allowed for investments in a renaissance fund organization. The amount of the credit is fifty percent of the amount invested in the renaissance fund organization during the taxable year. Any amount of credit which exceeds a taxpayer's tax liability for the taxable year may be carried forward for up to five taxable years after the taxable year in which the investment was made.

**SECTION 7.** Section 57-20-07.2 of the North Dakota Century Code is created and enacted as follows:

**57-20-07.2. State-paid property tax relief credit.**

1. The owner of taxable property is entitled to a credit against property taxes levied against the total amount of property or mobile home taxes in dollars levied against the taxable value of the property. The credit is equal to six and one-half percent of property or mobile home taxes levied in dollars against that property.
2. The owner, operator, or lessee of railroad property assessed by the state board of equalization under chapter 57-05 or public utility operative property assessed by the state board of equalization under chapter 57-06 is entitled to a credit against property taxes levied within each county against that property in the amount provided in subsection 1 against property taxes levied in dollars against that property in that county.

3. The owner, operator, or lessee of operative property of an air carrier transportation company assessed and taxed under chapter 57-32 is entitled to a credit in the amount provided in subsection 1 against property taxes in dollars levied against that property. The tax commissioner shall determine the total amount of credits under this subsection and certify the amount to the state treasurer for transfer from the general fund to the air transportation fund. The credit for each air transportation company must be allocated to each city or municipal airport authority where that company makes regularly scheduled landings, in the same manner as the tax collected from that company is allocated.
4. The tax commissioner shall determine the total amount of credits under this section for each county from the abstract of the tax list filed by the county auditor under section 57-20-04, as audited and corrected by the tax commissioner. The tax commissioner shall certify to the state treasurer for payment, by June first following receipt of the abstract of the tax list, the amount determined for each county under this subsection. No penalty or interest applies to any state payment under this section, regardless of when the payment is made.
5. Upon receipt of the payment from the state treasurer under subsection 4, the county treasurer shall apportion and distribute it to the county and the taxing districts in the county on the basis on which the general real estate tax for the preceding year is apportioned and distributed.
6. After payments to counties under subsection 4 have been made, the tax commissioner shall certify to the state treasurer as necessary any supplemental amounts payable to counties or the air transportation fund or any amounts that must be returned by counties or returned from the air transportation fund for deposit in the state general fund to correct any errors in payments or reflect any abatement or compromise of taxes, court-ordered tax reduction or increase, or levy of taxes against omitted property. The county auditor shall provide any supplemental information requested by the tax commissioner after submission of the abstract of the tax list. The county treasurer shall apply to the tax commissioner for any supplemental payments to which the county treasurer believes the county is entitled.
7. Notwithstanding any other provision of law, for any property other than mobile homes, the property tax credit under this section does not apply to any property subject to payments or taxes that are stated by law to be in lieu of personal or real property taxes.

**SECTION 8. AMENDMENT.** Section 57-20-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-09. Discount for early payment of tax.**

Except as provided in section 57-20-21.1, the county treasurer shall allow a five percent discount to all taxpayers who shall pay all of the real estate taxes levied on any tract or parcel of real property in any one year in full on or before February fifteenth prior to the date of delinquency. Such discount applies, after deduction of any credit allowed under section 57-20-07.2, to the net remaining amount of all general real estate taxes levied for state, county, city, township, school district, fire district, park

district, and any other taxing districts but does not apply to personal property taxes or special assessment installments. Whenever the board of county commissioners, by resolution, determines that an emergency exists in the county by virtue of weather or other catastrophe, it may extend the discount period for an additional thirty days.

**SECTION 9. AMENDMENT.** Section 57-20-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-21.1. Priority for delinquent taxes.**

When payment is made for any real or personal property taxes or special assessments, payments must be applied first to the oldest unpaid delinquent taxes or special assessments due, if any, shown to exist upon the property for which the tax payments are made, including any penalty and interest, except payments of state-paid property tax relief credit made by the state must be applied to taxes for the year for which the state-paid property tax relief credit is granted. The discounts applicable to payment of taxes set out in section 57-20-09 do not apply to payment of taxes made on property upon which tax payments are delinquent.

**SECTION 10. AMENDMENT.** Subsection 3 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 11. AMENDMENT.** Subsection 3 of section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

3. An angel fund must:
  - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate. Investments in real estate or real estate holding companies are not eligible investments by certified

angel funds. Any angel fund certificate before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.

- c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
- d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
- e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
- f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
- g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
- h. Be in compliance with the securities laws of this state.
- i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:
  - (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
  - (2) The dollar amount remitted by the taxpayer or passthrough entity; and
  - (3) The date the payment was received by the angel fund for the investment.
- j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.

**SECTION 12. AMENDMENT.** Subsections 5 and 7 of section 57-38-01.32 of the North Dakota Century Code are amended and reenacted as follows:

- 5. The aggregate amount of tax credits allowed to all eligible contributors is limited to fifteen million dollars per biennium. ~~This limitation applies to all contributions for which tax credits are claimed under section 57-35.3-05 and this section.~~
- 7. To receive the tax credit provided under this section, a taxpayer shall claim the credit on the taxpayer's state income ~~or financial institutions tax return~~ in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the housing finance agency under subsection 6.

**SECTION 13.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Employer-provided child care credit.**

1. An employer is allowed a credit against the tax imposed under section 57-38-30 or 57-38-30.3 for providing a qualified child care facility. The amount of the credit under this section is fifty percent of the qualified child care expenditures incurred by the employer. Qualified child care expenditures under this section may not be used in the calculation of any other income tax deduction or credit allowed under state law.
2. For purposes of this section:
  - a. "Employer" means a taxpayer who employs one or more full-time equivalent employees and whose primary source of income is from a business other than the business of providing child care services.
  - b. "Qualified child care expenditure" means any amount paid or incurred:
    - (1) To acquire, construct, rehabilitate, or expand property:
      - (a) That is to be used as part of a qualified child care facility;
      - (b) For which a deduction under federal law for depreciation, or amortization in lieu of depreciation, is allowable; and
      - (c) That does not constitute part of the principal residence of the taxpayer or any employee of the taxpayer;
    - (2) For the direct costs necessary for the operation of the child care facility;
    - (3) For the indirect or overhead costs properly attributable to the child care facility, including insurance, utilities, front office salaries, property taxes, legal fees, and advertising; or
    - (4) Under a contract with a qualified child care facility to provide child care services to employees of the taxpayer, including any amount paid to the child care facility for additional direct or indirect costs of the facility.

The term "qualified child care expenditure" does not include expenses in excess of the fair market value of such care.

- c. "Qualified child care facility" means a facility the principal use of which is to provide child care assistance to the taxpayer's employees and that meets the requirements of all applicable laws and regulations of the state and local government in which it is located.
  - (1) The term "qualified child care facility" does not apply to a facility which is the principal residence of the operator of the facility.
  - (2) A facility may not be treated as a qualified child care facility with respect to a taxpayer unless:
    - (a) Enrollment in the facility is open to employees of the taxpayer during the taxable year; and

- (b) Eligibility for enrollment must be offered to all employees on an equal opportunity basis.
3. The taxpayer shall claim the total credit amount for the taxable year in which the qualified child care expenditures are made, except depreciated property expenditures shall be claimed in the taxable year in which the property is placed in service. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.
  4. If two or more taxpayers share in the qualified child care expenditures, each taxpayer must be allowed the credit in relation to the respective share paid or incurred by each taxpayer of the total expenditures for the facility in each taxable year.
  5. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the next five succeeding taxable years.
  6. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.
  7. To receive the tax credit provided under this section, a taxpayer shall claim the credit in the form and manner as may be prescribed by the tax commissioner.
  8. It is the intent of the legislative assembly that the credit provided in this section must be liberally construed and interpreted to effectuate the expansion of child care availability in the state.

**SECTION 14.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Employer-provided child care credit under section 13 of this Act.

**SECTION 15.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

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

1. A subchapter S corporation that was a financial institution under chapter 57-35.3 may elect to be treated as a taxable corporation under chapter 57-38. If an election is made under this section, the election:
  - a. Must be made in the form and manner prescribed by the tax commissioner on the return filed for the tax year beginning on January 1, 2013, or the return filed for the short period required under subsection 8 of section 57-38-34; and

- b. Is binding until the earlier of:
  - (1) The end of the tax year for which the taxpayer reports a tax liability after tax credits; or
  - (2) The beginning of the tax year for which the taxpayer elects to be recognized as a subchapter S corporation under section 57-38-01.4.

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

- a. A subchapter S corporation may not file a consolidated return.
- b. Any unused credit carryovers earned by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward in the same number of years the financial institution would have been entitled under chapter 57-35.3.
- c. Any unused net operating losses incurred by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward for the same number of years the financial institution would have been entitled under chapter 57-35.3.

**SECTION 16.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

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

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

**SECTION 17. AMENDMENT.** Subdivisions c, d, and f of subsection 2 of section 57-38-30.3 of the North Dakota Century Code are amended and reenacted as follows:

- c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~ section 15 of this Act.
- d. Reduced by ~~thirty~~ forty percent of:
  - (1) The excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.
  - (2) ~~The qualified dividend income that is taxed at the same rate as long term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008.~~ Qualified dividends as defined under Internal Revenue

Code section 1(h)(11), added by section 302(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963 et seq.], but only if taxed at a federal income tax rate that is lower than the regular federal income tax rates applicable to ordinary income. If, for any taxable year, qualified dividends are taxed at the regular federal income tax rates applicable to ordinary income, the reduction allowed under this subdivision is equal to twenty percent of all dividends included in federal taxable income. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.

- f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 15 of this Act.

**SECTION 18.** Subsections 7 and 8 to section 57-38-34 of the North Dakota Century Code are created and enacted as follows:

7. For a person that was subject to the tax under chapter 57-35.3 for the calendar year ending December 31, 2012, payment of the tax under this chapter is due six months after the due date of the return as required under this section. The provisions of subdivision a of subsection 1 of section 57-38-45 do not apply to the tax due under this subsection. This subsection applies to the first tax year beginning after December 31, 2012.
8. A person that previously reported under chapter 57-35.3 on a calendar year basis and files its federal income tax return on a fiscal year basis must file a short period return for the period beginning January 1, 2013, and ending on the last day of the tax year in calendar year 2013.

**SECTION 19.** Subsection 11 to section 57-38-38 of the North Dakota Century Code is created and enacted as follows:

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

**SECTION 20.** Subsection 16 to section 57-38-40 of the North Dakota Century Code is created and enacted as follows:

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

**SECTION 21. AMENDMENT.** Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-26.1. Allocation of revenues among political subdivisions.**

Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to ~~forty~~forty-three and one-half percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters

57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.
  - a. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, in the following manner:
    - (1) Thirty-two percent of the amount must be allocated equally among the counties; and
    - (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.
  - b. Thirty-six percent of the amount must be allocated among all counties, excluding the seventeen counties with the greatest population, in the following manner:
    - (1) Forty percent of the amount must be allocated equally among the counties; and
    - (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period based upon the proportion each city's population bears to the total population of all cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a

park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

**SECTION 22. REPEAL.** Chapter 57-35.3 of the North Dakota Century Code is repealed.

**SECTION 23. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$125,000,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of allocation of state-paid property tax relief, for the biennium beginning July 1, 2013, and ending June 30, 2015.

**SECTION 24. LEGISLATIVE MANAGEMENT REPORT.** By December 31, 2014, the department of human services, with the assistance of the tax commissioner, shall prepare and file a report with the legislative council on the impact of the employer-provided child care credit on the availability of child care and on existing child care providers' ability to continue to provide affordable quality child care and the effects on the ability of the state's workforce to find affordable quality child care.

**SECTION 25. EFFECTIVE DATE.** Section 22 of this Act is effective for taxable events occurring after June 30, 2014, and the remainder of this Act is effective for taxable years beginning after December 31, 2012."

Renumber accordingly