

**SECOND ENGROSSMENT
with Conference Committee Amendments
REENGROSSED SENATE BILL NO. 2325**

Introduced by

Senators Burckhard, Cook, Dotzenrod

Representatives Belter, S. Kelsh

1 A BILL for an Act to create and enact a new section to chapter 57-38, two new subsections to
2 section 57-38-34, a new subsection to section 57-38-38, and a new subsection to section
3 57-38-40 of the North Dakota Century Code, relating to corporate and individual income tax
4 credits and transition of financial institutions to corporate income tax treatment; to amend and
5 reenact subsection 5 of section 11-37-08, subsection 8 of section 40-63-01, subsection 5 of
6 section 40-63-04, section 40-63-06, subsections 3 and 4 of section 40-63-07, subsection 3 of
7 section 57-33.2-01, section 57-33.2-03, subsection 3 of section 57-38-01.3, subsections 1 and 3
8 of section 57-38-01.26, subsections 5 and 7 of section 57-38-01.32, subdivisions c, d, and f of
9 subsection 2 of section 57-38-30.3, and section 57-39.2-26.1 of the North Dakota Century
10 Code, relating to reduction of the distribution tax rate for companies engaged in the distribution
11 of electricity, individual and corporation income tax rates, and credits and increased allocations
12 from the state aid distribution fund; to repeal chapter 57-35.3 of the North Dakota Century
13 Code, relating to elimination of the financial institutions tax; and to provide an effective date.

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

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

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

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

23 8. "Taxpayer" means an individual, corporation, ~~financial institution~~, or trust subject to the
24 taxes imposed by chapter ~~57-35.3~~ or 57-38 and includes a partnership, subchapter S

1 corporation, limited partnership, limited liability company, or any other passthrough
2 entity.

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

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

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

9 **40-63-06. Historic preservation and renovation tax credit.**

10 A credit against state tax liability as determined under sections ~~57-35.3-03~~, 57-38-30, and
11 57-38-30.3 is allowed for investments in the historic preservation or renovation of property
12 within the renaissance zone. The amount of the credit is twenty-five percent of the amount
13 invested, up to a maximum of two hundred fifty thousand dollars. The credit may be claimed in
14 the year in which the preservation or renovation is completed. Any excess credit may be carried
15 forward for a period of up to five taxable years.

16 **SECTION 5. AMENDMENT.** Subsections 3 and 4 of section 40-63-07 of the North Dakota
17 Century Code are amended and reenacted as follows:

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

26 4. A credit against state tax liability as determined under section ~~57-35.3-03~~, 57-38-30, or
27 57-38-30.3 is allowed for investments in a renaissance fund organization. The amount
28 of the credit is fifty percent of the amount invested in the renaissance fund
29 organization during the taxable year. Any amount of credit which exceeds a taxpayer's
30 tax liability for the taxable year may be carried forward for up to five taxable years after
31 the taxable year in which the investment was made.

1 **SECTION 6. AMENDMENT.** Subsection 3 of section 57-33.2-01 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 3. "Company" means an individual, partnership, corporation, limited liability company,
4 limited liability partnership, cooperative, or any other organization or association
5 engaged in generation, distribution, or transmission of electricity. A company subject to
6 taxation under chapter 57-06, is not a "company" for purposes of this chapter unless it
7 files an irrevocable election with the commissioner to be treated as a company under
8 this chapter by October 1, ~~2009~~2013, for taxable periods after December 31,
9 ~~2009~~2013; by October 1, ~~2010~~2014, for taxable periods after December 31,
10 ~~2010~~2014; by October 1, ~~2011~~2015, for taxable periods after December 31, ~~2011~~2015;
11 or by October 1, ~~2012~~2016, for taxable periods after December 31, ~~2012~~2016.
12 Property subject to taxation under this chapter which is owned by a company that is
13 otherwise taxable under chapter 57-06 which files an election under this chapter is
14 exempt from taxation under chapter 57-06.

15 **SECTION 7. AMENDMENT.** Section 57-33.2-03 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **57-33.2-03. Distribution taxes.**

18 A distribution company is subject to a tax at the rate of ~~one dollar~~eighty cents per
19 megawatt-hour for retail sale of electricity delivered to a consumer in this state during the
20 calendar year. Distribution taxes under this section do not apply to the sale of electricity to any
21 coal conversion facility that became operational before January 1, 2009, and which is subject to
22 taxation under chapter 57-60.

23 **SECTION 8. AMENDMENT.** Subsection 3 of section 57-38-01.3 of the North Dakota
24 Century Code is amended and reenacted as follows:

25 3. The sum calculated pursuant to subsection 1 must be reduced by the amount of any
26 net operating loss that is attributable to North Dakota sources, including a net
27 operating loss calculated under chapter 57-35.3 for tax years beginning before
28 January 1, 2013. If the net operating loss that is attributable to North Dakota sources
29 exceeds the sum calculated pursuant to subsection 1, the excess may be carried
30 forward for the same time period that an identical federal net operating loss may be
31 carried forward. If a corporation uses an apportionment formula to determine the

1 amount of income that is attributable to North Dakota, the corporation must use the
2 same formula to determine the amount of net operating loss that is attributable to
3 North Dakota. In addition, no deduction may be taken for a carryforward when
4 determining the amount of net operating loss that is attributable to North Dakota
5 sources.

6 **SECTION 9. AMENDMENT.** Subsections 1 and 3 of section 57-38-01.26 of the North
7 Dakota Century Code are amended and reenacted as follows:

- 8 1. A taxpayer is entitled to a credit against state income tax liability under section
9 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic
10 organization created under the laws of this state. The amount of the credit to which a
11 taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to an
12 angel fund during the taxable year. The aggregate annual credit for which a taxpayer
13 may obtain a tax credit is not more than forty-five thousand dollars. The aggregate
14 lifetime credits under this section that may be obtained by an individual, married
15 couple, passthrough entity and its affiliates, or other taxpayer is ~~one~~five hundred ~~five~~
16 thousand dollars. The investment used to calculate the credit under this section may
17 not be used to calculate any other income tax deduction or credit allowed by law.
- 18 3. An angel fund must:
- 19 a. Be a partnership, limited partnership, corporation, limited liability company, limited
20 liability partnership, trust, or estate organized on a for-profit basis which is
21 headquartered in this state.
- 22 b. Be organized for the purpose of investing in a portfolio of at least three primary
23 sector companies that are early-stage and mid-stage private, nonpublicly traded
24 enterprises with strong growth potential. For purposes of this section, an
25 early-stage entity means an entity with annual revenues of up to two million
26 dollars and a mid-stage entity means an entity with annual revenues over two
27 million dollars not to exceed ten million dollars. ~~Early stage and mid-stage entities~~
28 ~~do not include those that have more than twenty-five percent of their revenue~~
29 ~~from income-producing real estate.~~Investments in real estate or real estate
30 holding companies are not eligible investments by certified angel funds. Any

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

3 c. Consist of at least six accredited investors as defined by securities and exchange
4 commission regulation D, rule 501.

5 d. Not have more than twenty-five percent of its capitalized investment assets
6 owned by an individual investor.

7 e. Have at least five hundred thousand dollars in commitments from accredited
8 investors and that capital must be subject to call to be invested over an
9 unspecified number of years to build a portfolio of investments in enterprises.

10 f. Be member-managed or a manager-managed limited liability company and the
11 investor members or a designated board that includes investor members must
12 make decisions as a group on which enterprises are worthy of investments.

13 g. Be certified as an angel fund that meets the requirements of this section by the
14 department of commerce.

15 h. Be in compliance with the securities laws of this state.

16 i. Within thirty days after the date on which an investment in an angel fund is made,
17 the angel fund shall file with the tax commissioner and provide to the investor
18 completed forms prescribed by the tax commissioner which show as to each
19 investment in the angel fund the following:

20 (1) The name, address, and social security number or federal employer
21 identification number of the taxpayer or passthrough entity that made the
22 investment;

23 (2) The dollar amount remitted by the taxpayer or passthrough entity; and

24 (3) The date the payment was received by the angel fund for the investment.

25 j. Within thirty days after the end of a calendar year, the angel fund shall file with
26 the tax commissioner a report showing the name and principal place of business
27 of each enterprise in which the angel fund has an investment.

28 **SECTION 10. AMENDMENT.** Subsections 5 and 7 of section 57-38-01.32 of the North
29 Dakota Century Code are amended and reenacted as follows:

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

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

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

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

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

14 a. Must be made in the form and manner prescribed by the tax commissioner on the
15 return filed for the tax year beginning on January 1, 2013, or the return filed for
16 the short period required under subsection 8 of section 57-38-34; and

17 b. Is binding until the earlier of:

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

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

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

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

24 b. Any unused credit carryovers earned by a financial institution under chapter
25 57-35.3 for tax years beginning before January 1, 2013, may be carried forward
26 in the same number of years the financial institution would have been entitled
27 under chapter 57-35.3.

28 c. Any unused net operating losses incurred by a financial institution under chapter
29 57-35.3 for tax years beginning before January 1, 2013, may be carried forward
30 for the same number of years the financial institution would have been entitled
31 under chapter 57-35.3.

1 **SECTION 12. AMENDMENT.** Subdivisions c, d, and f of subsection 2 of section 57-38-30.3
2 of the North Dakota Century Code are 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 11 of this Act.

6 d. Reduced by ~~thirty~~forty percent of:

7 (1) The excess of the taxpayer's net long-term capital gain for the taxable year
8 over the net short-term capital loss for that year, as computed for purposes
9 of the Internal Revenue Code of 1986, as amended. The adjustment
10 provided by this subdivision is allowed only to the extent the net long-term
11 capital gain is allocated to this state.

12 (2) ~~The qualified dividend income that is taxed at the same rate as long-term~~
13 ~~capital gain for federal income tax purposes under Internal Revenue Code~~
14 ~~provisions in effect on December 31, 2008. Qualified dividends as defined~~
15 ~~under Internal Revenue Code section 1(h)(11), added by section 302(a) of~~
16 ~~the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108-27;~~
17 ~~117 Stat. 752; 2 U.S.C. 963 et seq.], but only if taxed at a federal income tax~~
18 ~~rate that is lower than the regular federal income tax rates applicable to~~
19 ~~ordinary income. If, for any taxable year, qualified dividends are taxed at the~~
20 ~~regular federal income tax rates applicable to ordinary income, the reduction~~
21 ~~allowed under this subdivision is equal to thirty percent of all dividends~~
22 ~~included in federal taxable income.~~ The adjustment provided by this
23 subdivision is allowed only to the extent the qualified dividend income is
24 allocated to this state.

25 f. Increased by an amount equal to the losses that are passed through to a
26 taxpayer in connection with an allocation and apportionment to North Dakota
27 under ~~chapter 57-35.3~~section 11 of this Act.

28 **SECTION 13.** Two new subsections to section 57-38-34 of the North Dakota Century
29 Code are created and enacted as follows:

30 For a person that was subject to the tax under chapter 57-35.3 for the calendar year
31 ending December 31, 2012, payment of the tax under this chapter is due six months

1 after the due date of the return as required under this section. The provisions of
2 subdivision a of subsection 1 of section 57-38-45 do not apply to the tax due under
3 this subsection. This subsection applies to the first tax year beginning after
4 December 31, 2012.

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

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

11 This section applies if additional tax would be due under the provisions of chapter
12 57-35.3 in effect for taxable years beginning before January 1, 2013.

13 **SECTION 15.** A new subsection to section 57-38-40 of the North Dakota Century Code is
14 created and enacted as follows:

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

18 **SECTION 16. AMENDMENT.** Section 57-39.2-26.1 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **57-39.2-26.1. Allocation of revenues among political subdivisions.**

21 Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and
22 motor vehicle excise tax collections, equal to ~~forty~~forty-three and one-half percent of an amount
23 determined by multiplying the quotient of one percent divided by the general sales tax rate, that
24 was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor
25 vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3
26 must be deposited by the state treasurer in the state aid distribution fund. The state tax
27 commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and
28 motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund
29 as determined under this section. Revenues deposited in the state aid distribution fund are
30 provided as a standing and continuing appropriation and must be allocated as follows:

1 1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in
2 the first month after each quarterly period as provided in this subsection.

3 a. Sixty-four percent of the amount must be allocated among the seventeen
4 counties with the greatest population, in the following manner:

5 (1) Thirty-two percent of the amount must be allocated equally among the
6 counties; and

7 (2) The remaining amount must be allocated based upon the proportion each
8 such county's population bears to the total population of all such counties.

9 b. Thirty-six percent of the amount must be allocated among all counties, excluding
10 the seventeen counties with the greatest population, in the following manner:

11 (1) Forty percent of the amount must be allocated equally among the counties;
12 and

13 (2) The remaining amount must be allocated based upon the proportion each
14 such county's population bears to the total population of all such counties.

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

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

29 A city shall deposit all revenues received under this subsection in the city general
30 fund. Each city shall reserve a portion of its allocation under this subsection for further
31 distribution to, or expenditure on behalf of, park districts and other taxing districts

1 within the city, excluding school districts. The share of the city allocation under this
2 subsection to be distributed to a park district must be equal to the percentage of the
3 city share of state aid distribution fund allocations that park district received during
4 calendar year 1996, up to a maximum of thirty percent. The governing boards of the
5 city and park district may agree to a different distribution.

6 **SECTION 17. REPEAL.** Chapter 57-35.3 of the North Dakota Century Code is repealed.

7 **SECTION 18. EFFECTIVE DATE.** Section 16 of this Act is effective for taxable events
8 occurring after June 30, 2014, and the remainder of this Act is effective for taxable years
9 beginning after December 31, 2012.