

2009 HOUSE FINANCE AND TAXATION

HB 1203

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1203

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 14, 2009

Recorder Job Number: 6982

Committee Clerk Signature

Minutes:

**Chairman Belter:** I call the hearing on HB1203 to order.

**Representative George Keiser:** I am here to present HB 1203 which I also strongly support.

The big difference between this bill and the last bill is that all those who spoke against me on the last bill will be with me. I believe it is consistent with my philosophical position, which is that the charities do, in fact, do good things in our communities and our state. In addition to considering ways to tax them, we need to consider ways to help them be successful. A couple of sessions ago, you enacted legislation in this area. There does exist a state tax credit available for corporations that made contributions to certain non-profits. When that legislation was first enacted, it was somewhat modeled after legislation in Montana. One state's legislation doesn't always perfectly fit another state's legislation. The current law allows corporations to access that tax credit. When you say corporations, we have a whole section of the code which deals with corporations. That tax credit is not available to sole proprietorships. For example, from a tax code perspective, sole proprietorships are treated as individuals and, therefore, cannot access this credit. The purpose of this legislation was to encourage giving to non-profits in our state to use in non-decreasing endowments so that these organizations could build existing endowments to support the purpose the organization was founded upon. It

has worked extremely well. We have corporations that have taken advantage of this. This bill does two general things: (1) It adds to the people that are eligible to access this tax credit. It allows individuals who are making a contribution to these organizations to access the tax credit. In allowing individuals, it allows sole proprietorships to also make the contribution. Another interesting glitch that I wasn't aware of until I began to meet with members of the various charities was that the original bill excluded financial institutions. That's a different section of the code. Corporations and financial institutions are treated differently so they decided to make it possible for sole proprietorships and individuals and for financial institutions to access this tax credit by giving to community agencies providing services. (2) This bill does require that they have to give to certain types of endowments that were already established as I understand it. One of the problems we have, especially hospitals, but other agencies as well in our state, is that hospitals frequently receive very sizable gifts not linked to a particular endowment. The hospitals said they would like to be able to offer to people considering gifts an incentive. (I am on Medcenter One's Board). The hospital frequently gets large gifts that are not designated that they don't immediately need for operations. They would like to put this money into a Board-developed endowment. This language also allows an individual to create an endowment or the Board of these agencies to create a non-decreasing endowment that would have access to this tax credit. This is a very good bill. This, in my opinion, is the correct way to assist these agencies by giving incentive to the people who give the contribution, rather than worrying about subsidizing them with tax dollars. Let the taxpayers themselves determine how they want to spend their dollars. If they want to give a \$10,000 gift, God bless them. It will increase giving. It will increase individual gifts. The one limit that we did place in here so the Tax Department could have a reasonable opportunity to develop a fiscal note is that only gifts of \$1,000 and more would qualify. It is my understanding that it is not in the aggregate

they give for a year. As written, it is hoped that the individual will come forward with a \$1,000 gift or more to qualify. We had a lengthy discussion. Many of the people who worked on this bill are in the room today, but we had a lot of support and input from various entities in that sector. The majority of them felt very strongly that the minimum should be set at \$1,000. Some of them, in their bylaws, treat \$1,000 as the critical point above which a gift would qualify for an endowment. It would be my hope that these organizations could become very much like other successful endowed entities. The largest endowment in the U.S., of course, is Harvard University. Harvard doesn't have to worry about too much in terms of underwriting. I think Stanford is No. 2. They have been very successful and this is an important tool for these entities to become more self-supporting. I also have a very substantial list of amendments which were brought forward by the Tax Department. **(Attachment #1.)** Joe Becker is here today and will be explaining these amendments. I am not saying these amendments are technical, but they are as close to technical as you can get. Joe and I met yesterday and he said they had a lot of concern about this bill. If we had looked at this bill more closely when it was passed originally, he would have deleted this section. My understanding is that these amendments do not change the intent or the way it works. It is simply housecleaning and an attempt to make it more understandable, etc. Mr. Chairman, with that, I conclude my testimony and stand for any questions.

**Representative Schmidt:** Representative Keiser, maybe the amendments can be changed. I hope they strike line 9, page 1 as I am very suspicious of words I can't say and don't understand.

**Representative Keiser:** I can't say it and I can't tell you what it is, but there are people here who be able explain it, but I know it is an important word.

**Representative Drovdal:** I would like to have explained exactly what this means in dollars and cents. If I donate \$1,000 to a qualifying fund, how much can I take off my income tax? How much credit do I get?

**Representative Keiser:** I am not sure I can give you the correct answer. I will give you my understanding. There is up to about a 40% tax credit with a limit of, I believe, \$5,000. It is already in code. If you give \$1,000, you would have the potential to receive up to a 40% or \$400 tax credit. How that is applied to your state taxes, I am not certain. However, there is some kind of offset recovery based on the federal. If you use it on the federal, you do not get the full 40%. You have to bring it back as income. You cannot double dip. Basically it is accessing up to a 40% tax credit.

**Representative Drovdal:** I look forward to being part of your committee. Sometimes we get into the non-refundable or refundable tax credit. Is this taken as a non-refundable tax credit?

**Representative Keiser:** I don't know how that works. Perhaps Joe Becker can clarify that.

**Chairman Belter:** Any other questions? Thank you, Representative Keiser.

**Senator Horne:** I represent District 3 in Minot. I had the privilege in the 2007 session to introduce a bill that strengthened the original bill brought forth a few sessions before that, which started this process of allowing tax credits for individuals and corporations to donate to non-profit charitable organizations. It was patterned after a bill in Montana, as Representative Keiser mentioned, but we tried to strengthen it and make it more applicable to North Dakota. I was pleased when Representative Keiser asked me to support a better bill which would help charitable organizations even more. The goal is to strengthen foundations and non-profit organizations to encourage you folks to contribute at a higher level and provide a tax credit as an incentive. I did check with the Tax Department and we are off to a start in the last few years, but it is not a great start. It has cost the State Treasury of North Dakota so far

\$132,328. It isn't breaking our bank yet, so don't worry about that although we hope to increase that considerably. In Montana I am told that over the past 12 years or so, there have been \$100 million given to non-profit charitable foundations to strengthen them over the long haul. It is working well in Montana and I see it working well in North Dakota eventually. It will take awhile to get the word out and talk with farmers, lawyers, estate planners and so on, but I think it will work eventually. That's the goal—to strengthen foundations and non-profit charitable organizations. This bill will expand it to include banks and other organizations. I am here to speak in favor of this bill and I hope you will give it favorable consideration.

Any questions?

**Chairman Belter:** Further testimony in favor of 1203?

**Gordon Binek, Executive Director of Bismarck State College Foundation:**

**(See Testimony #2.)**

**Kevin Dvorak, President of North Dakota Community Foundation: (See Testimony #3.)**

I can answer Representative Drovdal's question earlier asking what the credit would be if you give \$1,000. It would depend upon your tax bracket. You would get a charitable deduction on your federal income tax. If you gave \$1,000 and were in the 25% income tax, that would be \$250 against your federal income tax. In addition, you would get a credit of \$400 against your North Dakota income tax. Your total benefit could be \$650 for that \$1,000 gift. I am not a CPA and not giving you tax advice.

**Chairman Belter:** Any questions?

**Gayla Sherman, Co-Executive Director of Charles Hall Youth Services and North Dakota Association of Nonprofit Organizations (NDANO): (See Testimony #4.)**

**Andy Dahl, Executive Director of Bismarck YMCA:** In speaking on behalf of the local YMCA., this bill gives incentive to individuals to give endowment gifts. We are looking to

insure that future generations have the same available services we have now. We are in favor of HB1203 to allow individuals to give gifts to endowment funds that are already established.

**Rod Backman, Jamestown College and University of Mary:** We like this statute and support these changes. That is the extent of my testimony.

**Chairman Belter:** Is there any other other testimony in favor of 1203? Any opposition to 1203?

Any questions of the Tax Department?

**Representative Drovdal:** I assume this is on ND1?

**Joseph Becker of the Tax Department:** This is an item that is on both the ND1 and ND2.

**Chairman Belter:** Joe, the question about the amount of the \$1,000 contribution and saving \$400-650 on your tax. Is that correct?

**Joseph Becker:** Mr. Chairman, the gentleman was correct. It will reduce federal income tax, assuming you are itemizing. If you are not itemizing, you will not get a federal tax break. Corporations would. Anyway, on the state end, the credit is dollar for dollar against the tax liability itself. One thing I would add, just to augment that, is the current statute already includes a provision that you cannot get a dual benefit. If you do get the benefit of a federal deduction, when you claim on the state return, you will have to add back the amount of that deduction to North Dakota income. Basically you get the the credit in lieu of the deduction.

**Chairman Belter:** So you add back the \$250? The \$1,000?

**Joe Becker:** Mr. Chairman, you add back the portion of that contribution to the extent that you benefitted from it. If you deducted the full \$1,000 and your itemized deductions were such that full \$1,000 came to bear off your tax liability, you would have to add back the \$1,000 to the North Dakota income tax.

**Representative Drovdal:** I still need a little more clarification. You said dollar for dollar deduction for contributions. So the \$1,000, if you added it back in, what would be the credit off your ND income tax? \$400 or \$1000?

**Joe Becker:** Let's keep the federal deductions separate from the state credit. Ignoring what is happening on the federal return, even if we are recouping that deduction, the state credit is 40% of your contribution up to the max.

**Representative Winrich:** On page 3, line 15 and following in the bill, it says "Only charitable gifts of \$1,000 or more for the taxable year qualify for a tax credit under this subsection." It sets the maximum credit at \$10,000 or \$20,000 per married individuals. Does the \$1,000 minimum apply to individuals or married couples filing jointly or both?

**Joe Becker:** The minimum \$1,000 gift only applies to the individual who makes a contribution. In other words, any other contributor, a corporation or other business entity that makes a contribution is subject to this minimum amount.

**Representative Winrich:** What happens with a married couple filing a joint return? Is there no minimum contribution?

**Joe Becker:** Until we get a single gift of \$1,000, you can't qualify as an individual. The only thing the joint return is going to do is move the maximum from \$10,000 to \$20,000 on the credit side.

**Representative Winrich:** I will talk to you later about it.

**Chairman Belter:** No, go ahead. I am sure all of us are following in the same line here.

**Representative Winrich:** If my wife and I file a joint return, as a couple we have contributed \$1,000, which as an individual would qualify for this, are we allowed a tax credit on the joint return?

**Joe Becker:** Yes, we are not going to split it and say you gave \$500 apiece. As long as it is \$1,000 per gift, it would be alright.

**Representative Winrich:** Is there a limit on the contribution?

**Joe Becker:** There is no limit on the contribution. There is a limit on the credit amount that can be taken in a year.

**Chairman Belter:** If you file a joint return, can a husband and wife take two credits or only one? Is there a carryover?

**Joe Becker:** On a joint return, the maximum amount of the credit that can be taken in a year doubles from \$10,000 to \$20,000 regardless of who is giving the gifts. There is no refundable income tax credit. The constitution requires that unless it is for a public purpose, we cannot refund the income tax. In this case, it is not refundable, but there is a three year carryover. If you cannot use the full credit the first year, you have three additional years to make use of it.

**Chairman Belter:** Any other questions?

**Joe Becker:** Mr. Chairman, did you want me to explain the amendments? There are four essential changes the amendment is going to make. Let me walk you through the amendments. Page 3 of the bill, line 13 is striking "individual making the contribution" which opens this up. Current law only allows an individual to get this credit if they make a planned gift, an annuity or more involved type of gift giving for estate planning purposes. By striking the planned gift language, it opens it up for any charitable contributions. In doing so, the definition of a "planned gift" on line 18, page 1 of the bill, is no longer necessary and serves no purpose. All we are doing with one of the amendments is to strike that definition because it may be confusing. The second change relates to Representative Winrich's question earlier. That is on page 3, line 15 regarding that minimum contribution. We have altered the language just a bit so that it is understood that it is per gift, not gifts in the aggregate, i.e. a number of gifts adding

up to \$1,000 is not what that is talking about. A one time gift has to be at least \$1,000. The third major change is also on page 3, lines 22 and 23. The new language is allowing this endowment credit to the banks and financial institutions. However, putting it here in the income tax chapter is insufficient to accomplish that so what we are doing in the amendments is to create a new section in the financial institution chapter so that it is in the right location. It does not change anything the bill will accomplish; it is just putting it in the right place. Page 4, lines 7 through 14 is a section that pertains to pass through entities, a partnership, an S corporation, etc. If they make a contribution, they can also generate this credit. The credit is simply passed through to the owners. However, they do use language, on line 10, for example, for charitable gifts and planned gifts. We suggest striking "planned gifts" because it doesn't serve any purpose. "Charitable gifts" is comprehensive enough to include that. Page 4, lines 20 through 23, I indicated earlier that if an individual makes a contribution for federal purposes and benefits from it, it says you have to bring it back as income on the state return and then take your full credit, basically eliminating the dual benefit. The problem we see there is, in some cases, in a corporation might make a contribution large enough that they will run up against the limitation on their federal return. They are going to carry some of the deduction into a future year. What we want to do is adjust this language so that it allows us to recoup that contribution, regardless of the year it falls into. Right now it states that we can only take it the first year. I think that was an inadvertent change last session. What we are suggesting is a change to allow us to recoup the deduction off the federal return in any year it might show up if it generated this credit. Those are the major changes. Unless there are any questions, I will stand down.

**Representative Winrich:** I am curious about the limitation to one gift of \$1,000 because I know there are a number of charitable organizations that encourage a monthly deduction from

your account in order to stimulate giving. Is there a rationale for that rather than an aggregate?

**Joe Becker:** I can only take a guess at what the sponsors were after. I am going to assume that when they struck the planned gift language and opened this up that they wanted to provide some minimum contribution. From the Tax Department's point of view, it doesn't matter how you want to handle that. If you don't want the minimum, it doesn't cause us any grief.

**Representative Keiser:** There was significant discussion about that. There is a natural division in the way gifts are made. Many charities use these smaller gifts for operational funds and they did not want to disrupt the operational opportunities. They were afraid they were going to have to track contributions and account for it, then when it hit \$1,000, they would have to decide whether to use it for operations or move it. Tom Regan, with the United Way, was on our committee. He said that people give a variety of sized gifts to the United Way. They expect those to be operational, not typically an endowment. You are expecting funds to be almost immediately distributed. The consensus of our group was clearly that \$1,000 is a target level. Some of our groups here have \$1,000 literally in their bylaws for when a gift gets into the endowment category, rather than operations. From the administrative aspect, if it is \$250, it is operational; if it goes over \$1,000, it could go operational if not designated or it could be considered an endowment. I apologize, I forgot something. I want to address the committee's attention on page 5 that new subsection 9. We felt that that was relatively critical and I forgot to mention that the organization that receives this and wished to use the money in an endowment format, that organization is responsible to notify the contributor so that the contributor can then apply for the tax. The burden is not on the Tax Department; it is on the

organization itself to get back to an individual and inform them that it is a board designated endowment. This tax credit is available to you.

**Representative Pinkerton:** Isn't the top federal rate still around 33-35%? It is pretty easy to get in that 33-35%.

**Joe Becker:** I think it is in the neighborhood of 35%.

**Representative Pinkerton:** To be honest, my income has fallen since I've been in the legislature. The state rate is 1-14%?

**Joe Becker:** The state income tax rates or the corporate rates?

**Representative Pinkerton:** Individual.

**Joe Becker:** For an individual on taxable income, it ranges from 2.1% to 5.54%..

**Representative Pinkerton:** Essentially if you are over \$200,000 a year in taxable income, then you are about a 40% rate now. If you deduct this \$1,000 contribution from your federal tax liability, you would get a \$400 deduction more or less between the state and the federal rate. It would amount to about 40%. If you take this as a tax credit, you get 40%. It is an either or situation. You have to take either the federal deduction or the tax credit.

**Joe Becker:** No, they are going to take the deduction on the federal return if they can get it there. The language is simply stating that if you take this credit, we are going to take that deduction away to the extent it reduced the income coming into the state return.

**Representative Pinkerton:** So you would still get the 35% for the federal if you were in that bracket range and then you would not get the state deduction, but you would get the \$400. On a \$1,000 deduction, if you are in the top bracket, you would \$350 for the federal deduction and then you would get a \$400 deduction tax credit from the state so of that \$1,000, the out-of-pocket money would only be \$250. Is that correct?

**Joe Becker:** I don't have my calculator with me. I understand where you are going, but I won't verify those numbers now.

**Representative Pinkerton:** That is pretty close-\$350 and \$400 or \$750 so you would only be out-of-pocket \$250.

**Joe Becker:** With respect to the additional language that will allow this credit to apply to banks and financial institutions, we need to be clear that it will only reduce the general funds part of that tax. The general institution tax is divided between the general fund and the greater portion goes to (inaudible).

**Attachment #5: Attachments prepared by Tax Department after meeting and distributed to Finance and Taxation committee.**

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1203

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/02/09

Recorder Job Number: 8382

Committee Clerk Signature *Lou Engelson*

Minutes:

**Chairman Belter** opened the hearing on HB 1203.

**Chairman Belter:** We have some amendments on 1203. Joe, do you want to walk us through those.

**Joseph Becker, North Dakota State Tax Department:** Starting on page 1 of the bill itself, they are removing that new definition of board-designated fund. In talking with the sponsors, they indicate they do not want that language in there. Anywhere where it talks about board-designated funds, that language is coming out. Essentially what that is going to do is leave the existing statute in place in terms of a qualified endowment. On page 1, lines 8-12, all that is coming out. On page 1 after line 3 insert Section 1. The bill that was introduced wanted to allow a credit to financial institutions. That language was placed on page 3 in the income tax chapter. What the amendment is going to do is lift that out and put it over in the financial institution chapter where it belongs. It's just a technical move. The financial institutions will be able to access this credit for the first time. We're just putting the language in the right chapter.

**Rep. Kelsh:** The amendment states page 1, line 8, remove Board-designated endowment means a permanent endowment established, and then goes on to say remove lines 9 through 12. Why doesn't it say remove lines 8 through 12?

**Joseph Becker:** Because on line 8, the letter a. has to be left in. The next major change to the amendments starts with page 3, line 12 to the bottom of the first page of the amendments.

What that is doing is going into the bill. On the bill lines 11 through 20, that particular provision of the existing statute is where it talks about giving the planned gift credit to individuals only. In talking with the interested parties behind the bill as well as the prime sponsors, they want to make some changes in there because the bill as introduced wasn't really doing what they wanted. The amendments are going to do this. The current law allows an individual to make a contribution to a nonprofit organization, basically your tax exempt organizations, but it has to be in the form of a planned gift. So that really narrows what you can do. You can't just give them an out-of-pocket case donation. You have to go through a planned gift mechanism.

What the bill was trying to do was to open that up a little bit and allow individuals to give those cash gifts to a qualified endowment. When the sponsors contacted our office, what they want to do is this. The amendments are going to take that section of the law and it's going to take individuals and do two things. If they want to make a contribution to any sort of tax exempt organization, or as the law defines a nonprofit organization in North Dakota, it still must be in the form of a planned gift. They can also give a planned gift to a qualified endowment.

**Chairman Belter:** What is the definition of a planned gift?

**Joseph Becker:** That is what you are seeing in all that language starting on page 1, line 18. It defines it there. We're talking about things like charitable remainder trusts. These are the kind of tools that financial planners use when they are talking about folks who were doing estate planning. There are contracts they're entering into to give their assets away to a charity. These are serious gifts, and the statute does define all those various types of gifts that are allowed. What the sponsors want to do is also allow the individuals to go down a second road. They can make that cash gift. In other words, they don't have to make a planned gift.

They just want to make a cash gift to a qualified endowment only. It has to be at least \$2,500 in total gifts for the year. Once gifts reach \$2,500 in total for the year, the credit is allowed. So they're basically giving a little bit more room for individuals to operate by putting in that restriction of \$2,500. The bill, as introduced was going to restrict it to \$1,000 so they opened that up a little bit. My understanding in talking with a gentlemen from Fargo who was one of the individuals behind this legislation two sessions ago, he made sure that the changes that are being made here were going to stay with the spirit of an endowment and not cause any disruption. These amendments are relying our understanding of what they want to do here. The balance of the amendments on page 2 of the amendments, they are simply cleaning up some of the language since we have the statute open here. We're going and making some language changes just to clean it up a little bit in the partnership area. That's not changing anything substantive. The last substantive change in the amendments is occurring on page 4 of the bill, lines 20 through 22. When this particular statute was introduced two sessions ago, they put in a provision that states if a taxpayer wants to qualify for this credit on the state return, if they took a charitable contribution on the federal return which would have reduced taxable income coming into the state return. They have to restore the contribution. They lose the contribution. You're basically saying you can have the credit, but you lose the contribution. That provision has been in there since 2005. What we have asked the sponsors to do is to make a change there because in some cases when a taxpayer makes a charitable contribution, there are limits on how much you can deduct on the federal return based on your income. That means that charitable contribution may be used to claim the state credit. You may not get to claim all the deduction in the first year. It may get carried forward because of limitations so the deduction shows up in more than one year on the federal return. We're

suggesting a change that would allow us to recoup that contribution regardless of the year it falls into.

**Chairman Belter:** Any questions?

**Rep. Grande:** I move the amendment.

**Chairman Belter:** We have a motion from Rep. Grande to move the 90524.02TX amendments that were just explained by Mr. Becker.

**Rep. Brandenburg:** Second.

**Chairman Belter:** Second from Rep. Brandenburg. Any discussion. If not, all those in favor of the proposed amendments signify by saying aye. Opposed? Motion carries.

**Rep. Wrangham:** I move a **do not pass**.

**Chairman Belter:** We have a motion from Rep. Wrangham for a do not pass. Is there a second.

**Rep. Drovdol:** Second.

**Chairman Belter:** Second by Rep. Drovdol. Any discussion? We have a motion for a do not pass as amended on 1203.

The roll was ready by the clerk.

**7 yes, 6 no, 0 absent. Rep. Wrangham was assigned to carry the bill.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/06/2009

Amendment to: HB 1203

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HB 1203 expands the existing income tax credit for planned gifts to include certain other qualifying charitable gifts, and makes the credit available for financial institutions.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The revenue loss associated with this expansion of the tax credit cannot be determined.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	02/09/2009

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/09/2009

Bill/Resolution No.: HB 1203

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	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
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Revenues						
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<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/13/2009

February 3, 2009

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2/3/09  
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1203

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 57-35.3-05 of the North Dakota Century Code, relating to a financial institution tax credit for charitable gifts;"

Page 1, after line 3, insert:

**"SECTION 1.** A new subsection to section 57-35.3-05 of the North Dakota Century Code is created and enacted as follows:

There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12, the credit for charitable gifts to a qualified endowment as provided in section 57-38-01.21. The amount allowable as a credit under this subsection for any taxable year may not exceed five and seven-tenths percent of the tax before credits allowed under this section, or ten thousand dollars, whichever is less."

Page 1, line 8, remove "Board-designated endowment" means a permanent endowment established"

Page 1, remove lines 9 through 12

Page 1, line 13, remove "b."

Page 1, line 18, remove the overstrike over "~~b.~~" and remove "c."

Page 3, line 1, remove the overstrike over "~~e.~~", remove "d.", and remove "or"

Page 3, line 2, remove "board-designated endowment"

Page 3, line 7, remove the overstrike over "~~d.~~" and remove "e."

Page 3, line 11, after "2." insert "a."

Page 3, line 12, overstrike "in an amount equal to forty percent of the present value of the"

Page 3, line 13, overstrike "aggregate amount of", remove "a", overstrike "charitable gift", and overstrike "made by the"

Page 3, overstrike line 14

Page 3, line 15, overstrike "endowment." and replace "Only charitable gifts of one thousand dollars or more during the" with "for a charitable gift as follows:"

- (1) For a charitable gift in the form of a planned gift made to a qualified nonprofit organization or to a qualified endowment, the credit is equal to forty percent of the aggregate amount of the charitable gift portion of all planned gifts made during the taxable year.

2022

(2) For a charitable gift other than a planned gift made to a qualified endowment, the credit is equal to forty percent of the aggregate amount of all charitable gifts made during the taxable year, provided the aggregate amount of all charitable gifts made during the taxable year to a single qualified endowment is two thousand five hundred dollars or more.

b."

Page 3, line 16, remove "taxable year qualify for the tax credit under this subsection."

Page 3, remove line 22

Page 3, line 23, remove "57-35.3-03"

Page 4, line 7, overstrike "treated like a"

Page 4, line 8, overstrike "partnership"

Page 4, line 9, overstrike "by the entity during the taxable year"

Page 4, line 10, overstrike "to the entity" and overstrike "and planned"

Page 4, line 11, overstrike "gifts"

Page 4, line 13, overstrike "attributable to the charitable"

Page 4, line 14, overstrike "gifts and planned gifts under this section"

Page 4, line 21, overstrike the first "in" and insert immediately thereafter "for purposes of"

Page 4, line 22, overstrike "the taxable" and insert immediately thereafter "any tax", overstrike "credit" and insert immediately thereafter "contribution", and overstrike "first claimed" and insert immediately thereafter "deducted for federal tax purposes"

Page 5, line 5, remove "or board-designated endowment"

Page 5, line 6, after "for" insert "contributions made in"

Renumber accordingly

Date: 2/2/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1203

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Grande Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Total (Yes) 13 No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Voice vote to accept amendment*

Date: 2/2/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1203

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Wrangham Seconded By Drovdal

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	/		Representative Froelich		/
Vice Chairman David Drovdal	/		Representative Kelsh		/
Representative Brandenburg	/		Representative Pinkerton	/	
Representative Froseth	/		Representative Schmidt		/
Representative Grande		/	Representative Winrich		/
Representative Headland	/				
Representative Weiler		/			
Representative Wrangham	/				

Total (Yes) 7 No 6

Absent 0

Floor Assignment Representative Wrangham

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1203: Finance and Taxation Committee (Rep. Belter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1203 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 57-35.3-05 of the North Dakota Century Code, relating to a financial institution tax credit for charitable gifts;"

Page 1, after line 3, insert:

**"SECTION 1.** A new subsection to section 57-35.3-05 of the North Dakota Century Code is created and enacted as follows:

There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12, the credit for charitable gifts to a qualified endowment as provided in section 57-38-01.21. The amount allowable as a credit under this subsection for any taxable year may not exceed five and seven-tenths percent of the tax before credits allowed under this section, or ten thousand dollars, whichever is less."

Page 1, line 8, remove "Board-designated endowment" means a permanent endowment established"

Page 1, remove lines 9 through 12

Page 1, line 13, remove "b."

Page 1, line 18, remove the overstrike over "b." and remove "c."

Page 3, line 1, remove the overstrike over "e.", remove "d.", and remove "or"

Page 3, line 2, remove "board-designated endowment"

Page 3, line 7, remove the overstrike over "d." and remove "e."

Page 3, line 11, after "2." insert "a."

Page 3, line 12, overstrike "in an amount equal to forty percent of the present value of the"

Page 3, line 13, overstrike "aggregate amount of", remove "a", overstrike "charitable gift", and overstrike "made by the"

Page 3, overstrike line 14

Page 3, line 15, overstrike "endowment." and replace "Only charitable gifts of one thousand dollars or more during the" with "for a charitable gift as follows:

- (1) For a charitable gift in the form of a planned gift made to a qualified nonprofit organization or to a qualified endowment, the credit is equal to forty percent of the aggregate amount of the charitable gift portion of all planned gifts made during the taxable year.
- (2) For a charitable gift other than a planned gift made to a qualified endowment, the credit is equal to forty percent of the

aggregate amount of all charitable gifts made during the taxable year, provided the aggregate amount of all charitable gifts made during the taxable year to a single qualified endowment is two thousand five hundred dollars or more.

b."

Page 3, line 16, remove "taxable year qualify for the tax credit under this subsection."

Page 3, remove line 22

Page 3, line 23, remove "57-35.3-03"

Page 4, line 7, overstrike "treated like a"

Page 4, line 8, overstrike "partnership"

Page 4, line 9, overstrike "by the entity during the taxable year"

Page 4, line 10, overstrike "to the entity" and overstrike "and planned"

Page 4, line 11, overstrike "gifts"

Page 4, line 13, overstrike "attributable to the charitable"

Page 4, line 14, overstrike "gifts and planned gifts under this section"

Page 4, line 21, overstrike the first "in" and insert immediately thereafter "for purposes of"

Page 4, line 22, overstrike "the taxable" and insert immediately thereafter "any tax", overstrike "credit" and insert immediately thereafter "contribution", and overstrike "first claimed" and insert immediately thereafter "deducted for federal tax purposes"

Page 5, line 5, remove "or board-designated endowment"

Page 5, line 6, after "for" insert "contributions made in"

Renumber accordingly

2009 TESTIMONY

HB 1203

Attachment # 1  
January 14, 2009

## PROPOSED AMENDMENTS TO HOUSE BILL 1203

Page 1, line 1, after "Act" insert " to create a new subsection to section 57-35.3-05 of the North Dakota Century Code, relating to a financial institution tax credit for charitable gifts;"

Page 1, after line 3, insert:

**"SECTION 1.** A new subsection to section 57-35.3-05 of the North Dakota Century Code is created and enacted as follows:

There is a allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12, the credit for planned gifts and qualified endowments as provided in Section 2 of this Act. The amount allowable as a credit under this subsection for any taxable year may not exceed five and seven-tenths percent of the tax before credits allowed under this section, or ten thousand dollars, whichever is less."

Page 1, line 18, remove "c." and overstrike "Planned gift" means an irrevocable contribution to a North Dakota qualified"

Page 1, overstrike lines 19 through 24

Page 2, overstrike lines 1 through 30

Page 3, line 1, remove the overstrike over "e." and remove "d."

Page 3, line 7, remove the overstrike over "d." and remove "d."

Page 3, line 15, replace "Only charitable gifts" with "To qualify for the tax credit under this subsection, each charitable gift must be", and replace "during the" with an underscored period

Page 3, line 16, remove "taxable year qualify for the tax credit under this subsection"

Page 4, line 10, overstrike "and planned"

Page 4, line 11, overstrike "gifts"

Page 4, line 14, overstrike "and planned gifts"

Page 4, line 21, overstrike "in" and insert immediately thereafter "for purposes of"

Page 4, line 22, overstrike the first "the taxable" and insert immediately thereafter "any tax", overstrike "credit" and insert immediately thereafter "contribution", overstrike "first claimed" and insert immediately thereafter "deducted for federal tax purposes"

Page 5, line 6, after "for" insert "contributions made in"

Renumber accordingly

North Dakota House Bill No. 1203  
Testimony to the House Finance and Taxation Committee

Gordon Binek  
Executive Director  
Bismarck State College Foundation  
January 14, 2009

Chairman Belter and members of the House Finance and Taxation Committee, thank you for the opportunity to make comments on behalf of Bismarck State College Foundation and other non-profits in the state of North Dakota regarding House Bill No. 1203. I support and encourage the passage of House Bill No. 1203.

This bill expands the existing section of the North Dakota Century Code offering North Dakota tax credit for gifts to the endowment funds of North Dakota non-profits. House Bill 1203 offers the incentive of a tax credit to individuals and financial institutions that were not available through the previous legislation. In addition, there is language clarifying the meaning of endowment funds.

The passage of this Bill would encourage individuals who want to support charities and believe in the value of placing contributions into permanent endowment funds. It is a very important incentive to those individuals who do not want to create a planned gift but do want to see their contribution permanently endowed.

Many supporters of the BSC Foundation believe in the value of contributing to endowment funds that will exist in perpetuity. Both current and future generations will benefit from those endowed funds. The funds will be providing income that will be used for scholarships to BSC students and grants to purchase equipment and support activities at BSC.

For the 2008-09 school year Bismarck State College Foundation will provide about \$370,000 in scholarships to about 350 students. Those scholarships will make the difference in the lives of many of those students, they will be able to afford an education at BSC. During the 2007-08 school year the BSC Foundation provided about \$650,000 in grants to support the college. Those grants helped purchase equipment, support programs such as music, chemistry and engineering, provided funding for professional development and a fellowship for BSC employees, and support for many BSC students organizations. Most of the money for the scholarships and grants were the result of earnings from our endowment fund.

I believe strongly in endowed funds, they will be there for the future. House Bill No. 1203 would encourage our friends to contribute to our endowment fund as well as the funds of other North Dakota non-profits. I have no doubt our future will be stronger through the passage of this Bill and I encourage you to support it.



Chairman Belter and Members of the Committee,

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P.O. Box 387  
Bismarck, ND 58502-0387  
(701) 222-8349

My name is Kevin Dvorak. I am President and CEO of the North Dakota Community Foundation(NDCF). I also serve on the Public Policy Committee of the North Dakota Association of Nonprofit Organizations which voted to support this law. The North Dakota Community Foundation is a statewide public charitable foundation whose mission is to improve the quality of life for North Dakota's citizens through charitable giving and promoting philanthropy.

We do that by building charitable endowment and making grants across the State of North Dakota. In 2008, NDCF made grants totaling just over \$6,000,000.

HB 1203 will modify the existing law in three ways:

- It will correct an oversight in the existing law which inadvertently excluded Bank Holding Companies and Credit Unions from the provision which allowed tax credits for businesses that give to North Dakota charities' qualified endowment funds.
- It will allow individuals who give at least \$1,000 to these same endowments to also claim this credit.
- The bill also includes clarifying language regarding the definition of an endowment fund.

I can tell you that we have found that this tax credit has increased the incentive for businesses across the State to give to endowment. The North Dakota Community Foundation has community endowment funds in roughly 40 communities across the State and other types of endowments in nearly every community in North Dakota.

HB 1203 will make a difference, not only for the North Dakota Community Foundation, but for all community foundations and other charities with endowment funds. I strongly encourage you to support this bill which will assist North Dakota's Charitable Organizations to build endowments for the future of our State.

Testimony # 4

**Testimony of Gayla Sherman, MSW  
Co-Executive Director of Charles Hall Youth Services, Bismarck**

**To  
House Finance and Taxation Committee  
In Support of HB 1203  
Wednesday, January 14, 2009**

Chairman Belter and Members of the Committee, my name is Gayla Sherman, and I am co-executive director of Charles Hall Youth Services. I am testifying today in support of HB 1203 on behalf of the North Dakota Association of Nonprofit Organizations (NDANO), of which I am the board vice president.

NDANO represents more than 150 members from all parts of the state working in many different areas – from human services and the environment to education and the arts. In every North Dakota county, not-for-profit organizations are serving citizens and communities and addressing issues of concern. North Dakota's nonprofits range from emergency shelters to boys and girls clubs, from museums to environmental groups, from schools to organizations working with the elderly, veterans, and disabled persons.

Charitable giving is essential to support the 3,000 charitable nonprofits that work hard to improve the quality of life in our state. Allowing North Dakota citizens to receive a tax credit for contributions to endowments will provide a strong additional incentive to give. This is significant, as individuals are our nation's largest donor segment, contributing more than 75 percent of all charitable giving every year. Further, incentives to increase endowment contributions help not-for-profits by building long-term sustainability and ensuring continued focus on mission and purpose.

This tax credit also can lead to stronger foundation endowments in North Dakota, which continues to rank last in foundation assets when compared to all 50 states and the District of Columbia. This bill can help North Dakota increase its in-state foundation assets to better meet the needs of our most vulnerable citizens.

Charitable not-for-profit organizations benefit North Dakotans in many ways: by building community, fostering civil society, strengthening our social fabric and stimulating our economy. For instance, paid nonprofit workers make up approximately 13% of the total North Dakota workforce.

We encourage a DO PASS on HB 1203. By expanding charitable giving incentives, you will enable not-for-profit organizations to strengthen and continue to serve North Dakotans and improve the quality of life in our state.

Thank you for your consideration. I would be happy to answer any questions, along with NDANO's Executive Director Dana Schaar.



**North Dakota**  
**Office of State Tax Commissioner**  
Cory Fong, Tax Commissioner

# Memo

**To:** Representative Belter  
Chairman, House Finance and Taxation Committee

**From:** Joseph J. Becker

**Date:** January 27, 2009

**Re:** House Bill 1203 (Qualified endowment tax credit)

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Chairman Belter,

I am delivering a set of revised amendments to House Bill 1203, which the Tax Department drafted on behalf of Representative Keiser and Senator Horne.

They reflect the conclusions reached by the two legislators and the respective interested parties, as conveyed to me by Kevin Dvorak, ND Community Foundation.

Thank you for holding the bill at my request to allow the remaining issues to be resolved by the interested parties.

Let me know if and when you would like me to explain the amendments to your Committee.

Phone: 328-3451  
E-mail: [jjbecker@nd.gov](mailto:jjbecker@nd.gov)

January 16, 2009

Attachment # 5

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1203

Page 1, line 1, after "Act" insert "to create a new subsection to section 57-35.3-05 of the North Dakota Century Code, relating to a financial institution tax credit for charitable gifts;"

Page 1, after line 3, insert:

**"SECTION 1.** A new subsection to section 57-35.3-05 of the North Dakota Century Code is created and enacted as follows:

There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12, the credit for planned gifts to a qualified endowment as provided in Section 2 of this Act. The amount allowable as a credit under this subsection for any taxable year may not exceed five and seven-tenths percent of the tax before credits allowed under this section, or ten thousand dollars, whichever is less."

Page 3, line 12, overstrike "in an amount equal to forty percent of the present value of the"

Page 3, line 13, overstrike "aggregate amount of", remove "a", and overstrike "made by the"

Page 3, line 14, overstrike "taxpayer during the year to a qualified nonprofit organization or qualified"

Page 3, line 15, overstrike "endowment", and replace "Only charitable gifts of one thousand dollars or more during the" with "for a charitable gift as follows:"

- a. For a charitable gift in the form of a planned gift made to a qualified nonprofit organization or to a qualified endowment, the credit is equal to forty percent of the aggregate amount of the charitable gift portion of all planned gifts made during the taxable year.
- b. For a charitable gift other than a planned gift made to a qualified endowment, the credit is equal to forty percent of the aggregate amount of all charitable gifts made during the taxable year, provided the aggregate amount of all charitable gifts made during the taxable year to a single qualified endowment is one thousand dollars or more.

Page 3, remove line 22

Page 3, line 23, remove "57-35.3-03"

Page 4, line 7, overstrike "treated like a"

Page 4, line 8, overstrike "partnership"

Page 4, line 9, overstrike "by the entity during the taxable year"

Page 4, line 10, overstrike "to the entity" and "and planned"

Page 4, line 11, overstrike "gifts"

Page 4, line 13, overstrike "attributable to the charitable"

Page 4, line 14, overstrike "gifts and planned gifts under this section"

Page 4, line 21, overstrike the first "in" and insert immediately thereafter "for purposes of"

Page 4, line 22, overstrike the first "the taxable" and insert immediately thereafter "any tax", overstrike "credit" and insert immediately thereafter "contribution", overstrike "first claimed" and insert immediately thereafter "deducted for federal tax purposes"

Page 5, line 6, after "for" insert "contributions made in"

Renumber accordingly