

2009 HOUSE FINANCE AND TAXATION

HB 1324

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1324

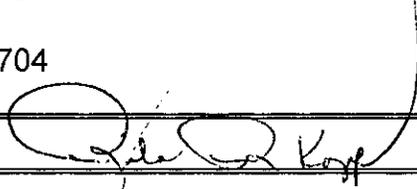
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7704

Committee Clerk Signature



Minutes:

**Chairman Belter:** We will open the hearing on HB 1324.

**Representative Berg:** This is a simple straightforward bill. Part of the reason for doing this is that North Dakota right now is at the top of the country in terms of its fiscal solvency. In fact, I just saw a report last week that had Texas and North Dakota the top #1 and #2 states for both fiscal soundness of state and economic opportunity. A few months ago, North Dakota was picked as the number one state for economic growth. The things that we have done in North Dakota the past several years have put us in a tremendous position. As we look around the country though, we are in a recession. There is no question about that. North Dakota has participated in every recession. We are usually the last ones in and the last ones out. The hope of this bill is simply to do two things. (1) To refund \$100 million to the people of North Dakota because we have collected more taxes than we need. (2) The second part of this bill is to do it now in the hopes that \$100 million injected into our economy as quickly as possible will have an effect in continuing our economic growth and hopefully prevent North Dakota from going into a more severe recession. The bill really does two things: (1) It gives taxpayers their money back based on the last income tax they have paid. (2) It will stimulate our economy. I couldn't help thinking about this stimulus package compared to the federal stimulus package.

There are a few differences. This would not create any debt. This would not have any strings attached. This would also provide long-term tax relief and the cash goes to the people, not another government entity. **(Testimony 1)**. (Representative Berg then described the bill.) (04:00 to 5:07). Really the question is does it make sense in the national and state's environment to put \$100 million into our economy today versus down the road? With that, I will answer any questions.

**Chairman Belter:** You have here that this bill will permanently lower income tax by 13%. Is that 13% in every tax bracket?

**Representative Berg:** That's a very good question. When this bill was drafted, it was drafted to mirror the Governor's tax reduction if we reduced each tax bracket so there are two ways of doing it. I think in the Governor's bill, it reduces it by a percent on each tax bracket so some brackets are reduced by 20% and some brackets are reduced by 5%. The other alternative would be to reduce each tax bracket by 13%. I believe that would be equal so obviously I leave that decision up to the committee. My preference would be that we reduce each tax bracket by 13%. This bill would need to be amended if you want to do that. This bill mirrors the Governor's future tax cuts.

**Representative Froseth:** This bill would send a check back immediately. Two years ago we struggled with the constitutionality of issuing a check back. That is why we basically came up with the plan we did then. That hasn't changed so do you think this would meet a constitution challenge?

**Representative Berg:** The problem we faced last year was in giving money back for property tax and the state doesn't collect property tax. That is where we ran in to the constitutional problem. When we collect income tax, our ability to refund income tax is within the constitution. That was my understanding from council.

**Representative Froseth:** If you are taking \$100 million out of the oil and gas trust fund, it seems to me we should put the first \$100 million on income taxes collected after we issue these checks back into that fund so it takes it off the table from the general fund. It is a little harder to get at in the oil and gas trust fund than it is in the general fund.

**Representative Berg:** That is a very good point. If we amended this bill and said we were going to pay \$100 million July 1, then we wouldn't need to take money out of the permanent oil trust fund. The way this bill is intended is to get the money into people's hands right now. We would only use the permanent oil trust fund for 60 days. So on July 1, that \$100 million would go back in there to restore it. Let me back up. The forecasted revenue we are using in legislative council when we are looking at all of our numbers, is reduced by \$100 million in the Governor's budget so that is why I say there is no fiscal impact because that \$100 million is already built into the budget of 2009-2011. If we send out this money, which I would like to do, and the bill says in this biennium, then there is about a 60 day window. That is exactly what we would do. If we pass this bill, our general fund revenue for the next biennium would go up \$100 million and then we would take it out and put it into this so it would then go down \$100 million. I probably didn't explain that very well. The \$100 million is built into the 2009-2011 budget. If we don't pass the Governor's bill and pass this bill, there is no fiscal impact on the general fund revenues based on the numbers we are looking at right now. The question is how do we get it sooner? Well, if we want it before July 1, we have to get the money from somewhere. We could borrow from the Bank of North Dakota, we could take it out of the trust fund, we could take it out of some place else if you want to get that check into people's hands before July 1. My point, as what Representative Froseth explained, was exactly my intention of how this would happen. Money would come out of the permanent oil trust fund; checks

would go back to the people; and the first \$100 million in the 2009-2011 biennium would replenish that \$100 million.

**Representative Headland:** Lines 12-16 describes how the commissioner is going to accomplish this. The first question would be is there anything magic about the year 2007 or is that just the way this information is available to work off?

**Representative Berg:** This obviously has an emergency clause on it. If we pass this through, what is the simplest way to distribute this money? My thinking was to use the last income tax people paid, the 2007 taxes paid April 15, 2008. It was going to take the tax commissioner a period of time to figure this out so that's why I used that date.

**Representative Headland:** The way I am reading this is that this payment will go to people who have actually paid taxes, not just filers.

**Representative Berg:** It is set up so the first \$10,000 goes to every legislator and the rest. No actually, Mr. Chairman, this may seem a little odd, but the taxes paid last year were \$290 million in just one year so we are used to looking at \$650 million or something like that. A lot of those taxes have already benefitted from the property tax income tax deduction so my simple thinking is we paid \$290 million, almost \$300 million that year; \$100 million is going to be one third and this directs it to go back to people proportionately so if you paid \$1,000, you would \$333 back. That is the intent.

**Representative Headland:** If you paid 0, you are going to get 0.

**Representative Berg:** You will get one third of whatever you paid.

**Representative Drovdal:** As you know, with the oil and gas money coming in, the first \$71 million goes into the general and the balance goes into the trust fund. That is why there is

money in the trust fund and probably why you decided to take money out of it; but we have this supposed surplus created not only by the oil and gas trust fund, but it is also created by the

increase in income tax and sales tax above what we projected two years ago. So there is also additional money in the general fund right now that hasn't been committed. Why couldn't this just come out of the general fund from the additional monies that came in the last two years without causing problems? Is there a reason?

**Representative Berg:** I think that would work. That money is appropriated the next biennium, but it won't be appropriated until July 1 so that might be a real good chance to just take it out of the general fund. What I wanted to make sure is that we don't goof up all of the cash flows that we are watching as we wind up the legislative session, but I think that would be as simple and easy as the trust fund because the money would be paid back July 1 and so it would all be there.

**Representative Wrangham:** If we decide to take \$100 million and redistribute it to the citizens of North Dakota out of the state revenues, I guess these pots don't mean a lot because they are all part of the state's revenue. We found out that the permanent oil trust fund isn't permanent (inaudible). Why did you select income tax rather than possibly sales tax, where more of the citizens would receive some benefit?

**Representative Berg:** I guess my main focus was looking at what the proposal on the table was for \$100 million income tax and figuring out if we could improve that and get that back to the people sooner. I certainly think property tax will be addressed this session; sales tax I guess I hadn't considered.

**Representative Pinkerton:** Do you have the demographic studies of how this will filter out to different brackets and who gets what? Is that available for us?

**Representative Berg:** Whatever you paid, you get one third back—wherever you are. I am assuming if you wanted to look at demographics of incomes by county and that kind of thing, you could just assume that that is how the money would flow back. The average income in

North Dakota is about \$35,000 and you could figure out exactly what that would mean for each person. That would probably be better for the tax commissioner.

**Representative Pinkerton:** The wealth we are enjoying, as apparently Texas is too, do you feel it is mostly created by the oil income?

**Representative Berg:** I don't want to get in a fight, but all you have to do is look. We have a 31% increase in income tax; we have had corporate income tax shoot up; we have had sales tax shoot up. We have \$600 million of revenue over and above our projections, not counting oil. Oil is in a separate fund. So what we are seeing is a booming economy; we are seeing job growth throughout our state. Again, I think the perception is that the bulk of it is from oil. Now having said that, there is no question in my mind that oil and energy have had a tremendous impact on our economy. Not only the oil tax has flown in, but people are paying higher income tax and sales tax because of it. I would say, from my perspective, at the end of the day, we have \$400-500 million in our oil fund; we have \$600 million in our general fund that is not oil revenue. I think some of that oil revenue has impacted that, but again, I think our economy has been growing steadily over the past number of years. Oil really spiked this last two year period.

**Representative Weiler:** I just wanted to address Representative Wrangham's question. As one of the sponsors of this bill, I think the intent was let's get some money back into the hands of people now; let's do it now. Constitutionally, I don't think Representative Wrangham's question—I think it can be very difficult to refund sales tax basis—very difficult to do—nearly impossible. Constitutionally to do it based on income tax is probably the simplest way to do it. That would probably be why we chose this route versus the sales tax.

**Representative Winrich:** My comments are along the line of Representative Wrangham's, but perhaps a little more general. According to red book, North Dakota already ranks very low

in terms of the income tax that is collected from citizens relative to personal income, as a percentage of personal income. It is one of the lowest ranking states in the country. We recently had a referendum on the ballot in which the citizens of ND rejected a major cut in income tax. I sense the feeling around the state that income taxes aren't disproportionate or unfair, that it is the property tax that needs to be addressed, perhaps the sales tax. Why the emphasis on income tax?

**Representative Berg:** We will deal with property tax later. I would make a couple of points. My first point would be getting back to Representative Pinkerton, why is our state doing so well? It is doing so well because people's incomes are going up, there is more prosperity. Our rates haven't gone up; there is just more cash flow. You look at South Dakota, for example, with zero income tax and other states with zero income tax, certainly that is stimulating their economy. The debate on what level our income tax level should be, that is a good debate to have. I share the same problem that was presented earlier. How do you refund sales tax? Should I as someone who goes out and buys a \$50,000 piece of equipment, get my sales tax reimbursed or should we reimburse people who spend less? How do you redistribute sales tax? It is very difficult. I will address the measure now. I am not sure if anyone was aware of this, but I think Governor Hoeven was opposed to Measure 2. Obviously Governor Hoeven also believes we should reduce our income tax. I think the message that came from Measure 2 quite frankly, and we all take a different message, the message I got from that was we trust our legislature, we trust the people we have elected, and we would like them to find the appropriate balance of taxes or, if we are going to refund taxes to taxpayers, we want them to do it without strings attached.

**Representative Winrich:** We don't have direct experience in ND, but we certainly have experience in the country and in neighboring states with this kind of check to citizens.

Minnesota did it eight or ten years ago under Governor Ventura, the national government has done this fairly recently, sent a check back to everyone. I think the general consensus is that it hasn't worked very well to stimulate the economy. People have paid existing debts or saved it rather than actually plowing it back into the economy. We are seeing a good deal of debate on the national scene right now about the economy being stimulated more vigorously and jobs being created better and so on by spending on infrastructure. Why not put \$100 million into infrastructure improvements rather than checks back to the people?

**Representative Berg:** I would say first of all, there is something substantially—you missed a few years here. Back in 2003 Minnesota was in the tank and part of it was because they sent out that \$600 check and they cut tax rates. In 2004 and 2005, every state was flush. In 2003, North Dakota was one of four states in the black. The economy was going strong; every state had money. Today there are only six states in the black and ND is still one of them. It is because we have taken a long-term approach at this, not simply how do we win some votes quickly? The difference between this and what Minnesota did and what Congress is doing is that this is cash. We are not borrowing from our children and grandchildren. This is cash and the cash is going to the people, quite frankly, that I think that are growing our economy—the people that are hiring people, expanding their business, people who are currently making money will receive more in return. What we have witnessed over the past five years is that they are not going out and buying boats and vacation homes and that kind of stuff. They are plowing it back into their ND employees and ND businesses so I think this is exactly what we want to do. The other point about infrastructure is the federal program is going to bring approximately \$600 million to ND in three weeks, \$600 million. That program is targeted on infrastructure; it is targeted on shovel-ready projects. Quite frankly, I think we are going to have a government building boom like we have never, ever seen before. My problem with that

is that government projects are not ready to go in 30 days; many of them take two years, four years, and five years so I don't think we are going to see that money injected into our economy creating jobs for quite some time. This particular thing is within our control; the concept of getting money back into the economy is proven to work. Otherwise people wouldn't do it.

**Representative Pinkerton:** I guess the oil question is that a lot of that wealth was created by high oil prices that is in our coffers. The people who benefitted from that oil were very glad to have benefitted; but even in an area like mine right on the edge of the Bakken, the actual number of people that had leases, work for oil companies, that number is fairly small as a percentage; but everyone in my community paid \$4 for gas and saw their natural gas bills go up. It is hard for me to think that the money that has come into our economy because of high oil prices shouldn't be distributed to those who really paid the price on it—those who used the energy, the farmers who paid \$4.50 a gallon for diesel. They have less money in their pockets because of it. I don't see how the distribution is matching where the money came from. How does your bill compare with the average North Dakotan who has \$35,000 worth of income? How do they get back money as compared to the Governor's bill? Do you have those numbers for us?

**Representative Berg:** I would say they would get it back basically the same. The difference is this bill gets it back to them now. The Governor's bill would get it back to them over the next three years. Clearly every political body wants to redistribute wealth. Quite frankly, if you want to look at the higher costs that farmers pay for diesel, as well as the higher commodity prices over the last two years and what the net income is. That is exactly what this bill does; this bill will reimburse based on net income. Mr. Farmer, if you, in fact, had higher income; this will help you offset some of those higher costs. Again, I can't think of a more simple way to simply say, last year whoever paid, whatever you paid, we are going to give you a third back.

**Representative Froelich:** This is a permanent tax cut. Would you be willing to have an amendment put on if let's say two years from now our economy is in the tank; it starts to go in the tank; and if our income revenue level is going to drop below a certain percent, that this would revert back to the present.

**Representative Berg:** This is the legislature's bill once it is introduced. I think the legislature every two years will take a look at the balance. There is no statute that we cannot change going into it. I have been involved in legislative assemblies that have increased income taxes, increased sales taxes. I have been involved with legislative assemblies that have reduced those. I think, from my perspective, rather than trying to think of all the possibilities and put it in a bill, we should just have the confidence that if we are in a bind, we will make changes to try and create stability in our state.

**Representative Dosch:** I have just come before you to voice my support for HB 1324. A couple of other points I would like to emphasize are that the importance of this bill is that it puts money in the ND taxpayer's hands now. As the Governor's bill would wait until July and later on, this puts it in the taxpayer's hands on May 1. If you talk to any economists out there, what is being said on the national level is it is pretty much agreed that these next two quarters are going to be critical quarters, the first and second quarters of 2009. If we are going to do something as a state and give some stimulus back, now is the time we need to be doing that. If we can enact this bill, get the money in the taxpayer's hands by May 1, hopefully it will help ND avert what the rest of the nation is facing right now. The other good thing about this bill is simply that it does put money back into the taxpayer's hands, rather than in another government entity that is looking at expanding their programs. This puts it back into the taxpayer's hands. We have a surplus because too much money was collected. The bottom

line was we collected too much money from the taxpayers in ND and we should be giving it back. That is what this bill does. Mr. Chairman, that concludes my testimony and I will answer any questions.

**Representative Pinkerton:** Do you know what percentage of this money will go to out-of-state non-resident taxpayers?

**Representative Dosch:** I do not know.

**Jeb Oehlke, North Dakota Chamber of Commerce: (Testimony 2). (31:40)**

**Representative Winrich:** You said in your testimony that this rebate back to business owners and so on would primarily be reinvested in business. Is there any data that supports that? Do you have records from past experience that would show that to be the case?

**Jeb Oehlke:** I do not have any hard documents. I can look for that type of information if you wish; but I think, in general, if a business owner wants to grow their business, they use the resources available to them to do so.

**Chairman Belter:** Further testimony in support of HB 1324? If not, is there any opposition to 1324?

**Josh Askvig, North Dakota Education Association: (Testimony 3). (36:19)**

**Representative Headland:** I had a couple of bills I put in that would reduce taxation in ND and the NDEA opposed them as well. You opposed Measure No. 2 and No. 1. How much money did you spend fighting those two measures?

**Jeb Oehlke:** I don't have those figures in front of me. I could find out and get them for you.

**Representative Weiler:** You have two factors here as to why you oppose--balance and sustainability. This is the same dollar amount and it looks to me reading your testimony that you are okay with the Governor's \$400 million package because it is a more balanced approach; yet this \$100 million in this bill is the same dollar amount in the Governor's \$100

million income tax relief. Obviously they are not going to both pass so I don't see, as far as sustainability goes, why you oppose it. It is the same dollar amount. I guess I don't agree with your argument about sustainability because \$100 million is \$100 million any way you look at it. Could you comment on that?

**Jeb Oehlke:** You make a very good point. I would simply just state as Representative Berg stated earlier, that the tax relief proposal, the Governor's proposal, the reason I would argue it is more balanced is that does it over a two-year period, rather than a one-time basis. I understand your argument about the \$100 million.

**Chairman Belter:** Any other opposition? Any neutral testimony on HB 1324.

**Donnita Wald, Legal Counsel of the Tax Commissioner's Office:** We are not opposed or for this bill. We would just like the committee to consider the timeline that is built into this bill.

As you know, right now, we are processing 2008 income tax returns. This would have to go on top of it and processing begin immediately because the bill requires the checks be mailed out by May 1. If we could just get some consideration on the timeline involved in that, we can do it; we just need a little bit more time. That is really all I have to say.

**Representative Froseth:** The refund system put in place when there was a million dollars appropriated for your department to administer that; it is pretty complicated and I can see where you need the funds and so forth, but this plan here wouldn't require—if the timeline was spread out—it wouldn't require any additional FTDs or anything, would it?

**Donnita Wald:** The one thing it would need for sure is some money. It would require some computer programming. Because we are doing this right now on top of income tax filing season, I am assuming that we need some help with the timeline. Part of the thing even with the current filing season, it is amazing how many people will file their income tax returns, asking for an income tax refund who are gone two weeks later. I think, in order for this to work

properly, we might have to make sure we have proper addresses and stuff like that; but to answer that question, maybe.

**Representative Headland:** You certainly understand the importance of getting this money out as quickly as possible. I understand the Tax Department's dilemma. How much time do you need? How much more time would you need?

**Donnita Wald:** I don't know. It took us about two months just to get the basics going on the property tax refund. I think at least a couple more months. You have the mailing of the checks going out by May 1. If you want to use money this biennium and the checks to be mailed by the end of the biennium, we maybe could do it. Again, we haven't really looked at that; we need more time. If we were going to do it the way it is written now, we should have started yesterday.

**Representative Pinkerton:** I am just thinking that this is a refund on tax year 2007 and so state tax is a deductible item on your federal tax, isn't that correct?

**Donnita Wald:** If you itemize.

**Representative Pinkerton:** How would this be, say in my situation, we deduct the state tax from our federal tax in 2007, and now we get it back, that would be taxable income, wouldn't it? How would that be handled?

**Donnita Wald:** It is not that simple. There are a varying number of rules for that. You wouldn't necessarily have to file amended returns. If you had to add it back, you would do that in the year you received the money back. You wouldn't have to go back and file an amended return, just claim it as taxable income in the year you received that benefit. It is called the tax benefit rule that the IRS looks at; but again, that would be only if you itemized.

**Representative Pinkerton:** So if you didn't itemize, would you have to claim it as taxable income?

**Donnita Wald:** No.

**Representative Winrich:** Dee, in looking over the changes to the income tax reduction, there are changes in the bracket boundaries, as well as rate reductions. It is a little difficult at first glance to get a sense of how much of a reduction there actually is. Has the Tax Department done any kind of an analysis of that? Is the rate reduction consistent across the brackets?

**Donnita Wald:** It is 42 basis points across the board; a .42% reduction across the board is what it ends up.

**Representative Winrich:** So every tax bracket is reduced by .42%?

**Donnita Wald:** The tax rate in that bracket and those are the 2009 brackets.

**Representative Winrich:** So .42% is subtracted from the tax rate; it is not a percentage of how big the tax rate is.

**Donnita Wald:** 42 basis points.

**Chairman Belter:** Any other questions? Any other neutral testimony? If not, we will close the hearing on HB 1324.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1324

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8632

Committee Clerk Signature



Minutes:

**Vice Chairman Drovdal:** This was Bird's bill on income tax reduction which would result in \$100 million income tax reduction this year and reduce the rates down the road \$100 million in 2009 and on. I don't think anybody requested any amendments. We have 1324 in front of us.

**Representative Grande:** I move a "do not pass".

**Representative Froseth:** Wouldn't this have a doubling effect if you are going to return \$100 million on May 1 and then offer \$50 million each year of the next biennium, which would be another \$100 million? Instead of a \$100 million fiscal note, it should have a \$200 million fiscal note, should it not?

**Vice Chairman Drovdal:** We have a \$100 million fiscal note out of the permanent oil trust fund if I remember correctly, and \$100 million out of the next biennium's budget.

**Representative Froseth:** That's not the point here. In Section 3, the effective date is December 31, 2010. Section 1 is declared an emergency, which calls for a \$100 million return to taxpayers immediately and \$50 million for each year in the biennium. That is basically \$200 million in the next biennium.

**Vice Chairman Drovdal:** That is correct. We do have HB 1279 on which we are waiting for an amendment. That is also an income tax bill. We have a "do not pass"

**from Representative Froseth and a second from Representative Pinkerton. Any further discussion? A roll call vote on a “do not pass” motion on HB 1324 resulted in 10 yeas, 3 nays, and 0 absent/not voting. Representative Kelsh will carry the bill.**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1324

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 11, 2009

Recorder Job Number: 9200

Committee Clerk Signature

Minutes:

**Chairman Belter:** We have a motion to reconsider from Representative Drovdal and a second from Representative Weiler to reconsider our actions for a "do not pass" on 1324. Any discussion. **The motion to reconsider passed by a voice vote.** We have HB 1324 before us.

**Representative Weiler:** Just to refresh the committee's memory, HB 1324 is a stimulus bill. When the Governor came out with his \$100 million income tax cut, this bill was put together by Representative Bird. The idea was to take that \$100 million in the budget and instead of just decreasing tax rates like the Governor would like to do, on May 1 it sends out \$100 million to the taxpayers of North Dakota based on their income tax. I believe it works out to something like a 30% amount. If you pay \$4,500 in state income tax, you are going to get a check for roughly \$1,400. That's what the original bills does, plus the original bill, starting in the 2011-2013 biennium, decreases the tax rates (which is the same thing the Governor's tax bill did) but it delays the decrease of tax rates for a biennium. This bill starts the decrease in tax rates for the biennium 2011-2013; but for this current biennium (2009-2011) instead of decreasing the tax rates, we are just going to send out \$100 million. The amendments are simply to change the income tax rates. The original bill had the tax rates on a .42 basis on each tax

bracket, meaning there was a much larger tax break for the lowest tax bracket and a very small break for the upper tax bracket. This amendment simply puts it at about 13% reduction for each tax bracket, which is what I believe is more fair and equitable to give everybody the same tax break. With that for the purpose of discussion, I will move the amendments.

**Chairman Belter:** We have a motion from Representative Weiler and a second from Representative Drovdal to move the .0101 amendments. Any discussion.

**Representative Pinkerton:** At the lowest bracket, those under \$56,000 would only get .29%. You equalized it both up and down. Is that correct.

**Representative Weiler:** I believe there are five tax brackets. Each tax bracket under this amendment is going to get a 13% reduction in its tax rate which is equal across the board. How that differs from the way the bill came to us is that each tax bracket was reduced by a .42 basis. It was a .42 on each tax bracket, but a .42 off of the upper tax bracket is about a 7% decrease in their tax rate and a .42 basis on the lower tax bracket is about a 20% decrease in their tax rates. This treats all the taxpayers equal across the board.

**Representative Pinkerton:** So this is more of a flat rate tax?

**Representative Weiler:** I don't think I would look at it as moving towards a flat tax. It is just that for me who would be in the lower tax bracket, I would get a 13% reduction of my taxes. For you in the upper tax bracket, you get as 13% reduction. If we don't adopt these amendments, I in the lower tax bracket get a 20% reduction in my taxes. You get a 7% in your taxes. I don't believe that is fair. I think what I stated is true.

**Representative Pinkerton:** You are essentially proposing a progressive tax bracket where those who make less like you and those who make more like me have a different tax rate. Rather than that angle being so steep and the people in the top paying so much, you would decrease it so there is less of an angle on that graph.

**Representative Weiler:** All the tax brackets drop the same percentage. Under the Governor's plan, it went like this. The bottom bracket got a bigger tax break and the upper bracket got a very small tax break so the upper bracket that used to pay 80% of the taxes is now paying 85% of the taxes even though they are paying a little bit less in money, percentagewise they are paying more of the total tax to the state. This makes it go like this; it is even across the board. I don't know if that analogy helps, but it did make sense to me.

**Representative Froseth:** I just want to point out that the analysis is not quite as simple as Representative Weiler is portraying here because anyone who is the top bracket is also paying tax on the lower brackets as you work your way up the schedule. They also enjoy the benefit of a 20% tax cut on the first whatever of their income. What you have to do is look at the overall tax bill and that is kind of a spreadsheet exercise which is not as simple as what you are saying. You cannot assert that this is an even tax cut for everybody.

**Representative Weiler:** The people in the upper tax bracket pay the lowest, the second lowest, the third and fourth. They pay all of them and this just makes it equal across the board.

**Representative Froseth:** Depending on what you call equal.

**Chairman Belter:** Any more discussion on the amendments? **The motion to approve the amendments carried.** We have HB 1324 before us. Committee, what are our wishes? We have a motion for a "do pass" as amended from Representative Grande and a second from Representative Brandenburg. Any discussion?

**Representative Drovdal:** The first time I supported the "do not pass". Since that time, we have had a new revenue forecast come in. I expected it to be lower than it was. If that is the case, we can certainly share the revenue with the people of North Dakota. I am going to change my vote to "do pass".

**Representative Kelsh:** Can you tell me what the revenue picture is with that amended?

**Representative Weiler:** It doesn't change anything. It is revenue neutral. It still is going to be a \$100 million reduction in revenues in the 2011-2013 biennium.

**Representative Drovdal:** This is \$100 million right away so there is a \$100 million hit to the budget. There isn't any other \$100 million reduction that was in the Governor's budget so it is a \$100 million hit.

**Representative Weiler:** That is true; however, the \$100 million is already in the Governor's budget.

**Representative Drovdal:** The Governor's budget is \$12,079 and that had \$100 million reduction in revenue starting with the next tax period. This has that part in it, but it also has \$100 million being sent out immediately so there is a \$100 million hit on the general fund too, what is commonly referred to as general but is the permanent oil gas trust fund.

**Representative Weiler:** The \$100 million that will go out on the 81<sup>st</sup> legislative day, May 1, comes from the permanent oil trust fund. The \$100 million that is in the Governor's budget for \$100 million tax relief came from the general fund so if we do not do that, the tax really is \$100 million appropriation from other funds, which is the \$100 million May 1 from the not so permanent oil trust fund. The expenditures are in the 2009-2011 biennium and that money is coming from the oil trust fund. In 2009-2011 there is no effect on the general fund with this bill. The Governor's bill has an effect in 2009-2011. This actually saves the state \$100 million.

**Representative Drovdal:** What you are saying is true now I look at both of them. This give out \$100 million instantly and it doesn't go into effect in the 2009 taxes or the 2010 taxes. The 13% reduction does not kick in until 2011 so the Governor's budget kicks in starting this year.

**Representative Froelich:** Just a point of clarification. I realize we are getting the \$100 million out of the oil trust fund. Mr. Chairman, if we enact this law, doesn't it reduce \$100 million every year then? There is no sunset clause, is there?

**Representative Weiler:** That is true. Starting in 2011-2013, it is \$100 million reduction to general fund revenues because of the tax rates being reduced each biennium going forward. Obviously any legislative session could come in and raise them back up; but at this point, this is a reduction in each tax bracket starting in 2011 so it is \$100 million going forward each biennium as it stands.

**Representative Kelsh:** I am going to oppose this motion simply because I think that people on the bottom will notice a .42 reduction much more than the people in the top bracket. You can debate whether a rebate is a good idea. I think a lot of people would rather see a reduction in property taxes. The election last fall didn't give much horsepower to an income tax cut. I think people are looking for property tax relief.

**Representative Winrich:** Just a comment basically in agreement with Representative Kelsh. This is not the part of the tax system that needs reform. We have heard a lot about tax reform as opposed to tax relief in the debates here. We need some reform, but this is not it.

**Representative Grande:** I think we are hearing especially from the national level that stimulus is the way to go and I think we need to get money in the hands of the people and allow our smaller employers to hire people for jobs and help take care of the economy. As far as property taxes, we have over \$300 million sitting in the Senate to deal with that issue. This is above and beyond that.

**Representative Schmidt:** I just took a poll in my mind of the people back home and they have said, if you have extra money when it is all done, after you give us property tax relief, then you can give us some money back on our income taxes. They don't complain about income taxes, it is always property taxes. They will be glad to get this, but I am not so sure we have taken care of property taxes. We have got some bills there, but they would be awful happy if we gave them \$100 million property tax relief right away.

**Representative Weiler:** We do not have the property tax bill; it's in the Senate. When it comes over, it will be in this committee and we will address it at that time. The Governor's plan was for \$100 million in income tax relief and we are just adjusting that a little bit.

**Chairman Belter:** A motion has been called for “do pass as amended on HB 1324”. A roll call vote resulted in 8 ayes, 5 nays, 0 absent. Representative Froseth will carry the bill.

**Rerefer to appropriations.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
05/01/2009

Amendment to: Reengrossed  
HB 1324

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).*

HB 1324 2nd Engr with Conference Committee Amendments repeals the state's optional filing method (Form ND-2) and replaces it with a new simplified filing method to be available to taxpayers that do not have tax deductions or credits.

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 repeal of existing Form ND-2 is expected to result in a small shift in revenues ranging from +/- \$100,000 for the 2009-11 biennium. (Note: 2007 tax liabilities on Form ND-2 returns totaled only \$907,000. Tax liabilities on 2007 Form ND-1 returns totaled \$288.3 million.)

The ND-1 rate reductions enacted as part of SB 2199 help mitigate any tax increases that might occur to those ND-2 filers that might be hurt by the repeal. Many ND-2 filers will benefit by the repeal because they are filing ND-2 in error.

The provisions authorizing a new simplified filing method for taxpayers with no tax deductions or tax credits is not expected to affect revenues. The tax rates and brackets in place for this new simplified filing method are the same as for the more detailed and lengthy existing filing method, Form ND-1. If this bill is enacted, the rate reductions in SB 2199 will apply to ND-1 and to the new simple form provided for in this bill.

Section 31 addresses the hold-harmless intent for schools receiving a portion of gross production tax revenues. The additional revenue provided to oil producing counties, cities and school districts in HB 1304 intended to keep the schools receiving the exact amount they would receive under current law. Section 31 corrects a problem in HB 1304 and assures the schools are kept whole. There is no net change in total revenues distributed in HB 1304 because of the correction in this bill.

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>	05/01/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
04/07/2009

Amendment to: Reengrossed  
HB 1324

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
<b>Revenues</b>			(\$57,000,000)		(\$57,000,000)	
<b>Expenditures</b>						
<b>Appropriations</b>						

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).*

HB 1324 2nd Engr with Senate Amendments reduces individual income tax rates beginning with the tax year 2010. It also repeals the state's optional filing method (Form ND-2) and replaces it with a new simplified filing method to be available to taxpayers that do not have tax deductions or credits.

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 rate reduction provisions of the bill are expected to reduce state general fund revenues by an estimated \$57 million per year. The rate reductions are effective for tax years 2010 and 2011.

The repeal of existing Form ND-2 is expected to result in a small shift in revenues ranging from +/- \$100,000 for the 2009-11 biennium. (Note: 2007 tax liabilities on Form ND-2 returns totaled only \$907,000. Tax liabilities on 2007 Form ND-1 returns totaled \$288.3 million.)

The provisions authorizing a new simplified filing method for taxpayers with no tax deductions or tax credits is not expected to affect revenues. The tax rates and brackets in place for this new simplified filing method are the same as for the more detailed and lengthy existing filing method, Form ND-1.

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>	04/07/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
03/19/2009

Amendment to: Reengrossed  
HB 1324

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
<b>Revenues</b>			(\$57,000,000)		(\$114,000,000)	
<b>Expenditures</b>						
<b>Appropriations</b>						

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).*

HB 1324 2nd Engr with Senate Amendments reduces individual income tax rates beginning with the tax year 2010. It also repeals the state's optional filing method (Form ND-2) and replaces it with a new simplified filing method to be available to taxpayers that do not have tax deductions or credits.

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 rate reduction provisions of the bill are expected to reduce state general fund revenues by an estimated \$57 million per year. The rate reductions are effective beginning with tax year 2010, reducing revenues beginning with the second year of the 2009-11 biennium.

The repeal of existing Form ND-2 is expected to result in a small shift in revenues ranging from +/- \$100,000 for the 2009-11 biennium. (Note: 2007 tax liabilities on Form ND-2 returns totaled only \$907,000. Tax liabilities on 2007 Form ND-1 returns totaled \$288.3 million.)

The provisions authorizing a new simplified filing method for taxpayers with no tax deductions or tax credits is not expected to affect revenues. The tax rates and brackets in place for this new simplified filing method are the same as for the more detailed and lengthy existing filing method, Form ND-1.

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>	03/23/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/20/2009

Amendment to: HB 1324

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
<b>Revenues</b>					(\$100,000,000)	
<b>Expenditures</b>				\$100,000,000		
<b>Appropriations</b>				\$100,000,000		

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).*

HB 1324 Second Engrossment authorizes economic stimulus payments totaling \$100 million to be allocated based on the individual income tax liability of taxpayers filing 2007 state income tax returns. The bill also reduces individual income tax rates in the 2011-13 biennium.

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.*

Section 1 authorizes the issuance of economic stimulus payments totaling \$100 million, to be issued before or on May 1, 2009. The bill appropriates \$100 million from the permanent oil tax trust fund for this purpose. The emergency clause contained in the first engrossment is not part of the second engrossment. Without the emergency clause, the issuance of the stimulus payments may be required to be delayed until the 2009-11 biennium.

Section 2 establishes reduced individual income tax rates beginning with tax year 2011. The rate reduction provisions are expected to reduce state general fund revenues by approximately \$100 million (plus a growth factor currently unestimated) in the 2011-13 biennium.

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>	02/23/2009

**FISCAL NOTE**  
 Requested by Legislative Council  
 02/16/2009

Amendment to: HB 1324

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					(\$100,000,000)	
Expenditures	\$100,000,000					
Appropriations				\$100,000,000		

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 1324 authorizes economic stimulus payments totaling \$100 million to be allocated based on the individual income tax liability of taxpayers filing 2007 state income tax returns. The bill also reduces individual income tax rates in the 2011-13 biennium.

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.*

Section 1 authorizes the issuance of economic stimulus payments totaling \$100 million, to be issued before or on May 1, 2009. The bill appropriates \$100 million from the permanent oil tax trust fund for this purpose.

Section 2 establishes reduced individual income tax rates beginning with tax year 2011. The rate reduction provisions are expected to reduce state general fund revenues by approximately \$100 million (plus a growth factor currently unestimated) in the 2011-13 biennium.

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>	02/16/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/13/2009

Bill/Resolution No.: HB 1324

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					(\$100,000,000)	
Expenditures	\$100,000,000					
Appropriations				\$100,000,000		

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).*

HB 1324 authorizes economic stimulus payments totaling \$100 million to be allocated based on the individual income tax liability of taxpayers filing 2007 state income tax returns. The bill also reduces individual income tax rates in the 2011-13 biennium.

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.*

Section 1 authorizes the issuance of economic stimulus payments totaling \$100 million, to be issued before or on May 1, 2009. The bill appropriates \$100 million from the permanent oil tax trust fund for this purpose.

Section 2 establishes reduced individual income tax rates beginning with tax year 2011. The rate reduction provisions are expected to reduce state general fund revenues by approximately \$100 million (plus a growth factor currently unestimated) in the 2011-13 biennium.

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
--------------	----------------------	----------------	----------------------------

Phone Number: 328-3402

Date Prepared: 01/22/2009

Date: 2/4/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1324

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 Froseth Seconded By Pinkerton

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) 10 No 3

Absent 0

Floor Assignment Rep Kelsh

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

**REPORT OF STANDING COMMITTEE (410)**  
February 5, 2009 11:33 a.m.

**Module No: HR-22-1750**  
**Carrier: S. Kelsh**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1324: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO NOT PASS (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1324 was placed on the Eleventh order on the calendar.**

Date: 2/11/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1324

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number Motion to reconsider

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Drovdal Seconded By Weiler

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) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

Motion carries

VR  
2/11/09  
182

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1324

Page 2, replace lines 8 through 30 with:

"a. Single, other than head of household or surviving spouse.  
If North Dakota taxable income is:  
Not over ~~\$27,050~~ \$33,950 The tax is equal to:  
Over ~~\$27,050~~ \$33,950 but not ~~\$568.05~~ \$614.50 plus ~~3.92%~~ 3.38%  
over ~~\$65,550~~ \$82,250 of amount over ~~\$27,050~~ \$33,950  
Over ~~\$65,550~~ \$82,250 but not ~~\$2,077.25~~ \$2,247.04 plus ~~4.34%~~ 3.75%  
over ~~\$136,750~~ \$171,550 of amount over ~~\$65,550~~ \$82,250  
Over ~~\$136,750~~ \$171,550 but not ~~\$5,167.33~~ \$5,595.79 plus ~~5.04%~~ 4.35%  
over ~~\$297,350~~ \$372,950 of amount over ~~\$136,750~~ \$171,550  
Over ~~\$297,350~~ \$372,950 ~~\$13,261.57~~ \$14,356.69 plus ~~5.54%~~ 4.78%  
of amount over ~~\$297,350~~ \$372,950

b. Married filing jointly and surviving spouse.  
If North Dakota taxable income is:  
Not over ~~\$45,200~~ \$56,750 The tax is equal to:  
Over ~~\$45,200~~ \$56,750 but not ~~\$949.20~~ \$1,027.18 plus ~~3.92%~~ 3.38%  
over ~~\$109,250~~ \$137,050 of amount over ~~\$45,200~~ \$56,750  
Over ~~\$109,250~~ \$137,050 but not ~~\$3,459.96~~ \$3,741.32 plus ~~4.34%~~ 3.75%  
over ~~\$166,500~~ \$208,850 of amount over ~~\$109,250~~ \$137,050  
Over ~~\$166,500~~ \$208,850 but not ~~\$5,944.64~~ \$6,433.82 plus ~~5.04%~~ 4.35%  
over ~~\$297,350~~ \$372,950 of amount over ~~\$166,500~~ \$208,850  
Over ~~\$297,350~~ \$372,950 ~~\$12,539.45~~ \$13,572.17 plus ~~5.54%~~ 4.78%  
of amount over ~~\$297,350~~ \$372,950

c. Married filing separately.  
If North Dakota taxable income is:  
Not over ~~\$22,600~~ \$28,375 The tax is equal to:  
Over ~~\$22,600~~ \$28,375 but not ~~\$474.60~~ \$513.59 plus ~~3.92%~~ 3.38%  
over ~~\$54,625~~ \$68,525 of amount over ~~\$22,600~~ \$28,375  
Over ~~\$54,625~~ \$68,525 but not ~~\$1,729.98~~ \$1,870.66 plus ~~4.34%~~ 3.75%  
over ~~\$83,250~~ \$104,425 of amount over ~~\$54,625~~ \$68,525  
Over ~~\$83,250~~ \$104,425 but not ~~\$2,972.34~~ \$3,216.91 plus ~~5.04%~~ 4.35%  
over ~~\$148,675~~ \$186,475 of amount over ~~\$83,250~~ \$104,425  
Over ~~\$148,675~~ \$186,475 ~~\$6,269.73~~ \$6,786.08 plus ~~5.54%~~ 4.78%  
of amount over ~~\$148,675~~ \$186,475

d. Head of household.  
If North Dakota taxable income is:  
Not over ~~\$36,250~~ \$45,500 The tax is equal to:  
Over ~~\$36,250~~ \$45,500 but not ~~\$761.25~~ \$823.55 plus ~~3.92%~~ 3.38%  
over ~~\$93,650~~ \$117,450 of amount over ~~\$36,250~~ \$45,500  
Over ~~\$93,650~~ \$117,450 but not ~~\$3,011.33~~ \$3,255.46 plus ~~4.34%~~ 3.75%  
over ~~\$151,650~~ \$190,200 of amount over ~~\$93,650~~ \$117,450  
Over ~~\$151,650~~ \$190,200 but not ~~\$5,528.53~~ \$5,983.59 plus ~~5.04%~~ 4.35%  
over ~~\$297,350~~ \$372,950 of amount over ~~\$151,650~~ \$190,200  
Over ~~\$297,350~~ \$372,950 ~~\$12,871.84~~ \$13,933.21 plus ~~5.54%~~ 4.78%  
of amount over ~~\$297,350~~ \$372,950

e. Estates and trusts.

282

If North Dakota taxable income is:  
 Not over ~~\$1,800~~ \$2,300  
 Over ~~\$1,800~~ \$2,300 but not  
 over ~~\$4,250~~ \$5,350  
 Over ~~\$4,250~~ \$5,350 but not  
 over ~~\$6,500~~ \$8,200  
 Over ~~\$6,500~~ \$8,200 but not  
 over ~~\$8,900~~ \$11,150  
 Over ~~\$8,900~~ \$11,150

The tax is equal to:  
~~2.10%~~ 1.81%  
~~\$37.80~~ \$41.63 plus ~~3.02%~~ 3.38%  
 of amount over ~~\$1,800~~ \$2,300  
~~\$133.84~~ \$144.72 plus ~~4.34%~~ 3.75%  
 of amount over ~~\$4,250~~ \$5,350  
~~\$231.49~~ \$251.60 plus ~~5.04%~~ 4.35%  
 of amount over ~~\$6,500~~ \$8,200  
~~\$352.45~~ \$379.92 plus ~~5.54%~~ 4.78%  
 of amount over ~~\$8,900~~ \$11,150"

Page 3, remove lines 1 through 30

Page 4, remove lines 1 and 2

Renumber accordingly

Date: 2/11/09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1324

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 101

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Weiler 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) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

*Amendment adopted*

Date: 2/11/09

Roll Call Vote #: 3

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1324**

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 \_\_\_\_\_ Seconded By \_\_\_\_\_

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) 8 No 5

Absent 0

Floor Assignment Froseth

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

*Refer to appropriations*

REPORT OF STANDING COMMITTEE

HB 1324: Finance and Taxation Committee (Rep. Belter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1324 was placed on the Sixth order on the calendar.

Page 2, replace lines 8 through 30 with:

"a. Single, other than head of household or surviving spouse.  
If North Dakota taxable income is: The tax is equal to:  
Not over ~~\$27,050~~ \$33,950 ~~2.10%~~ 1.81%  
Over ~~\$27,050~~ \$33,950 but not ~~\$568.05~~ \$614.50 plus ~~3.92%~~ 3.38%  
over ~~\$66,550~~ \$82,250 of amount over ~~\$27,050~~ \$33,950  
Over ~~\$66,550~~ \$82,250 but not ~~\$2,077.25~~ \$2,247.04 plus ~~4.34%~~ 3.75%  
over ~~\$136,750~~ \$171,550 of amount over ~~\$66,550~~ \$82,250  
Over ~~\$136,750~~ \$171,550 but not ~~\$5,167.33~~ \$5,595.79 plus ~~5.04%~~ 4.35%  
over ~~\$297,350~~ \$372,950 of amount over ~~\$136,750~~ \$171,550  
Over ~~\$297,350~~ \$372,950 ~~\$13,261.57~~ \$14,356.69 plus ~~5.54%~~ 4.78%  
of amount over ~~\$297,350~~ \$372,950

b. Married filing jointly and surviving spouse.  
If North Dakota taxable income is: The tax is equal to:  
Not over ~~\$46,200~~ \$56,750 ~~2.10%~~ 1.81%  
Over ~~\$46,200~~ \$56,750 but not ~~\$949.29~~ \$1,027.18 plus ~~3.92%~~ 3.38%  
over ~~\$109,250~~ \$137,050 of amount over ~~\$46,200~~ \$56,750  
Over ~~\$109,250~~ \$137,050 but not ~~\$3,459.96~~ \$3,741.32 plus ~~4.34%~~ 3.75%  
over ~~\$166,500~~ \$208,850 of amount over ~~\$109,250~~ \$137,050  
Over ~~\$166,500~~ \$208,850 but not ~~\$5,944.61~~ \$6,433.82 plus ~~5.04%~~ 4.35%  
over ~~\$297,350~~ \$372,950 of amount over ~~\$166,500~~ \$208,850  
Over ~~\$297,350~~ \$372,950 ~~\$12,539.45~~ \$13,572.17 plus ~~5.54%~~ 4.78%  
of amount over ~~\$297,350~~ \$372,950

c. Married filing separately.  
If North Dakota taxable income is: The tax is equal to:  
Not over ~~\$22,600~~ \$28,375 ~~2.10%~~ 1.81%  
Over ~~\$22,600~~ \$28,375 but not ~~\$474.60~~ \$513.59 plus ~~3.92%~~ 3.38%  
over ~~\$54,625~~ \$68,525 of amount over ~~\$22,600~~ \$28,375  
Over ~~\$54,625~~ \$68,525 but not ~~\$1,729.98~~ \$1,870.66 plus ~~4.34%~~ 3.75%  
over ~~\$83,250~~ \$104,425 of amount over ~~\$54,625~~ \$68,525  
Over ~~\$83,250~~ \$104,425 but not ~~\$2,972.31~~ \$3,216.91 plus ~~5.04%~~ 4.35%  
over ~~\$148,675~~ \$186,475 of amount over ~~\$83,250~~ \$104,425  
Over ~~\$148,675~~ \$186,475 ~~\$6,269.73~~ \$6,786.08 plus ~~5.54%~~ 4.78%  
of amount over ~~\$148,675~~ \$186,475

d. Head of household.  
If North Dakota taxable income is: The tax is equal to:  
Not over ~~\$36,250~~ \$45,500 ~~2.10%~~ 1.81%  
Over ~~\$36,250~~ \$45,500 but not ~~\$761.25~~ \$823.55 plus ~~3.92%~~ 3.38%  
over ~~\$93,650~~ \$117,450 of amount over ~~\$36,250~~ \$45,500  
Over ~~\$93,650~~ \$117,450 but not ~~\$3,011.33~~ \$3,255.46 plus ~~4.34%~~ 3.75%  
over ~~\$151,650~~ \$190,200 of amount over ~~\$93,650~~ \$117,450  
Over ~~\$151,650~~ \$190,200 but not ~~\$5,528.53~~ \$5,983.59 plus ~~5.04%~~ 4.35%  
over ~~\$297,350~~ \$372,950 of amount over ~~\$151,650~~ \$190,200  
Over ~~\$297,350~~ \$372,950 ~~\$12,871.81~~ \$13,933.21 plus ~~5.54%~~ 4.78%  
of amount over ~~\$297,350~~ \$372,950

e. Estates and trusts.

If North Dakota taxable income is:  
Not over ~~\$1,800~~ \$2,300  
Over ~~\$1,800~~ \$2,300 but not  
over ~~\$4,250~~ \$5,350  
Over ~~\$4,250~~ \$5,350 but not  
over ~~\$6,500~~ \$8,200  
Over ~~\$6,500~~ \$8,200 but not  
over ~~\$8,900~~ \$11,150  
Over ~~\$8,900~~ \$11,150

The tax is equal to:  
~~2.10%~~ 1.81%  
~~\$37.80~~ \$41.63 plus ~~3.92%~~ 3.38%  
of amount over ~~\$1,800~~ \$2,300  
~~\$133.84~~ \$144.72 plus ~~4.34%~~ 3.75%  
of amount over ~~\$4,250~~ \$5,350  
~~\$231.49~~ \$251.60 plus ~~5.04%~~ 4.35%  
of amount over ~~\$6,500~~ \$8,200  
~~\$352.45~~ \$379.92 plus ~~5.54%~~ 4.78%  
of amount over ~~\$8,900~~ \$11,150"

Page 3, remove lines 1 through 30

Page 4, remove lines 1 and 2

Renumber accordingly

2009 SENATE FINANCE AND TAXATION

HB 1324

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1324

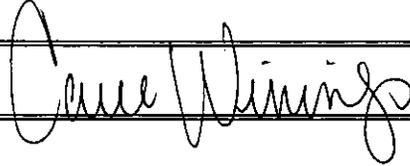
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/04/2009

Recorder Job Number: 10141 and 10183

Committee Clerk Signature



Minutes:

**Chairman Cook:** Opened hearing on HB 1324.

**Representative Rick Berg, District 45:** Appeared to introduce and explain the bill as a sponsor and in support of. The purpose of this bill is to give back the extra money that we collected in taxes. We are increasing our spending by \$700 million dollars in the next budget. We need to address relief in income tax. This is an extension of the Governor's bill. 93% of the legislators in the House supported an income tax relief measure. The people are waiting to see what the legislators will do with the surplus. If we do nothing then the people will think that we are not dealing with the issue. We need to put forward the ideas that we think are right and balanced. We have the money to do this. If it is a fair way to tax people then it is a fair way to give money back. (8.15 Begins explanation of the bill) Now is the time to give some of the excess collected in income tax back. This is sustainable. (See attachment #2 for proposed amendment)

13.14 **Chairman Cook:** If we extend this income tax deduction out two years conceivably then if the voters did not want income tax relief, they could easily refer it and it would never go into effect?

**Representative Berg:** Yes.

**Senator Triplett:** How much of the excess of income tax that we have collected is attributed to increased salaries and employment and such in the oil industry that may be backing off now with the global recession that we have? Do you really think that it is sustainable?

**Representative Berg:** What we are talking about in the 3.1 billion dollar budget is 3%. Will our economy grow 3%? I believe so. In my perspective it would be sustainable. We have two years to watch the sustainability of that.

**Senator Triplett:** You cannot look at this in a vacuum; you understand that we have to look at the big picture of all of the bills that we are voting on that affect the budget. I have questions on whether or not we can sustain all of them.

**Representative Berg:** One thing that I think we need to think about is that this is the only one that addresses the issue of raising too much money in income tax the past two years, and what we are doing with the excess.

**Vice Chairman Miller:** I was wondering what you would do with the situation if someone had a \$20 tax bill, would you send them \$7?

**Representative Berg:** Yes.

**Vice Chairman Miller:** What would that cost to send out the checks?

**Representative Berg:** I think the tax department could answer that. I think the cost will be minimal.

**Chairman Cook:** Comment.

18.46 **Senator Anderson:** I have heard from the people that they want the property tax fixed not the income tax. It would be uncomfortable to have to take this back in the reduction if things go badly economically.

**Representative Berg:** This is what has made us strong as a state. We have in statute and we say with our budget stabilization fund if this is the money the next legislature has, here is what

you need to do with it. We have it in our tax policy all over the place. In our oil for example, we say that if the trigger price triggers on or off here is what happens to the tax rates. I think that it is more prudent that we lay out a tax change two years down the road so that we have time to have it transparent and have time to look at it.

**Chairman Cook:** Whether we pass this bill or not, we will be telling the next legislative session and the people of North Dakota what the tax policy will be unless somebody acts.

**Representative Berg:** Comment.

21.40 **Bill Shalhoob, North Dakota Chamber of Commerce:** See Attachment #1 for testimony in support of the bill.

23.00 **Chairman Cook:** Comment.

**Senator Triplett:** Can you tell us why you believe that the \$100 million is the measured and proper level for this tax deduction? Why not more, why not less?

**Bill Shalhoob:** I think that it is a proper level because that is what the Governor talked about. If you look at the income tax growth over the period, it has grown by that plus and so to give that amount back in an area where it makes sense. It would be a way to get tax relief to those that did not benefit from the property tax relief.

25.40 **Dustin Gawrylow, North Dakota Taxpayer's Association:** See Attachment #3 for testimony in support of the bill.

29.00 **Senator Triplett:** Your premise is based on a prediction that the North Dakota personal income tax will decrease by 15.4% this year. I remember when we received the report by Moody's dot com on February 9<sup>th</sup>, it was predicted a reduced level of growth, but it was said that North Dakota should expect a very slow growth in personal income tax. Which should we accept?

**Dustin Gawrylow:** I would point out that the Moody's projection was made about three weeks before the Federal Reserve report came out and on page 4 of the handout I compiled the history of the last 20 years of personal income verses general fund spending. What we are looking at, we are basing our assumptions on the 15.4% reduction in 2009 and then a 6% increase over that level in 2010 for an overall growth rate of 3.5% during the biennium as far as income change growth. That is far less than we have been seeing for the last three biennium's. We have been above 10% for three budgets now. It is a question of who you believe the Federal Reserve or economy.com. I think both are valid and both definitely have to be taken into account and as far as which one you go by, we are a conservative state so I would say the lower one.

**Senator Triplett:** That is one way to put it.

**Chairman Cook:** Tell me what you think \$1 will be worth in 5 years?

**Dustin Gawrylow:** I think we are heading towards an era of hyper-inflation. The idea of 2 and 3% inflation is going to be a thing of the past and we need to take that into account when it comes to public policy and how much money we take out of the pockets of the average person. If we can do something today to increase and bump up their spending power now and to reduce the impact in the coming years, that is the best strategy.

33.00 **Wayne Papke, Citizens for Responsible Government:** See Attachment #4 for testimony in support of the bill.

36.35 **Senator Anderson:** What do you mean wasting it by spending?

**Wayne Papke:** Probably a bad choice of words, unnecessary spending, I think the tax payers are the first people that it should come back to.

**Senator Hogue:** What amount do you think that the relief should be increased to?

**Wayne Papke:** I have heard the number of \$2 million thrown out, but I don't have a specific answer to that either. I think that you should front load it as much you think the economists in the state think, or the tax department.

**Senator Triplett:** When you say that we are six months behind the national economy in the effect of the economic downturn and we have just begun to feel the effects. I agree to the extent that you have said it. They were very clear to show us in the October report they made that North Dakota has pretty much escaped the piece of the downturn that is a result of the housing bubble. We did not have a housing bubble in North Dakota because our banks in North Dakota did not get into the subprime mortgage market. The chart shows the North Dakota housing increasing gradually over time and in the rest of the country and the values elsewhere are similar now. I think that even though I can conceive that we are behind in terms of the affects of the recession in terms of job loss and the rest of it going on as a result of the freeze up of the liquidity markets and such. We really have truly and honestly escaped a significant piece of what is going on in the rest of the country. It is less doom and gloom than what you are saying.

**Wayne Papke:** I think that we are getting the rippling effects of the energy market and the agriculture market, which are our main source of economy. The rippling affects can be just as devastating to our style of economy. I think percentage wise we will have the same effects.

**Vice Chairman Miller:** If we see hyper inflation that is definitely going to affect North Dakota.

**Wayne Papke:** If we have a fast recovery we will see the hyper inflation. If we have a very slow steady recovery over three to five years we may not see it.

**Senator Oehlke:** I can't help but think about a few years ago about a state near to us that did just this and now that state is hurting?

**Wayne Papke:** I think that is why the adjustment idea is good. I think these tax cuts are necessary now, because we have been over paying. If that proves to be untrue in the next economic cycle we need to adjust again.

**Senator Oehlke:** That adjacent state then, they are happy with adjusting on the fly then?

**Wayne Papke:** I am sure they are not.

**Vice Chairman Miller:** Any further testimony?

**Donnita Wald, General Council, State Tax Department:** Testified in a neutral capacity on the bill. We have some issues that you need to address. One of the things that I have not been able to look at is the appropriations that were done or the amendments that Representative Berg brought up. They appear to fix at least some of the appropriation issues that we had and some of the payment issues we had. We have an issue with the amount of the check – in the income tax statute we do have a minimum refund statute that says we do not have to send a check out if it is \$5 or less. This bill, while it appears to be an income tax refund, it is my opinion that it is not necessarily a refund, but a payment based on income taxes that were paid in 2007. We have a technical definition of what a tax refund is and I don't think this is what that is. If you do want to put a minimum amount of a refund we would appreciate it if you could put it in the statute. We do have a cost to the refund and could you look into what that minimal amount will be.

**Vice Chairman Miller:** Do you have any idea what the overall cost would be?

**Donnita Wald:** We haven't put some hard numbers to that yet, we want to look and see what the committee decides to do on this. We can get you those numbers when you decide what you want to do and how you want to do it. The other item we would like you to address is that it is to be based on the 2007 income tax liability. We have a lot of amended returns that people can file between now and then, so we would like to propose a firm cutoff date. We could have

a lot of people filing amended returns between now and the end of the session increasing their tax liability. We would like a firm cutoff date. The last thing that I would like to discuss is that we would like you to decide what net tax liability paid means. This can be one of three different numbers on the return. I believe the fiscal note was based on line 25 of the form. It could be lines 25, 17, and one other location. You want to consider whether you want it to be after credits. We would be happy to work with the committee on that.

49.11 **Senator Hogue:** Asked what lines of the return were possible.

**Donnita Wald:** Listed again.

50.36 **Senator Dotzenrod:** I have a question on the effective date. How mechanically can that work? Is there a way to offset that?

**Donnita Wald:** I am assuming that you are thinking that they would be increasing the tax because if they lower it, people would just be over withheld for a short period of time. If they raised the tax, then we would have some kind of an issue because people would have been under withheld. Nothing is impossible.

52.50 **Kathy Strombeck, Research Analyst, Tax Department:** See Attachment # 5 for statistics given in testimony.

56.09 **Senator Hogue:** You said that the individual paid \$280,000 in 2007 and the Red Book says \$319,000. I am wondering why the discrepancy.

**Kathy Strombeck:** That has to do with the fiscal year payment. At least two tax years and this is the actual 2007 tax year. It is just a matter of timing.

**Vice Chairman Miller:** Closed hearing on HB 1324.

(Job 10183 starts here)

0.00 **Jack Dalrymple, Lt. Governor:** Testified in support of the bill. As you know the Governor did propose as part of his budget and part of his public comments last year that we

include in our property tax relief package, \$100,000,000 in income tax relief. As a basic premise we believe that when you go to provide \$400,000,000+ dollars of tax relief to a state that you really do need to try to provide the relief in a somewhat balanced way. One of the great strengths of the North Dakota tax system in general is that it is one of the most balanced in the United States. When you provide tax relief, you need to provide it in a balance way. See Attachment #6 for testimony for chart of proposed as the preferred method of tax relief instead of this bill directly. (Explains the chart) This chart is the way that we feel this should be done. The House amended it to a straight 13% for everyone. The lower wages need to be treated well, or at least as well as they can be. The other aspect of this is that aside from a balance tax policy we also felt that income tax is a competitive issue and a complicated one against other states. It is one of the things that incoming business and individuals will go to the trouble to find out about and they will make these comparisons. It is constantly a battle to try and show that there are other states that are higher than us and indeed there are. In regards to 1324, that seeks to accelerate the tax relief into this year. See attachment # 7 for the original bill that was introduced in the House that this compares to. Explains that bill and compares it to the other bill.

**Chairman Cook:** Closed hearing.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1324

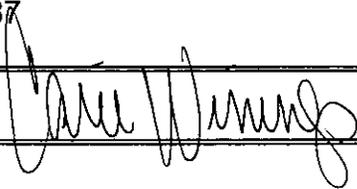
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/16/2009

Recorder Job Number: 10987

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened the discussion on HB 1324. Reviews the bill and reminds the committee that there are two issues at hand; the stimulus portion and a reduction in personal income tax rates beginning in 2011.

**Senator Triplett:** In looking at the issue of the federal stimulus money and how much do we spend as a state, I would be prepared to go with a do not pass on this one.

**Senator Dotzenrod:** North Dakota is in a good spot right now heading into a bad economic situation and we want to manage this right. I have not heard from anyone concerning personal income tax rates. It looks like a gimmick to send a check back.

**Chairman Cook:** I am hearing from my constituents that we are spending too much and I think they would like to see us put more of it away. I am not all that much of a fan of the stimulus part of this. I would like to go back to a good income tax bill and reduce the rates. I think we have been taxing the people of North Dakota too much when you look at the surplus we have. It is their money.

**Senator Triplett:** I don't think that we are taxing people too much. I think we were unintentional beneficiaries of the spike in oil that happened at a time when we had an amazing increase in oil drilling. We had a onetime large amount of income. I don't think our taxes are

out of balance with the exception of property taxes. If we work to rebalance that we have a good tax system in this state. I just don't like this bill.

**Chairman Cook:** I am not going to argue that we certainly had some good times, but I will also point out that out of all the factors that create a booming economy, a state's tax policy is one of the major factors also. Right now we need to restore and build confidence.

**Vice Chairman Miller:** The stimulus portion of this bill is not going to be simulative in my perspective. We can discuss what level we want to reduce the level to on the taxes. We want to set ourselves ahead of the pack as a state. The income tax should be looked at in a smaller sense. I think the stimulus is reckless. We need to set better long term tax policy.

**Senator Hogue:** I don't know that sending back \$200-\$300 on average is going to stimulate North Dakota's economy. The tax rates that we have, have a very little effect on our economy as to how businesses and individuals behave. They don't adjust their conduct based on North Dakota tax rates. I do support the reduction in income tax rates. Lowering the tax rates will restrain future spending. If we have the revenue, we will continue to spend it.

**Chairman Cook:** Does anyone have amendments for this bill?

**Senator Hogue:** I have amendments to change the rates of income. They are between Representative Berg's and the Governor's bill proposed.

**Chairman Cook:** What is the fiscal effect, do you know?

**Senator Hogue:** I do not. I have asked to have them.

**Chairman Cook:** We will look at them before we act on this bill. (Asks Donnita Wald to come up to the podium) I had talked to Donnita about a similar idea and she got them ready.

See Attachment #1 for a set of proposed amendments.

**Chairman Cook:** This is reducing only the income tax?

Donnita Wald, Tax Department Legal Council: That is correct.

**Chairman Cook:** You are following the brackets closer to what the Governor's did?

**Donnita Wald:** That is correct, it is same progressive rate.

**Chairman Cook:** But you increased it more?

**Donnita Wald:** We increased it so that the fiscal note would be \$150 million.

**Chairman Cook:** Senator Hogue, yours would be about \$100 million. What else is in here?

**Donnita Wald:** These are the lowest rates in the nation and we are getting rid of the long form because the rate would be so low that we want the short form. It also creates a North Dakota EZ form. That is why these amendments are so big. (Proceeds to walk through the amendments)

**Chairman Cook:** Clarified that it was his idea to do this.

**Senator Dotzenrod:** In determining the new rates, is there a formula?

**Donnita Wald:** This follows the same concept as the Governor's proposal did with the .42, but it is not .42 anymore.

**Senator Dotzenrod:** Then what is it?

**Donnita Wald:** We can find that out.

**Senator Hogue:** I did mine with no fixed basis points or percentage. They are sort of splitting the two for the most part and rounding up to the nearest 5 basis points. John Walstad will be bringing them down.

**Vice Chairman Miller:** Do you know how much cost savings is involved for the tax department for having a cleaner form?

**Donnita Wald:** We have done that in an interim committee and I believe it was not very much.

21.38 **Senator Oehlke:** The new section 1, why do we have to change that?

**Donnita Wald:** That puts a credit from the long form to the ND1.

**Chairman Cook:** So for the 2009 taxes the ND-2 will be gone and there will be an EZ form?

**Donnita Wald:** That is correct.

**Chairman Cook:** You can do that?

**Donnita Wald:** Yes.

**Senator Triplett:** It looks like the rates are .63 across the board.

**Donnita Wald:** If you make any changes prospective we do need a little technical amendment to the effective date for the indexing. The incomes are indexed at 2009 level and right now we can only index year by year. This is only if you skip a year.

25.50 **Chairman Cook:** OK. How could we tie this to state revenue, the effective date?

**Donnita Wald:** You could postpone it or maybe stop it. We can work on that. I think we did that with the property tax bill. It is possible.

**Chairman Cook:** Confirmed with Cory Fong that the rate proposed is .63 basis points.

**Senator Triplett:** The amendments here don't do anything to get rid of the current stimulus do they?

**Senator Oehlke:** It is in there.

**Chairman Cook:** If we were going to pass an income tax bill, I think the first discussion we should have is if you like it or not and get a consensus. We have several options here.

28.34 **Senator Hogue:** See Attachment #2 for proposed amendments.

**Chairman Cook:** Could I get the Governor's numbers?

29.00 **Senator Triplett:** Reads off the figures.

30.43 **Senator Hogue:** Gives his numbers and explains where they came from.

**Chairman Cook:** Asks for a fiscal note on Senator Hogue's amendments.

33.33 **Chairman Cook:** What about the concept of changing the forms?

**Senator Triplett:** Wholehearted approval.

**Senator Hogue:** I agree with that but I hate to do it without a committee hearing on it.

**Chairman Cook:** It has been studied on two interim committees. Last year the average savings was \$25-\$40 in using the long form and that was for the most part for out of state people. There were just a few credits that bring people to that form. I share your concern somewhat.

**Senator Dotzenrod:** There has never been a result of the studies to recommend that we change the forms?

**Chairman Cook:** We had legislation in 2007 but it did not pass in the House.

**Senator Dotzenrod:** Who are the 2% that use that form? It is a dinosaur.

**Senator Triplett:** Over the last couple of years we have added some of the long form credits to the short form, and every year we are making it less relevant.

**Senator Oehlke:** Comment on the long form.

**Senator Hogue:** Could you explain the objections in getting rid of the long form? The issue here is tax relief and I hate to attach any baggage to that.

**Chairman Cook:** There is only one reason we keep the long form in my opinion; it is so legislators can tuck tax credits on the long form and say that they gave it. It is an escape tool and a lot of legislators hate to give that up.

**Chairman Cook:** Recaps what the committee is waiting on for information to be able to vote later.

**Senator Triplett:** I oppose all three of them for the same reasons I mentioned earlier. I don't think people are clamoring for income tax reduction. I would rather we make sure we have property tax relief. If we are going to do something, I would certainly like it to be fair across the board and then getting rid of ND-2 is a great idea.

**Senator Anderson:** I just want to see the best amendment we can have before I vote against the bill.

**Senator Dotzenrod:** I think we need income tax relief if we are going to have property tax relief. I think property tax relief is priority.

**Senator Oehlke:** Comment.

**Chairman Cook:** Suspended the discussion.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1324

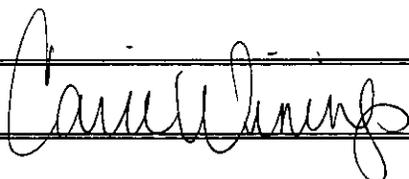
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/16/2009

Recorder Job Number: 10991

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on HB 1324.

**Donnita Wald:** Gives figures on what each amendment would do to the fiscal note. (not on tape)

1.30 **Chairman Cook:** Asks the committee to weigh in on how they feel about the North Dakota-2 form.

**Senator Triplett:** I would support that and would appreciate being able to vote on that as a separate amendment.

**Chairman Cook:** Can we divide these amendments? We should be able to vote on those separately how they are on here. Asks Donnita Wald to verbally note which of the amendments does that.

2.58 **Donnita Wald:** Separates out the amendments prepared for Senator Cook. See attachment #1 from HB 1324-2 minutes.

**Senator Oehlke:** Does that delete the stimulus portion?

**Chairman Cook:** Yes.

**Senator Triplett:** Moved amendment except all of Section 11 except subsection 8.

**Senator Oehlke:** Seconded.

**Chairman Cook:** Discussion?

**Senator Hogue:** I cannot support this.

**Chairman Cook:** OK and I understand, any further discussion? (no)

**A Roll Call Vote Was Taken: Yea 4, Nay 2, Absent 1 (Senator Miller).**

**Motion passed.**

**Chairman Cook:** The income tax rate issue is now before us. What are your wishes?

7.03 **Senator Triplett:** I appreciate the move to have the lowest tax rates in the nation, but we only need a small amount of income tax relief; certainly not the \$150 million.

**Senator Hogue:** You are driving him to my \$114 million fiscal note.

**Chairman Cook:** I am alright with that. Looking at a combination I would like a happy medium.

**Senator Hogue:** Moved to amend re engrossed HB 1324 section 2 to reflect the rates that are contained in amendment 90715.0306.

**Senator Oehlke:** Seconded.

**Chairman Cook:** Discussion? (no)

**A Roll Call vote was taken: Yea 3, Nay 4, Absent 0.**

**Motion failed.**

**Chairman Cook:** Asked the committee to come back with amendments on the brackets to be proposed.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1324

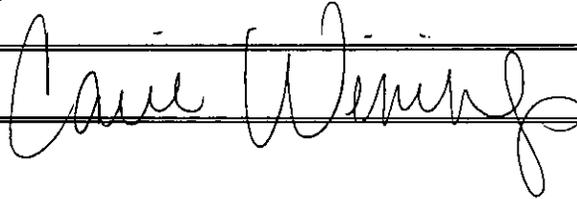
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/16/2009

Recorder Job Number: 11054

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on SB 1324. See Attachment #1 for information regarding figures pertaining to the bill.

**Senator Hogue:** See Attachment #2 for figures regarding proposed amendments.

**Senator Hogue:** Moved the amendments I presented.

**Vice Chairman Miller:** Seconded.

**Chairman Cook:** Any further discussion? (no)

**A Roll Call vote was taken: Yea 4, Nay 3, Absent 0.**

**Motion passed.**

**Chairman Cook:** Your wishes?

**Senator Hogue:** Moved a Do Pass As Amended twice and Re-Referred to Appropriations.

**Senator Oehlke:** Seconded.

**Chairman Cook:** Discussion? (no)

**A Roll Call vote was taken: Yea 4, Nay 3, Absent 0.**

**Senator Hogue will carry the bill.**

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1324

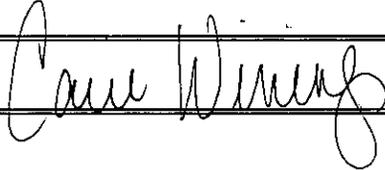
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/16/2009

Recorder Job Number: 11062

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened the discussion on HB 1324. (Clarified the effective date with the tax department on the bill after the amendments were passed)

**Donnita Wald, Tax Department:** My amendments were effective for the tax year beginning after 12/31/2008, beginning with the 2009 tax year.

**Chairman Cook:** Where were they at in the bill?

**Donnita Wald:** The very last page.

**Chairman Cook:** I want to make sure we put that amendment on. Yes we did it.

**Donnita Wald:** Senator Hogue's amendment changed the 2010 to 2009, so I want to clarify it. If you adopt those then we need the rest of that language on Senator Hogue's amendment right above the renumber accordingly where it talks about the indexing.

**Chairman Cook:** We want to be able to do it beginning after 2009, and that is where we had it.

**Senator Dotzenrod:** So in the middle of the biennium we will start with the new rates?

**Chairman Cook:** Yes.

**Senator Oehlke:** It says beginning after the year 2009.

**Senator Dotzenrod:** So we took the Berg bill and moved the date up one year?

**Chairman Cook:** Where do we want it?

**Senator Oehlke:** If you leave it at 2009 the fiscal note will be off.

**Chairman Cook:** When is the new EZ form going to be ready.

**Donnita Wald:** If you adopt Senator Hogue's amendment, then it will be postponed a year.

**Chairman Cook:** That is fine.

**Chairman Cook:** Adjourned.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1324

Page 1, line 2, after "taxpayers" insert "and to provide for a transfer"

Page 1, line 12, replace "By May" with "As soon as possible after July"

Page 1, line 13, after "2007" insert "individual"

Page 1, after line 16, insert:

"On July 1, 2011, the state treasurer shall transfer from the state general fund to the permanent oil tax trust fund in the state treasury the sum of \$100,000,000, or so much of the sum as was expended under the appropriation in this section for the purpose of allocation of state economic stimulus payments among taxpayers under this section, for the biennium beginning July 1, 2009, and ending July 30, 2011."

Renumber accordingly

#1  
**PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1324 (0715.0300)**

Page 1, line 1, remove "to provide an appropriation for allocation of state economic stimulus"

Page 1, line 2, remove "payments among taxpayers," and after "reenact" insert "subsection 4 of section 10-33-124, subsection 5 of section 11-37-08, subsections 1 and 3 of section 40-63-04, section 40-63-06, subsection 4 of section 40-63-07, subsections 1 and 2 of section 57-38-01.7, subsections 1 and 4 of section 57-38-01.8, sections 57-38-01.14, 57-38-01.16, and 57-38-01.17, subsection 1 of section 57-38-1.20, and after "57-38-30.3" insert ", and sections 57-38.5-03 and 57-38.6-03"

Page 1, line 3, after "to" insert "elimination of the optional long-form income tax return, and to"

Page 1, line 4, after "trusts" insert "and a simplified method of reporting tax for individuals; and to repeal sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-29, 57-38-29.2, and 57-38-30.4, and sections 57-38-67, 57-38-68, 57-38-69, 57-38-70, 57-38-71, 57-38-72, 57-38-73, and 57-38-74 of the North Dakota Century Code, relating to elimination of the optional long-form income tax return"

Page 1, replace lines 6 through 16 with:

**SECTION 1. AMENDMENT.** Subsection 4 of section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

4. a. ~~An individual or a~~ A corporation that buys membership in, or pays dues or contributes to, a nonprofit development corporation is entitled to an income tax credit against the tax liability under section 57-38-30 equal to twenty-five percent of the amount paid.
- b. This credit may not be claimed ~~by an individual who elects to file an income tax return under section 57-38-30.3 or by a corporation that is recognized as a~~ subchapter S corporation under section 57-38-01.4.
- c. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.
- d. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.

**SECTION 2. 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, ~~57-38-29~~, 57-38-30, and 57-38-30.3.

**SECTION 3. AMENDMENT.** Subsections 1 and 3 of section 40-63-04 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual taxpayer who purchases or rehabilitates single-family residential property for the individual's primary place of residence as a zone project is exempt from up to ten thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3 for five taxable years beginning with the date of occupancy or completion of rehabilitation.
3. If the cost of a new business purchase or expansion of an existing business, approved as a zone project, exceeds seventy-five thousand dollars, and the business is located in a city with a population of not more than two thousand five hundred, an individual taxpayer may, in lieu of the exemption provided in subsection 2, elect to take an income tax exemption of up to two thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3. The election must be made on the taxpayer's zone project application. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or this subsection. If no election is made on the zone project application, the taxpayer is only eligible for the exemption provided in subsection 2.

**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, ~~57-38-29~~, 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 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, ~~57-38-29,~~ 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 6. AMENDMENT.** Subsections 1 and 2 of section of section 57-38-01.7 of the North Dakota Century Code are amended and reenacted as follows:

1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax imposed by ~~this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund.

~~a. In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~

~~b. In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax imposed by ~~this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state.

~~a. In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~

~~b. In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

**SECTION 7. AMENDMENT.** Subsections 1 and 4 of section of section 57-38-01.8 of the North Dakota Century Code are amended and reenacted as follows:

1. Any A taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30 for the cost of a geothermal, solar, wind, or biomass energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.

4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, wind, or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the corporate partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 8. AMENDMENT.** Subsections 1 and 2 of section of section 57-38-01.7 of the North Dakota Century Code are amended and reenacted as follows:

**57-38-01.14. No gain recognized on property subject to eminent domain sale or transfer.** If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for corporate income tax purposes.

**SECTION 9. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.16. Income tax credit for employment of developmentally disabled or chronically mentally ill persons.** Any A taxpayer filing an income tax return under this chapter, ~~except a return on which liability is determined under section 57-38-30.3,~~ may claim a credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

**SECTION 10. AMENDMENT.** Section 57-38-01.17 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.17. Credit for investments in development corporations.** ~~An individual, estate, or trust, or~~ A corporation is allowed, as a credit against a tax otherwise due under section ~~57-38-29 or~~ 57-38-30, the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 10-33-124.

**SECTION 11. AMENDMENT.** Subsection 1 of section 57-38-01.20 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual is entitled to a credit against the tax imposed under section ~~57-38-29 or~~ 57-38-30.3 in the amount of the qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year."

Page 2, line 10, replace "1.81%" with "1.47%"

Page 2, line 11, replace "\$614.50" with "\$499.07" and replace "3.38%" with "3.29%"

Page 2, line 13, replace "\$2,247.04" with "\$2,088.14" and replace "3.75%" with "3.71%"

Page 2, line 15, replace "\$5,595.79" with "\$5,401.17" and replace "4.35%" with "4.41%"

Page 2, line 17, replace "\$14,356.69" with "\$14,282.91" and replace "4.78%" with "4.91%"

Page 2, line 21, replace "1.81%" with "1.47%"

Page 2, line 22, replace "\$1,027.18" with "\$834.23" and replace "3.38%" with "3.29%"

Page 2, line 24, replace "\$3,741.32" with "\$3,476.10" and replace "3.75%" with "3.71%"

Page 2, line 26, replace "\$6,433.82" with "\$6,139.88" and replace "4.35%" with "4.41%"

Page 2, line 28, replace "\$13,572.17" with "\$13,376.69" and replace "4.78%" with "4.91%"

Page 3, line 2, replace "1.81%" with "1.47%"

Page 3, line 3, replace "\$513.59" with "\$417.11" and replace "3.38%" with "3.29%"

Page 3, line 5, replace "\$1,870.66" with "\$1,738.05" and replace "3.75%" with "3.71%"

Page 3, line 7, replace "\$3,216.91" with "\$3,069.94" and replace "4.35%" with "4.41%"

Page 3, line 9, replace "\$6,786.08" with "\$6,688.34" and replace "4.78%" with "4.91%"

Page 3, line 13, replace "1.81%" with "1.47%"

Page 3, line 14, replace "\$823.55" with "\$668.65" and replace "3.38%" with "3.29%"

Page 3, line 16, replace "\$3,255.46" with "\$3,036.01" and replace "3.75%" with "3.71%"

Page 3, line 18, replace "\$5,983.59" with "\$5,735.08" and replace "4.35%" with "4.41%"

Page 3, line 20, replace "\$13,933.21" with "\$13,794.31" and replace "4.78%" with "4.91%"

Page 3, line 24, replace "1.81%" with "1.47%"

Page 3, line 25, replace "\$41.63" with "\$33.81" and replace "3.38%" with "3.29%"

Page 3, line 27, replace "\$144.72" with "\$134.16" and replace "3.75%" with "3.71%"

Page 3, line 29, replace "\$251.60" with "\$239.89" and replace "4.35%" with "4.41%"

Page 4, line 1, replace "\$379.92" with "\$369.99" and replace "4.78%" with "4.91%"

Page 4, after line 25, insert:

"h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.

**SECTION 12. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under ~~section 57-38-29 or~~ 57-38-30.3. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following: . . .

**SECTION 13. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. Agricultural business investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under ~~section 57-38-29 or~~ 57-38-30.3. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following: . . .

**SECTION 14. REPEAL.** Sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-29, 57-38-29.2, and 57-38-30.4, and sections 57-38-67, 57-38-68, 57-38-69, 57-38-70, 57-38-71, 57-38-72, 57-38-73, and 57-38-74 of North Dakota Century Code are repealed."

Page 4, line 27, replace "2010" with "2008"

Renumber accordingly

Date: 03/16/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.: 1324

Senate Finance and Taxation Committee

Check here for Conference Committee Amendments  
Senator Cook's except section 11

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Senator Triplett Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman			Sen. Jim Dotzenrod		✓
Sen. David Hogue		✓	Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 4 No 2

Absent 1 Miller

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

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

#2

March 11, 2009

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1324

Page 1, line 13, after "2007" insert "individual"

Page 1, line 16, after the period insert "However, the payment to a taxpayer, or the combined payment to married taxpayers, whether filing jointly or separately, may not exceed twenty thousand dollars."

Page 2, replace lines 9 through 30 with:

"If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$27,050</del> <u>\$33,950</u>	<del>2.10%</del> <u>1.70%</u>
Over <del>\$27,050</del> <u>\$33,950</u> but not	<del>\$568.05</del> <u>\$577.15</u> plus <del>3.92%</del> <u>3.40%</u>
over <del>\$65,550</del> <u>\$82,250</u>	of amount over <del>\$27,050</del> <u>\$33,950</u>
Over <del>\$65,550</del> <u>\$82,250</u> but not	<del>\$2,077.25</del> <u>\$2,219.35</u> plus <del>4.34%</del> <u>3.60%</u>
over <del>\$136,750</del> <u>\$171,550</u>	of amount over <del>\$65,550</del> <u>\$82,250</u>
Over <del>\$136,750</del> <u>\$171,550</u> but not	<del>\$5,167.33</del> <u>\$5,434.15</u> plus <del>5.04%</del> <u>4.25%</u>
over <del>\$297,350</del> <u>\$372,950</u>	of amount over <del>\$136,750</del> <u>\$171,550</u>
Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$13,261.57</del> <u>\$13,993.65</u> plus <del>5.54%</del> <u>5.00%</u>
	of amount over <del>\$297,350</del> <u>\$372,950</u>

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$45,200</del> <u>\$56,750</u>	<del>2.10%</del> <u>1.70%</u>
Over <del>\$45,200</del> <u>\$56,750</u> but not	<del>\$949.20</del> <u>\$964.75</u> plus <del>3.92%</del> <u>3.40%</u>
over <del>\$109,250</del> <u>\$137,050</u>	of amount over <del>\$45,200</del> <u>\$56,750</u>
Over <del>\$109,250</del> <u>\$137,050</u> but not	<del>\$3,459.96</del> <u>\$3,694.95</u> plus <del>4.34%</del> <u>3.60%</u>
over <del>\$166,500</del> <u>\$208,850</u>	of amount over <del>\$109,250</del> <u>\$137,050</u>
Over <del>\$166,500</del> <u>\$208,850</u> but not	<del>\$5,944.61</del> <u>\$6,279.75</u> plus <del>5.04%</del> <u>4.25%</u>
over <del>\$297,350</del> <u>\$372,950</u>	of amount over <del>\$166,500</del> <u>\$208,850</u>
Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$12,539.45</del> <u>\$13,254</u> plus <del>5.54%</del> <u>5.00%</u>
	of amount over <del>\$297,350</del> <u>\$372,950</u>

c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$22,600</del> <u>\$28,375</u>	<del>2.10%</del> <u>1.70%</u>
Over <del>\$22,600</del> <u>\$28,375</u> but not	<del>\$474.60</del> <u>\$482.38</u> plus <del>3.92%</del> <u>3.40%</u>
over <del>\$54,625</del> <u>\$68,525</u>	of amount over <del>\$22,600</del> <u>\$28,375</u>
Over <del>\$54,625</del> <u>\$68,525</u> but not	<del>\$1,729.98</del> <u>\$1,847.48</u> plus <del>4.34%</del> <u>3.60%</u>
over <del>\$83,250</del> <u>\$104,425</u>	of amount over <del>\$54,625</del> <u>\$68,525</u>
Over <del>\$83,250</del> <u>\$104,425</u> but not	<del>\$2,972.31</del> <u>\$3,139.88</u> plus <del>5.04%</del> <u>4.25%</u>
over <del>\$148,675</del> <u>\$186,475</u>	of amount over <del>\$83,250</del> <u>\$104,425</u>
Over <del>\$148,675</del> <u>\$186,475</u>	<del>\$6,269.73</del> <u>\$6,627.01</u> plus <del>5.54%</del> <u>5.00%</u>
	of amount over <del>\$148,675</del> <u>\$186,475</u>

d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$36,250</del> <u>\$45,500</u>	<del>2.10%</del> <u>1.70%</u>
Over <del>\$36,250</del> <u>\$45,500</u> but not	<del>\$761.25</del> <u>\$773.50</u> plus <del>3.92%</del> <u>3.40%</u>
over <del>\$93,650</del> <u>\$117,450</u>	of amount over <del>\$36,250</del> <u>\$45,500</u>
Over <del>\$93,650</del> <u>\$117,450</u> but not	<del>\$3,011.33</del> <u>\$3,219.80</u> plus <del>4.34%</del> <u>3.60%</u>
over <del>\$151,650</del> <u>\$190,200</u>	of amount over <del>\$93,650</del> <u>\$117,450</u>

Over ~~\$151,650~~ \$190,200 but not  
over ~~\$207,350~~ \$372,950  
Over ~~\$207,350~~ \$372,950

~~\$5,528.53~~ \$5,838.80 plus ~~5.04%~~ 4.25%  
of amount over ~~\$151,650~~ \$190,200  
~~\$12,871.81~~ \$13,605.68 plus ~~5.54%~~ 5.00%  
of amount over ~~\$207,350~~ \$372,950

e. Estates and trusts.

If North Dakota taxable income is:

Not over ~~\$1,800~~ \$2,300  
Over ~~\$1,800~~ \$2,300 but not  
over ~~\$4,250~~ \$5,350  
Over ~~\$4,250~~ \$5,350 but not  
over ~~\$6,500~~ \$8,200  
Over ~~\$6,500~~ \$8,200 but not  
over ~~\$8,900~~ \$11,150  
Over ~~\$8,900~~ \$11,150

The tax is equal to:

~~2.10%~~ 1.70%  
~~\$37.80~~ \$39.10 plus ~~3.92%~~ 3.40%  
of amount over ~~\$1,800~~ \$2,300  
~~\$133.84~~ \$142.80 plus ~~4.34%~~ 3.60%  
of amount over ~~\$4,250~~ \$5,350  
~~\$231.40~~ \$245.40 plus ~~5.04%~~ 4.25%  
of amount over ~~\$6,500~~ \$8,200  
~~\$352.45~~ \$370.78 plus ~~5.54%~~ 5.00%  
of amount over ~~\$8,900~~ \$11,150

Page 3, remove lines 1 through 30

Page 4, remove lines 1 and 2

Page 4, line 26, after "DATE" insert "- APPLICATION"

Page 4, line 27, replace "2010" with "2009" and after the period insert "The income amounts shown in the tax brackets in section 2 of this Act are the income amounts as indexed for taxable year 2009. The tax commissioner shall apply appropriate indexing factors, as determined under subdivision g of subsection 1 of section 57-38-30.3, to the dollar amounts of the brackets to update those amounts for taxable years after 2009."

Renumber accordingly

Date: 03/16/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 1324

Senate Finance and Taxation Committee

Check here for Conference Committee Amendment

Legislative Council Amendment Number 90715.306

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Senator Hogue Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson		✓
Sen. Joe Miller - Vice Chairman		✓	Sen. Jim Dotzenrod		✓
Sen. David Hogue	✓		Sen. Constance Triplett		✓
Sen. Dave Oehlke	✓				

*Failed*

Total: Yes 3 No 4

Absent \_\_\_\_\_

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

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

Date:

Roll Call Vote #: 03/16/09 # 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 1324

Senate Finance and Taxation Committee

Check here for Conference Committee Amendments (Hogue)

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Senator Hogue Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson		✓
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod		✓
Sen. David Hogue	✓		Sen. Constance Triplett		✓
Sen. Dave Oehlke	✓				

Total: Yes 4 No 3

Absent 0

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

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

Date: 03/16/09

Roll Call Vote #: #2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.: 1324

Senate Finance and Taxation Committee

Check here for Conference Committee Amended 2x's

Legislative Council Amendment Number Be-Refer

Action Taken  Do Pass  Do Not Pass  Amended <sup>AS</sup>

Motion Made By Hogue Seconded By Oehlke

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson		✓
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod		✓
Sen. David Hogue	✓		Sen. Constance Triplett		✓
Sen. Dave Oehlke	✓				

Total: Yes 4 No 3

Absent 0

Floor Assignment Senator Hogue

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

**REPORT OF STANDING COMMITTEE**

**HB 1324, as reengrossed: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1324 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 6-09.8-01, subsection 4 of section 10-33-124, subsection 5 of section 11-37-08, sections 27-17-06 and 37-28-07, subsections 1 and 3 of section 40-63-04, section 40-63-06, subsection 4 of section 40-63-07, subsections 1 and 2 of section 57-38-01.7, subsections 1 and 4 of section 57-38-01.8, sections 57-38-01.14, 57-38-01.16, and 57-38-01.17, subsection 1 of section 57-38-01.20, subsections 2 and 4 of section 57-38-01.21, sections 57-38-01.22, 57-38-01.23, 57-38-01.24, 57-38-01.25, and 57-38-01.26, subsection 6 of section 57-38-01.27, subsection 1 of section 57-38-01.29, subsection 1 of section 57-38-01.30, section 57-38-04, subsection 2 of section 57-38-08.1, sections 57-38-30.3 and 57-38-30.5, subdivision b of subsection 1 of section 57-38-40, and sections 57-38.5-03 and 57-38.6-03 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return; to repeal sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09.8-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Beginning farmer" means ~~a person~~ an individual who qualifies as a beginning farmer ~~under subsection 2 of section 57-38-67~~ who:
  - a. Is a resident of this state;
  - b. Receives more than half of that person's gross annual income from farming, unless the person initially commences farming during the year of the application under this chapter;
  - c. Intends to use any farmland to be purchased or rented for agricultural purposes;
  - d. Is adequately trained by education in the type of farming operation which the person wishes to begin on the purchased or rented land referred to in subdivision c through satisfactory participation in the adult farm management education program of the state board for career and technical education or an equivalent program approved by the agriculture commissioner; and
  - e. Has, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

**SECTION 2. AMENDMENT.** Subsection 4 of section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

4. a. ~~An individual or a~~ A corporation that buys membership in, or pays dues or contributes to, a nonprofit development corporation is entitled to an income tax credit against the tax liability under section 57-38-30 equal to twenty-five percent of the amount paid.
- b. This credit may not be claimed by ~~an individual who elects to file an income tax return under section 57-38-30.3 or by~~ a corporation that is recognized as a subchapter S corporation under section 57-38-01.4.
- c. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.
- d. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.

**SECTION 3. 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, ~~57-38-29~~, 57-38-30, and 57-38-30.3.

**SECTION 4. AMENDMENT.** Section 27-17-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-17-06. Immediate withdrawal of present active judges from judges retirement fund.**

1. From and after July 1, 1973, each judge of the supreme or district court serving on that date and each former judge of the supreme or district court, not receiving judicial retirement salary, may elect to withdraw the judge's previous contributions made pursuant to this chapter, and thereafter not participate in a judicial retirement program provided for by law. This option ceases to be available and may not be exercised after June 30, 1975. If a judge selects this option, the judge is entitled to receive the combined total of the following sums:
  - ~~1.~~ a. The entire amount of the judge's previous contributions made pursuant to this chapter, to be calculated to the date of election under this section; plus
  - ~~2.~~ b. An amount calculated by applying the vesting schedule set forth in section 54-52-11 to an amount equal to sixty percent of the judge's individual contributions as calculated in subsection 1, plus earnings thereon as calculated in subsection 3; plus
  - ~~3.~~ c. An amount calculated by applying the figure .05625 to the periodic annual or partial annual balances in the individual judge's account during the judge's years of service prior to selecting the option provided by this section. The figure applied pursuant to this ~~subsection~~ subdivision must be compounded annually.

2. The total amounts received pursuant to this section may not be considered taxable income for the purposes of chapter 57-38 ~~and may be treated as an additional adjustment reducing the amount of taxable income in addition to those provided in section 57-38-01.2.~~ Selection of the option provided by this section must be made in writing to the director of the office of management and budget.

**SECTION 5. AMENDMENT.** Section 37-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-07. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted.** Payments under this chapter are exempt from all state and local taxes, including taxes determined under section ~~57-38-29~~ or 57-38-30.3, and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under this chapter is void and payment to the veteran may not be denied because of any sums owed to the state or any political subdivisions, except as provided in section 37-26-05.

**SECTION 6. AMENDMENT.** Subsections 1 and 3 of section 40-63-04 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual taxpayer who purchases or rehabilitates single-family residential property for the individual's primary place of residence as a zone project is exempt from up to ten thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3 for five taxable years beginning with the date of occupancy or completion of rehabilitation.
3. If the cost of a new business purchase or expansion of an existing business, approved as a zone project, exceeds seventy-five thousand dollars, and the business is located in a city with a population of not more than two thousand five hundred, an individual taxpayer may, in lieu of the exemption provided in subsection 2, elect to take an income tax exemption of up to two thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3. The election must be made on the taxpayer's zone project application. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or this subsection. If no election is made on the zone project application, the taxpayer is only eligible for the exemption provided in subsection 2.

**SECTION 7. 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, ~~57-38-29~~, 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 8. 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, ~~57-38-29~~, 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 9. AMENDMENT.** Subsections 1 and 2 of section 57-38-01.7 of the North Dakota Century Code are amended and reenacted as follows:

1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund.
  - a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state.
  - a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

**SECTION 10. AMENDMENT.** Subsections 1 and 4 of section 57-38-01.8 of the North Dakota Century Code are amended and reenacted as follows:

1. ~~Any~~ A taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30 for the cost of a geothermal, solar, wind, or biomass energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a

device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.

4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, wind, or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the corporate partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 11. AMENDMENT.** Section 57-38-01.14 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.14. No gain recognized on property subject to eminent domain sale or transfer.** If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for corporate income tax purposes.

**SECTION 12. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.16. Income tax credit for employment of developmentally disabled or chronically mentally ill persons.** ~~Any~~ A taxpayer filing an income tax return under this chapter, ~~except a return on which liability is determined under section 57-38-30.3,~~ may claim a credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

**SECTION 13. AMENDMENT.** Section 57-38-01.17 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.14. Credit for investments in development corporations.** ~~An individual, estate, trust, or~~ A corporation is allowed, as a credit against a tax otherwise due under section ~~57-38-29 or~~ 57-38-30, the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 10-33-124.

**SECTION 14. AMENDMENT.** Subsection 1 of section 57-38-01.20 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual is entitled to a credit against the tax imposed under section ~~57-38-29 or~~ 57-38-30.3 in the amount of qualified care expenses under

this section paid by the individual for the care of a qualifying family member during the taxable year.

**SECTION 15. AMENDMENT.** Subsections 2 and 4 of section 57-38-01.21 of the North Dakota Century Code are amended and reenacted as follows:

2. An individual is allowed a tax credit against the tax imposed by section ~~57-38-29~~ or 57-38-30.3 in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the year to a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for contributions made in a taxable year is ten thousand dollars, or twenty thousand dollars for married individuals filing a joint return. The credit allowed under this section may not exceed the taxpayer's income tax liability.
4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit allowed under this subsection for contributions made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section ~~57-38-29~~, 57-38-30, or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.

**SECTION 16. AMENDMENT.** Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.22. Income tax credit for blending of biodiesel fuel.** A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

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 this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of 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.

**SECTION 17. AMENDMENT.** Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.23. Income tax credit for biodiesel sales equipment costs.** A seller of biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the

facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel fuel begin.

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 this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of 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.

**SECTION 18. AMENDMENT.** Section 57-38-01.24 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.24. Internship employment tax credit.**

1. A taxpayer that is an employer within this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for qualified compensation paid to an intern employed in this state by the taxpayer. To qualify for the credit under this section, the internship program must meet the following qualifications:
  - a. The intern must be an enrolled student in an institution of higher education or vocational technical education program who is seeking a degree or a certification of completion in a major field of study closely related to the work experience performed for the taxpayer;
  - b. The internship must be taken for academic credit or count toward the completion of a vocational technical education program;
  - c. The intern must be supervised and evaluated by the taxpayer; and
  - d. The internship position must be located in this state.
2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend or salary paid to a college intern employed by the taxpayer. A taxpayer may not receive more than three thousand dollars in total credits under this section for all taxable years combined.
  - a. The tax credit under this section applies to a stipend or salary for not more than five interns employed at the same time.
  - b. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is 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.

**SECTION 19. AMENDMENT.** Section 57-38-01.25 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.25. Workforce recruitment credit for hard-to-fill employment positions.** A taxpayer that is an employer in this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for costs the taxpayer incurred during the tax year to recruit and hire employees for hard-to-fill employment positions within this state for which the annual salary for the position meets or exceeds the state average wage.

1. The amount of the credit to which a taxpayer is entitled is five percent of the salary paid for the first twelve consecutive months to the employee hired for the hard-to-fill employment position. To qualify for the credit under this section, the employee must be employed by the taxpayer in the hard-to-fill employment position for twelve consecutive months.
2. For purposes of this section:
  - a. "Extraordinary recruitment methods" means using all of the following:
    - (1) A person with the exclusive business purpose of recruiting employees and for which a fee is charged by that recruiter.
    - (2) An advertisement in a professional trade journal, magazine, or other publication, the main emphasis of which is providing information to a particular trade or profession.
    - (3) A web site, the sole purpose of which is to recruit employees and for which a fee is charged by the web site.
    - (4) Payment of a signing bonus, moving expenses, or nontypical fringe benefits.
  - b. "Hard-to-fill employment position" means a job that requires the employer to use extraordinary recruitment methods and for which the employer's recruitment efforts for the specific position have been unsuccessful for six consecutive calendar months.
  - c. "State average wage" means one hundred twenty-five percent of the state average wage published annually by job service North Dakota and which is in effect at the time the employee is hired.
3. The taxpayer may claim the credit in the first tax year beginning after the employee hired for the hard-to-fill position has completed the employee's first twelve consecutive months of employment in the hard-to-fill position with the taxpayer.
4. The credit under this section may not exceed a taxpayer's liability for the taxable year as determined under this chapter. Any amount of unused credit may be carried forward for up to four taxable years after the taxable year in which the credit could initially be claimed.

5. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.

**SECTION 20. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.26. Angel fund investment tax credit.** A taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The angel fund must be in compliance with the securities laws of this state for the investment to qualify for the tax credit under this section. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

**SECTION 21. AMENDMENT.** Subsection 6 of section 57-38-01.27 of the North Dakota Century Code is amended and reenacted as follows:

6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 equal to twenty percent of the taxpayer's new investment and new employment in the microbusiness during the taxable year. A taxpayer may not obtain more than ten thousand dollars in credits under this section over any combination of taxable years.

**SECTION 22. AMENDMENT.** Subsection 1 of section 57-38-01.29 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other credit or deduction allowed by law for a homeowner, an individual is entitled to a credit against the tax imposed under section ~~57-38-29~~ or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against the individual's homestead in this state. For purposes of this section, "property taxes" does not include any special assessments.

**SECTION 23. AMENDMENT.** Subsection 1 of section 57-38-01.30 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other credit or deduction allowed by law for a property owner, an individual or corporation is entitled to a credit against the tax imposed under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or

mobile home taxes that became due during the income tax taxable year and are paid which were levied against commercial property in this state. For purposes of this section, "property taxes" does not include any special assessments.

- a. The amount of the credit under this section may not exceed one thousand dollars for any taxpayer.
- b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
- c. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individual filing separate returns.

**SECTION 24. AMENDMENT.** Section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-04. Allocation and apportionment of gross income of individuals.**

The gross income of individuals must be allocated and apportioned as follows:

1. a. Income from personal or professional services performed in this state by individuals must be assigned to this state regardless of the residence of the recipients of such income, except that income from such services performed within this state by an individual who resides and has the individual's place of abode in another state to which place of abode the individual customarily returns at least once a month must be excluded from the individual's income for the purposes of this chapter if such income is subject to an income tax imposed by the state in which the individual resides, provided that the state in which the individual resides allows a similar exclusion for income received from similar services performed in that state by residents of North Dakota.
- b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, must be excluded from income to the extent that the income is subject to an income tax imposed by the state of the individual's residence; provided, that the state allows a similar exclusion of the compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For purposes of this subdivision, the term an individual who performs services for a common carrier engaged in interstate transportation is limited to an individual who performs the services for a common carrier only during the course of making regular runs into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier.
2. ~~a.~~ Income received from personal or professional services performed by residents of this state, regardless of where such services are

performed, and income received by residents of this state from intangible personal property must be assigned to this state.

- b. ~~A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also taxable under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and c of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:~~
- ~~(1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under this subsection.~~
  - ~~(2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.~~
3. Income and gains received from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if such business consists principally of the holding of such property and collection of income and gains therefrom, must be assigned to this state without regard to the residence of the recipient if such property has a situs within this state.
  4. Income derived from business activity carried on by an individual as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to the residence of the individual if the business activity is conducted wholly within this state. Income derived from gaming activity carried on in this state by an individual must be assigned to this state without regard to the residence of the individual.
  5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.

6. a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists principally of the holding of the property and the collection of income and gains from the business, must be assigned to this state without regard to the situs of the property.
- b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to where the business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.
- ~~e. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in these jurisdictions that is also subject to tax under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:
  - (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
  - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.~~
7. All other items of gross income must be assigned to the taxpayer's domicile.
8. The privileges granted nonresidents apply only when other states grant to the residents of North Dakota the same privilege.

~~This section applies to every income year beginning after December 31, 1956.~~

**SECTION 25. AMENDMENT.** Subsection 2 of section 57-38-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Resident partners, limited to individuals, estates, and trusts, must report their entire distributive share to this state as provided in subdivision b of subsection 6 of section 57-38-04, and may claim a credit for taxes paid to another state on that portion of their distributive share attributable to and taxed by another state, as provided in subdivision e j of subsection 6 1 of section ~~57-38-04~~ 57-38-30.3.

**SECTION 26. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.3. Simplified method of computing individual, estate, and trust income tax.**

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$27,050</del> <u>\$33,950</u>	<del>2.10%</del> <u>1.70%</u>
Over <del>\$27,050</del> <u>\$33,950</u> but not over <del>\$66,550</del> <u>\$82,250</u>	<del>\$568.05</del> <u>\$577.15</u> plus <del>3.92%</del> <u>3.40%</u> of amount over <del>\$27,050</del> <u>\$33,950</u>
Over <del>\$66,550</del> <u>\$82,250</u> but not over <del>\$136,750</del> <u>\$171,550</u>	<del>\$2,077.25</del> <u>\$2,219.35</u> plus <del>4.34%</del> <u>3.60%</u> of amount over <del>\$66,550</del> <u>\$82,250</u>
Over <del>\$136,750</del> <u>\$171,550</u> but not over <del>\$297,350</del> <u>\$372,950</u>	<del>\$5,167.33</del> <u>\$5,434.15</u> plus <del>5.04%</del> <u>4.25%</u> of amount over <del>\$136,750</del> <u>\$171,550</u>
Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$13,261.57</del> <u>\$13,993.65</u> plus <del>6.54%</del> <u>5.00%</u> of amount over <del>\$297,350</del> <u>\$372,950</u>

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$46,200</del> <u>\$56,750</u>	<del>2.10%</del> <u>1.70%</u>
Over <del>\$46,200</del> <u>\$56,750</u> but not over <del>\$109,250</del> <u>\$137,050</u>	<del>\$949.20</del> <u>\$964.75</u> plus <del>3.92%</del> <u>3.40%</u> of amount over <del>\$46,200</del> <u>\$56,750</u>
Over <del>\$109,250</del> <u>\$137,050</u> but not over <del>\$166,500</del> <u>\$208,850</u>	<del>\$3,459.96</del> <u>\$3,694.95</u> plus <del>4.34%</del> <u>3.60%</u> of amount over <del>\$109,250</del> <u>\$137,050</u>
Over <del>\$166,500</del> <u>\$208,850</u> but not over <del>\$297,350</del> <u>\$372,950</u>	<del>\$5,944.61</del> <u>\$6,279.75</u> plus <del>5.04%</del> <u>4.25%</u> of amount over <del>\$166,500</del> <u>\$208,850</u>
Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$12,539.45</del> <u>\$13,254</u> plus <del>6.54%</del> <u>5.00%</u> of amount over <del>\$297,350</del> <u>\$372,950</u>

c. Married filing separately.

If North Dakota taxable income is:  
Not over ~~\$22,600~~ \$28,375  
Over ~~\$22,600~~ \$28,375 but not  
over ~~\$54,625~~ \$68,525  
Over ~~\$54,625~~ \$68,525 but not  
over ~~\$83,250~~ \$104,425  
Over ~~\$83,250~~ \$104,425 but not  
over ~~\$148,675~~ \$186,475  
Over ~~\$148,675~~ \$186,475

The tax is equal to:  
~~2.10%~~ 1.70%  
~~\$474.60~~ \$482.38 plus ~~3.02%~~ 3.40%  
of amount over ~~\$22,600~~ \$28,375  
~~\$1,729.98~~ \$1,847.48 plus ~~4.34%~~ 3.60%  
of amount over ~~\$54,625~~ \$68,525  
~~\$2,972.31~~ \$3,139.88 plus ~~5.04%~~ 4.25%  
of amount over ~~\$83,250~~ \$104,425  
~~\$6,269.73~~ \$6,627.01 plus ~~5.54%~~ 5.00%  
of amount over ~~\$148,675~~ \$186,475

d. Head of household.

If North Dakota taxable income is:  
Not over ~~\$36,250~~ \$45,500  
Over ~~\$36,250~~ \$45,500 but not  
over ~~\$93,650~~ \$117,450  
Over ~~\$93,650~~ \$117,450 but not  
over ~~\$151,650~~ \$190,200  
Over ~~\$151,650~~ \$190,200 but not  
over ~~\$297,350~~ \$372,950  
Over ~~\$297,350~~ \$372,950

The tax is equal to:  
~~2.10%~~ 1.70%  
~~\$761.25~~ \$773.50 plus ~~3.02%~~ 3.40%  
of amount over ~~\$36,250~~ \$45,500  
~~\$3,011.33~~ \$3,219.80 plus ~~4.34%~~ 3.60%  
of amount over ~~\$93,650~~ \$117,450  
~~\$5,528.53~~ \$5,838.80 plus ~~5.04%~~ 4.25%  
of amount over ~~\$151,650~~ \$190,200  
~~\$12,871.81~~ \$13,605.68 plus ~~5.54%~~ 5.00%  
of amount over ~~\$297,350~~ \$372,950

e. Estates and trusts.

If North Dakota taxable income is:  
Not over ~~\$1,800~~ \$2,300  
Over ~~\$1,800~~ \$2,300 but not  
over ~~\$4,250~~ \$5,350  
Over ~~\$4,250~~ \$5,350 but not  
over ~~\$6,500~~ \$8,200  
Over ~~\$6,500~~ \$8,200 but not  
over ~~\$8,900~~ \$11,150  
Over ~~\$8,900~~ \$11,150

The tax is equal to:  
~~2.10%~~ 1.70%  
~~\$37.80~~ \$39.10 plus ~~3.02%~~ 3.40%  
of amount over ~~\$1,800~~ \$2,300  
~~\$133.84~~ \$142.80 plus ~~4.34%~~ 3.60%  
of amount over ~~\$4,250~~ \$5,350  
~~\$231.49~~ \$245.40 plus ~~5.04%~~ 4.25%  
of amount over ~~\$6,500~~ \$8,200  
~~\$352.45~~ \$370.78 plus ~~5.54%~~ 5.00%  
of amount over ~~\$8,900~~ \$11,150

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

g. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is

imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.

- h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.
- i. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also taxable under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:

  - (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under this subsection.
  - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
- j. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income. For an individual, estate, or trust that is a resident of this state for only part of

the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:

- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivision i.
  - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
- a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
  - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
  - 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.
  - d. Reduced by thirty percent of 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.
  - e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
  - 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.
  - g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not

- apply to federal service while attending annual training, basic military training, or professional military education.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
  - i. Reduced by interest and income from bonds issued under chapter 11-37.
  - j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
    - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
    - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
    - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
  - k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
  - l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
  - m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.
  - n. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.



becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.

7. A taxpayer filing a return under this section is entitled to the following tax credits:
  - a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. Seed capital investment tax credit under section 57-38.5-03.
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
  - g. Internship employment tax credit under section 57-38-01.24.
  - h. Workforce recruitment credit under section 57-38-01.25.
  - i. Angel fund investment tax credit under section 57-38-01.26.
  - j. Microbusiness tax credit under section 57-38-01.27.
  - k. Marriage penalty credit under section 57-38-01.28.
  - l. Homestead income tax credit under section 57-38-01.29.
  - m. Commercial property income tax credit under section 57-38-01.30.
  - n. Research and experimental expenditures under section 57-38-30.5.
8. A taxpayer filing a return under this section is entitled to the exemption provided under section 40-63-04.
9. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
  - (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
  - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax

under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
  - c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
  - d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
10. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.

**SECTION 27. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.5. Income tax credit for research and experimental expenditures.**

A taxpayer is allowed a credit against the tax imposed under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for conducting qualified research in this state.

- 1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
  - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to

fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.

- d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - f. The maximum annual credit a taxpayer may obtain under this section is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.
2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
    - a. This rate applies through the tenth taxable year beginning after December 31, 2006.
    - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.

4. For purposes of this section:
  - a. "Base period research expenses" means base period research expenses as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.
  - b. "Director" means the director of the department of commerce division of economic development and finance.
  - c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.
  - d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
  - e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
  - f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
6. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
7. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year.
8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and

development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:

- a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
- b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
- c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
- d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
- e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
- f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.

- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
- h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.
9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].
10. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.
11. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section ~~57-38-29~~ or 57-38-30.3.
12. 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 ~~sections 57-38-29 and 57-38-30~~ section 57-38-30.3.

**SECTION 28. AMENDMENT.** Subdivision b of subsection 1 of section 57-38-40 of the North Dakota Century Code is amended and reenacted as follows:

- b. An individual who filed a return of income as a resident of this state and is assessed tax by another state or territory of the United States or the District of Columbia on that income after the time for filing a claim has expired under this section is entitled to a credit or refund for the amount of tax paid to the other jurisdiction, not including penalty or interest, as provided under subsection ~~2 or 6 of section 57-38-04~~ 1 or subsection 4 of section 57-38-30.3, notwithstanding the time limitations of this section. The claim for the credit or refund under this subdivision must be submitted to the commissioner within one year from the date the taxes were paid to the other jurisdiction. The taxpayer must submit sufficient proof to show entitlement to a credit or refund under this subdivision.

**SECTION 29. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the

return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 is not eligible for the investment tax credit under this chapter.

**SECTION 30. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. The credit under this section may not exceed the liability for tax under chapter 57-38. If the amount of credit under this section exceeds the liability for tax, the excess may be carried forward for up to ten taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's owners, in proportion to their respective ownership interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purposes of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.

6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business. Real property that qualifies as an investment must be used in, and be an integral part of, the qualified business's North Dakota business operations.
8. If the investment is a contribution of real property:
  - a. The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.
  - b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.
  - c. The qualified business receiving the contribution of real property shall provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
  - d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

**SECTION 31. REPEAL.** Sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code are repealed.

**SECTION 32. EFFECTIVE DATE - APPLICATION.** This Act is effective for taxable years beginning after December 31, 2009. The income amounts shown in the tax brackets in the amendment to section 57-38-30.3 in this Act are the income

amounts as indexed for taxable year 2009. The tax commissioner shall apply appropriate indexing factors, as determined under subdivision g of subsection 1 of section 57-38-30.3, to the dollar amounts of the brackets to update those amounts for taxable years after 2009."

Renumber accordingly

2009 SENATE APPROPRIATIONS

HB 1324

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1324

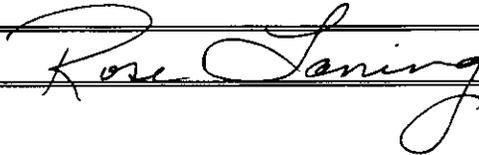
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: March 23, 2009

Recorder Job Number: 11372

Committee Clerk Signature



Minutes:

**Chairman Holmberg:** Called the committee hearing to order on HB 1324 which is an allocation of state economic stimulus payments among taxpayers.

**Dwight Cook:** Senator District 34 introduced and testified in support of HB 1324.

(Handed out an article from the Jamestown Sun and chart with tax brackets—see attached # 1)

Reduces the tax burden on the citizens of ND.

Simplifies tax forms and replaces the ND2 form and replaces it with a North Dakota EZ form.

**Senator Christmann:** Effective date? 2009 will be under current. This will impact income earned in 2010. Am I correct?

**Dwight Cook:** It's delayed one year. Effective date of tax increases.

**Senator Mathern:** Our income tax is based on progressive form of taxation. Which column is most progressive?

**Dwight Cook:** Which is most progressive? I'd say the third one, Hogue.

**Rick Berg:** Representative District 45 testified in favor of HB 1324. The state of North Dakota collected \$1.2 B in surplus this last Biennium, which came from corporate, oil, and personal tax collections. We collected \$115M more than we project at the end of the last Legislative session in personal income tax. Part of that prompted an initiated measure last fall. We voted on this and during that election, the Governor and Legislators went out and said we're solid and

legislators will look at it to provide relief. Over next biennium we are going to spend \$350M onetime, \$350M ongoing, and \$300M in property tax. This bill reduces our revenue by about 4%. For reasons, we've collected a lot of money and should return some of the money to the people who paid that. It's sustainable. All bills proposed have a window next session to take a look at them.

The issue that I feel the strongest about is the economy. We are in dogfight nationally. In FM area, we have seen buildings, building permits going up, and yet jobs are down. There have been zero building permits, residential or commercial permits issued in January of this year. My point is that we need to get some more money back into the hands of the people in North Dakota that are creating the jobs and making things happen.

**Senator Warner:** You're in favor of ND stimulus, but by delaying this until the second year of biennium, what good would this do?

**Rick Berg:** I had some things that I felt would have a bigger impact. But I'm trying to speak to you about the bill you have before you. I support the bill in its present form. With a zero fiscal note and put that money back to the people and defer income tax reductions until the following biennium.... Then the next Legislative Session could look at our economy then and proceed accordingly.

**Chairman Holmberg:** Those who would argue that in times of economic hardships, isn't it risky to cut taxes, but extremely difficult to raise taxes and we would be laying our cards on the table before we know the extent of this economic Malays?

**Rick Berg:** Cochrane from Economy.com gave 5 conditions that could be met and we can do it. One of those priorities was to get the money back into the hands of its people. The stimulus package from feds is a bailout for most of the other states. North Dakota has an opportunity to

take things to new level. We're not going to let things get out of hand, we're stable. I believe we need to have a theme to encourage growth and not have investments flow out of ND.

**Jack Dalrymple, Lt. Governor for the State of North Dakota:**

Testified in support of HB 1324. Handed out chart – see attached # 2.

Want to go forward with permanent tax relief for citizens of ND because we feel we have a sustainable revenue stream. ND is envy of US States where you have balance of tax sources and this is what all states are trying to achieve. Be careful to provide relief in careful balanced way. Out of \$400 M tax relief, there should be a component that addresses the income tax area. The chart shows current rates and proposed rates. House decided they want the Berg bill. Need to focus on the lower brackets. If most people aren't affected, inevitable you will be asked if these are good policies. Difficulty in - those who pay most benefit most. Relief should come in year one of the biennium as well as year two. This is a permanent ongoing change in tax policy.

**Senator Mathern:** Before session, I talked with someone over \$500,000, he told me that that's the last thing he wanted was tax reduction, because he made money by having the State infrastructure built up.

**Lt. Gov. Dalrymple:** We do not have people calling into the capital in any tax bracket, that you should provide cuts to us. People say that if we can afford a tax break in the long-term, that's good, but don't raise them again in 2-4 years. Public opinion polls show that property tax relief is favored 2-1 over income tax. But the highest category is combination property tax and income tax.

**Chairman Holmberg:** With passage of this bill, where would this place ND with regards to the rest of the States that have an income tax?

**Lt. Gov. Dalrymple:** We did study, and wanted to get the top rate down to 5% or less. That would put us above all but two states. We want to have competitive rate. With 5.12 %, we'd still have 6 states lower than us, but not by much.

**Chairman Holmberg:** We have a lot of bills going through the Legislature to reduce revenue; we also have a number of bills that spends money over and above the proposed budgets. At what point do we try to balance them and balance them by cutting all the good ideas or slash all the revenue reducers and spend all the money there is? That is our dilemma and none of the bills that we have that affect human services are bad ideas, so how do we balance this in the end?

**Lt. Gov. Dalrymple:** The answer at this point is clear. We must prioritize tax relief for our citizens. All of income tax credits favor. The only true tax cut is one that covers all rates. It's tough because people know there are dollars available.

**Chairman Holmberg:** Once in a lifetime; - last time legislature raised income taxes was 20 years ago and the citizens rebelled. If legislature did this and then 4 years from now we need to cut budgets, where do we get the political will to do that?

**Lt. Gov. Dalrymple:** We do not foresee that arising. The economy in North Dakota is completely different than it was in the 1980's. The diversification in our economy is so that it continues to improve. We have natural resources that are developing nicely. We have to have confidence and must go forward and not adopt policy on bases of fear.

**Chairman Holmberg:** Brag about the bond rating for North Dakota for a moment.

**Lt. Gov. Dalrymple:** In the midst of all this national financial problems, North Dakota's economy's rating went from double A to double A plus. That is truly a remarkable feat.

**Senator Wardner:** Great job of diversifying. The primary sector is reliant on the national economy. Some companies in his area have back log, but that will end.

**Lt. Gov. Dalrymple:** Some job layoffs are temporary. Agricultural manufacturing in ND will continue to do well and people will be reinstated shortly. Manufacturing or construction industry jobs will hopefully be restored. The window manufacturing industry will benefit from the weatherization stimulus package.

**V. Chair Grindberg:** What about commodity prices? A lot of income and collections is based on commodity prices in next twelve months.

**Lt. Gov. Dalrymple:** This is a topic that I do spend time on every day and that is not an easy answer. Soybeans rallying back to \$9 in the last week, corn rallying back into the \$4 area. We realize the rest of the world has a rapidly expanding appetite for food commodities, and they will find a US dollar that is weaker. Exports have held up well and price of oil has gone up \$14/barrel. We think it's a mistake to take one day and make a 15 year decision based on what happens on a particular day.

**Senator Robinson:** I'm struggling thru issue, and I have yet to have one person ask for income tax relief. With the situations pertaining to Melroe, Sykes, Case IH, and Rosenbluth; I think it has effected North Dakota. Folks are telling me that now is the time to be careful. They are saying what we have been doing must have been working and why change the formula when there is so much unknown out there. Where is the governor's office on the rest of the package? Because we literally have the kitchen sink thrown at us right now? Some of the "old-timers" are saying we went through this in the 80's and they are afraid we haven't learned. How would you respond to them?

**Lt. Gov. Dalrymple:** We have prioritized property tax relief by far. There is such a thing as a balanced tax system. We must do something in the income tax bracket at the same time. The other things are way down the list in light of broad term tax relief.

**Senator Krauter:** Budget status summary. 1279 was on but 1324 is not on there.

**Becky Keller:** Legislative Council, 1324 was a duplication of what was in the governor's budget. It's in the balance for the general fund, so we wouldn't show it twice.

**Senator Krauter:** If 1279 has been defeated.

**Becky Keller:** Looking at the fiscal note for 1324 does not show general revenue effect for 09-11 bienniums.

**Jeb Oehlke:** ND Chamber of Commerce testified in favor of HB 1324. (See attachment #3)

**Chairman Holmberg:** Question that governor's office had property tax on top of list of other taxes. Where are those other tax deductions on your list?

**Jeb Oehlke:** The four bills I've mentioned are the ones we prefer because of the reasons I stated in my written testimony.

**Chairman Holmberg:** are they prioritized?

**Jeb Oehlke:** They are all ranked #1 for us.

**Senator Robinson:** I think your board needs to hear that we have to provide leadership for

**Jeb Oehlke:** We see it the same way they do, and we don't see much change in the future.

**Senator Robinson:** There's responsibility for leadership

**Senator Krebsbach:** I have response to Senator Robinson. In 1989, GNDA did take a stance against referral.

**V. Chair Grindberg:** The phone calls from high income people. Does chamber get calls? What position did the Chamber take on the measure that was on the November ballot and why?

**Jeb Oehlke:** I haven't received phone calls asking for income tax relief. The policy committee prioritized list. We did not take a position on measure #2. Our board felt unwise to create tax policy through initiated measure.

**Becky Keller:** I have an answer for Senator Krauter regarding why its not showing up on Budget Status and that is because the expenditure was initially shown as coming from the permanent oil tax trust fund and not the general fund. It will show up on the executive summary on the 2<sup>nd</sup> page under the permanent oil tax trust fund analysis.

**Robert Harms:** Bismarck resident testified in favor of HB 1324. (See attachment # 4)

**Chairman Holmberg:** Closed the hearing on HB 1324.

## 2009 SENATE STANDING COMMITTEE MINUTES

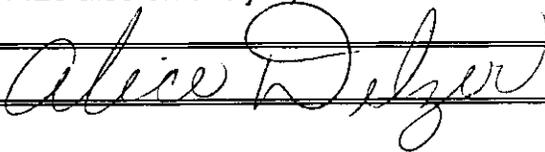
Bill/Resolution No. 1324

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 04-03-09

Recorder Job Number: 11724 (HB 1425 also on this job)

Committee Clerk Signature 

Minutes:

**Chairman Holmberg** called the committee back to order in reference to HB 1324 in regards to allocation of state economic stimulus payments among taxpayers.(04.58)

**SENATOR WARDNER MOVED A DO PASS ON HB 1324. SECONDED BY SENATOR CHRISTMANN.**

**Senator Krauter** I have some amendments drafted for 1324. You have a motion in front of you.

**Chairman Holmberg** They will withdraw it.

**Both Senator Wardner and Senator Christmann withdrew their motion.**

**Senator Krauter** distributed Amendment .0309 and explained it to the committee. (6.43) I bring this to the committee because I honestly believe that residents of North Dakota on their radar screen their primary issue is property tax issues and what this amendment does it takes the fiscal note in this bill and puts it back into property tax relief. It simply does that and uses the system that we currently have established in the tax department to mix it up \$500.00 up to \$1,000.00 basically identical to what we currently have. My reasons for this is #1 That is what the voters said loud and clear. 70% of the voters have voted in the November election said no to a reduction in income tax and this falls through the tax. We want to have property tax relief. In this current biennium according from the things we have gotten from the tax department and

testimony we have had here as of January 9<sup>th</sup> I think that 42 or 42 million out of that 112 has been used for property tax relief in the first year biennium and now in actuary getting the second year. It is being used. There is a method out there. we do have a bill that we did pass already which was 2199 and that process puts property tax relief in the form of mills back to school districts and if you sit down and look at that and compare it with two of those, that is this. This is for North Dakota residents. I did research on it in the counties I represent and on the average about 22% of the taxes are going to tax statements and the tax payments on nonresidents. If you really want to be sincere and truthful about property tax relief we've got to stay with the system we've got and we'll have more benefit coming. I offer these amendments as a proposal to get ourselves back on track with property tax relief.

**Senator Krauter moved the amendment #0309. Seconded by Senator Warner**

**Senator Mathern** I just wanted to note that I find it interesting that the property tax issue seems to be across the board rural and urban. I support these amendments because I think it brings together farmers, ranchers and city folks about this issue. (10.32)

**Chairman Holmberg** I don't know what will happen on this motion but I am guessing that the issue of the current system even if this doesn't pass is not an issue that is dead. There are a number of people that feel that way that they like the current system even though two years ago there were some who did not.

**Senator Christmann** There are things about this I really like, and I'm working to try and get the property tax relief bill, whatever that number is, switched back into (inaudible) (11.12) the formula that is suggested. That is way we have done it the last 10 years and I am still hopeful of doing that but that is THAT bill. This is income. It is a different bill. We can say people are clamoring for income tax relief, property tax relief. I almost think now that the two main issues are how much land the game and fish department can buy up and property tax relief. This is

going to have an impact on some people who won't get property tax relief who chooses to rent somewhere, and I think in a round-about way they actually do get property tax relief, round-about from their landlords, but there is some high income people here who won't get direct property tax relief and I think a well balanced tax system has been good for the state of North Dakota in the past and in order to maintain a well balanced tax system when you grow them you all need to grow, and when you cut them they all need to be trimmed and I think this does it.(12.50)

**Senator Robinson** That is the problem. Our system is not balanced. That's why we have such an effort on property tax and we can't ignore this 70% vote that was a slam dunk. "We don't want income tax, it's property, 1,2,3,4, if you have extra money, put it in the property tax". because we have been way out of line on property tax. If we do this, what we are doing is creating an adverse situation. We want to level the playing field. And those 3 legged legs on a stool are way out of line because of property tax. So we should put it all into property tax and I agree on the formula we are using. Let's do it all. We have it before us. We might not have that other one, it might be killed. So we got it now, and we might not have a chance. Put it on the consent calendar. If it's property tax relief, I am for it.

**Senator Christmann** I guess there will be some building projects and university projects and those sorts of things that will have a chance and then we can amend those into property tax relief.

**Senator Fischer** The income tax relief addresses those people who live in apartments who don't own any property and they can take that money.

**Senator Robinson** If we are trying to be fair and balanced around here, we haven't been doing much of that today. That's our point. We just passed out a bill or defeated a bill that would have provided some money for people who have nothing. All I am saying is property tax

in the purest form are what people are asking for. 70% last fall said income is not an issue. A lot of those people in apartments and so on, they all voted. They voted loud and clear. Let's leave income alone and we come back and talk about a balanced tax system. That is why we have to deal with property because we are out of balance. It's been going nuts. It has gone off the charts.

**Senator Mathern** I believe we did have some provision for renters. I don't know exactly what that was. (inaudible) (15.46)

**Chairman Holmberg** I know apartment dwellers, if they are under the homestead property tax credit program, they get benefits from the home property tax credit applying to the state whereas everyone else applies at the local level but I don't recall, let's ask, is there (inaudible) (16.16) refresh our memory.

**Dee Wald, General Council State Tax Commission** Income tax credit relief in property tax (inaudible) (16.23) for renters. (The rest of her comments are inaudible)(16.43)

**Chairman Holmberg All in favor of the amendment .0309 signify by saying Aye. Motion did not carry.**

**Senator Robinson** proposed amendment #.0311. What this would do would sunset this particular package and we can revisit next legislative session. I think that is the right thing to do. There is a cloud in the economy, there is a lot of unknowns, we've had floods, we've had major challenges in the state. We've had a lot of layoffs, the uncertainty is certainly something that a lot of folks are concerned about. So rather than locking us in, this would sunset it and if it is such a good idea I would imagine the troops be lined up to pass it next session. If not, we revisit and all we do is sunset.

**Senator Robinson moved the amendment 0311. Seconded by Senator Krauter.**

**Senator Warner** Just to reiterate some of Senator Robinson's comments I understand from radio reports that North Dakota officially moved into recession in January. It has been determined now. we have unprecedented amount of flooding in the state. My best understanding of our oil revenues is that the first of May or so we will expect our oil revenues to drop to the floor. I think it is a very inopportune time to making major structural changes in our income tax and any one of the legs of our structure. We've already made a big commitment to address the property tax issues this session and hopefully we will go forward with that. (20.04)

**Chairman Holmberg** Call the roll on Senator Robinson's amendments #0311. (a break was taken)

**Chairman Holmberg** We have a motion before us for a Robinson amendment which would put a sunset on the income tax measure 1324. Would you call the roll on the Robinson amendment. **A Roll Call Vote was taken on amendment .0311 resulting in 14 yeas, 0 nays and 0 absent.**

**SENATOR WARDNER MOVED A DO PASS AS AMENDED WITH THE ROBINSON AMENDMENTS. SECONDED BY SENATOR GRINDBERG. A ROLL CALL VOTE WAS TAKEN RESULTING IN 8 YEAS, 6 NAYS, 0 ABSENT. SENATOR ROBINSON WILL CARRY THE AMENDMENT. SENATOR HOGUE FROM FINANCE AND TAX WILL CARRY THE BILL.**

**Chairman Holmberg** closed the hearing on HB 1324.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1324

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 57-38-01.29 and 57-38-01.30 of the North Dakota Century Code, relating to a homestead income tax credit and a commercial property income tax credit; to provide for a transfer; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-38-01.29 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.29. Homestead income tax credit - Rules.**

1. In addition to any other credit or deduction allowed by law for a homeowner, an individual is entitled to a credit against the tax imposed under section 57-38-29 or 57-38-30.3 for taxable years ~~2007~~ 2009 and ~~2008~~ 2010 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against the individual's homestead in this state. For purposes of this section, "property taxes" does not include any special assessments.
2. For purposes of this section, "homestead" means the dwelling occupied by the individual as the individual's primary residence and, if that residence is in this state, any residential or agricultural property owned by that individual in this state.
3.
  - a. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individuals filing separate returns.
  - b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
4. The amount of the credit under subsection 3 in excess of the taxpayer's tax liability may be carried forward for up to five years or the taxpayer may request that the tax commissioner issue the taxpayer a certificate in the amount of the excess which may be used by the taxpayer against property or mobile home tax liability of the taxpayer during the ensuing taxable year by delivering the certificate to the county treasurer in which the taxable property or mobile home is subject to taxes. The county treasurer shall forward certificates redeemed in payment of a tax obligation under this section to the tax commissioner, who shall issue payment to the county in the amount of the certificates.
5. Persons owning property together are entitled to only one credit for a parcel of property between or among them under this section. Persons owning property together are each entitled to a percentage of the credit for a single individual under this section equal to their ownership interests in the property.
6. This section is not subject to subsection 1 or 2 of section 57-38-45.

7. The tax commissioner shall adopt rules to provide for filing and verification of claims of credits under this section and for issuance and redemption of tax certificates under subsection 4.
8. a. ~~If, on November 15, 2008, the total amount of tax credits claimed under this section exceeds forty seven million dollars, the tax commissioner shall reduce the rate of the credit under subsection 1. The adjusted credit rate must be calculated by the tax commissioner as follows:~~
  - (1) ~~The tax commissioner shall determine the percentage by which the credits claimed under this section exceeds forty seven million dollars.~~
  - (2) ~~The difference between the number one and the amount calculated under paragraph 1 multiplied by ten percent is the adjusted credit rate for the 2008 taxable year.~~
- b. ~~The tax commissioner shall report any adjustment under this subsection to the budget section of the legislative council for review.~~

A partnership, subchapter S corporation, limited partnership, or limited liability company, or any other entity treated as a passthrough entity for federal income tax purposes must be considered to be the taxpayer for purposes of this section. The amount of the 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.

**SECTION 2. AMENDMENT.** Section 57-38-01.30 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.30. Commercial property income tax credit - Rules.**

1. In addition to any other credit or deduction allowed by law for a property owner, an individual or corporation is entitled to a credit against the tax imposed under section 57-38-29, 57-38-30, or 57-38-30.3 for taxable years ~~2007~~ 2009 and ~~2008~~ 2010 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against commercial property in this state. For purposes of this section, "property taxes" does not include any special assessments.
  - a. The amount of the credit under this section may not exceed one thousand dollars for any taxpayer.
  - b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
  - c. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individual filing separate returns.
2. The amount of the credit under subdivisions a and c of subsection 1 in excess of the taxpayer's tax liability may be carried forward for up to five years.
3. Persons owning property together are entitled to only one credit for property between or among them under this section. Persons owning property together are each entitled to a percentage of the credit equal to

their ownership interests in the property. Married individuals owning property together are each entitled to a percentage of the credit for a single individual under this section equal to their ownership interests in the property.

4. This section is not subject to subsection 1 or 2 of section 57-38-45.
5. A passthrough entity entitled to the credit under this section shall allocate the amount of the credit allowed with respect to the entity's property at the passthrough entity level. The amount of 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.
6. The tax commissioner shall adopt rules to provide for filing and verification of claims under this section.
- ~~7. a. If, on November 15, 2008, the total amount of credits claimed under this section exceeds seven million dollars, the tax commissioner shall reduce the cap that applies to the credit under subsection 1. The adjusted credit cap must be calculated by the tax commissioner as follows:
  - (1) The tax commissioner shall determine the percentage by which the credits claimed under this section exceeds seven million dollars.
  - (2) The difference between the number one and the amount calculated under paragraph 1 multiplied by the amount of the cap is the adjusted credit cap for the 2008 taxable year.~~  
~~b. The tax commissioner shall report any proposed adjustment under this subsection to the budget section of the legislative council for approval.~~

**SECTION 3. TRANSFER.** During the biennium beginning July 1, 2009, and ending June 30, 2011, the state treasurer shall transfer \$115,000,000 from the permanent oil tax trust fund to the general fund.

**SECTION 4. EFFECTIVE DATE.** Sections 1 and 2 of this Act are effective for taxable years beginning after December 31, 2008."

Renumber accordingly

Date: 4/3/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1324

Senate Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number 90715, 0309

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Krauter Seconded By Warner

Representatives	Yes	No	Representatives	Yes	No
Senator Fischer			Senator Warner		
Senator Christmann			Senator Robinson		
Senator Krebsbach			Senator Krauter		
Senator Bowman			Senator Lindaas		
Senator Kilzer			Senator Mathern		
Senator Grindberg			Senator Seymour		
Senator Wardner					
Chairman Holmberg					

Total Yes                      No                     

Absent Vote failed

Floor Assignment                     

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

Date: 4/3/09  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1324

Senate Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number 90715.0311

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Robinson Seconded By Krauter

Representatives	Yes	No	Representatives	Yes	No
Senator Krebsbach	✓		Senator Seymour	✓	
Senator Fischer	✓		Senator Lindaas	✓	
Senator Wardner	✓		Senator Robinson	✓	
Senator Kilzer	✓		Senator Warner	✓	
V. Chair Bowman	✓		Senator Krauter	✓	
Senator Christmann	✓		Senator Mathern	✓	
V. Chair Grindberg	✓				
Chairman Holmberg	✓				

Total Yes 14 No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

Date: 4/3/09  
 Roll Call Vote #: 3

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1324

Senate Senate Appropriations Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Wardner Seconded By Grindberg

Representatives	Yes	No	Representatives	Yes	No
Senator Wardner	✓		Senator Robinson		✓
Senator Fischer	✓		Senator Lindaas		✓
V. Chair Bowman	<del>✓</del>	✓	Senator Warner	✓	
Senator Krebsbach	✓		Senator Krauter		✓
Senator Christmann	✓		Senator Seymour		✓
Chairman Holmberg	✓		Senator Mathern		✓
Senator Kilzer	✓				
V. Chair Grindberg	✓				

Total Yes 8 No 6

Absent \_\_\_\_\_

Floor Assignment W. Robinson carry the Amendment

If the vote is on an amendment, briefly indicate intent: F & T. Hogue

**REPORT OF STANDING COMMITTEE**

HB 1324, as reengrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1324, as amended, was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 6-09.8-01, subsection 4 of section 10-33-124, subsection 5 of section 11-37-08, sections 27-17-06 and 37-28-07, subsections 1 and 3 of section 40-63-04, section 40-63-06, subsection 4 of section 40-63-07, subsections 1 and 2 of section 57-38-01.7, subsections 1 and 4 of section 57-38-01.8, sections 57-38-01.14, 57-38-01.16, and 57-38-01.17, subsection 1 of section 57-38-01.20, subsections 2 and 4 of section 57-38-01.21, sections 57-38-01.22, 57-38-01.23, 57-38-01.24, 57-38-01.25, and 57-38-01.26, subsection 6 of section 57-38-01.27, subsection 1 of section 57-38-01.29, subsection 1 of section 57-38-01.30, section 57-38-04, subsection 2 of section 57-38-08.1, sections 57-38-30.3 and 57-38-30.5, subdivision b of subsection 1 of section 57-38-40, and sections 57-38.5-03 and 57-38.6-03 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return; to repeal sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09.8-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Beginning farmer" means ~~a person~~ an individual who qualifies as a beginning farmer ~~under subsection 2 of section 57-38-67~~ who:
  - a. Is a resident of this state;
  - b. Receives more than half of that person's gross annual income from farming, unless the person initially commences farming during the year of the application under this chapter;
  - c. Intends to use any farmland to be purchased or rented for agricultural purposes;
  - d. Is adequately trained by education in the type of farming operation which the person wishes to begin on the purchased or rented land referred to in subdivision c through satisfactory participation in the adult farm management education program of the state board for career and technical education or an equivalent program approved by the agriculture commissioner; and
  - e. Has, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

**SECTION 2. AMENDMENT.** Subsection 4 of section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

4. a. ~~An individual or a~~ A corporation that buys membership in, or pays dues or contributes to, a nonprofit development corporation is entitled to an income tax credit against the tax liability under section 57-38-30 equal to twenty-five percent of the amount paid.
- b. This credit may not be claimed by ~~an individual who elects to file an income tax return under section 57-38-30.3 or by~~ a corporation that is recognized as a subchapter S corporation under section 57-38-01.4.
- c. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.
- d. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.

**SECTION 3. 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, ~~57-38-29~~, 57-38-30, and 57-38-30.3.

**SECTION 4. AMENDMENT.** Section 27-17-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-17-06. Immediate withdrawal of present active judges from judges retirement fund.**

1. From and after July 1, 1973, each judge of the supreme or district court serving on that date and each former judge of the supreme or district court, not receiving judicial retirement salary, may elect to withdraw the judge's previous contributions made pursuant to this chapter, and thereafter not participate in a judicial retirement program provided for by law. This option ceases to be available and may not be exercised after June 30, 1975. If a judge selects this option, the judge is entitled to receive the combined total of the following sums:
  - ~~1-~~ a. The entire amount of the judge's previous contributions made pursuant to this chapter, to be calculated to the date of election under this section; plus
  - ~~2-~~ b. An amount calculated by applying the vesting schedule set forth in section 54-52-11 to an amount equal to sixty percent of the judge's individual contributions as calculated in subsection 1, plus earnings thereon as calculated in subsection 3; plus
  - ~~3-~~ c. An amount calculated by applying the figure .05625 to the periodic annual or partial annual balances in the individual judge's account during the judge's years of service prior to selecting the option provided by this section. The figure applied pursuant to this ~~subsection~~ subdivision must be compounded annually.

2. The total amounts received pursuant to this section may not be considered taxable income for the purposes of chapter 57-38 ~~and may be treated as an additional adjustment reducing the amount of taxable income in addition to those provided in section 57-38-01.2.~~ Selection of the option provided by this section must be made in writing to the director of the office of management and budget.

**SECTION 5. AMENDMENT.** Section 37-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-07. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted.** Payments under this chapter are exempt from all state and local taxes, including taxes determined under section ~~57-38-29~~ or 57-38-30.3, and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under this chapter is void and payment to the veteran may not be denied because of any sums owed to the state or any political subdivisions, except as provided in section 37-26-05.

**SECTION 6. AMENDMENT.** Subsections 1 and 3 of section 40-63-04 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual taxpayer who purchases or rehabilitates single-family residential property for the individual's primary place of residence as a zone project is exempt from up to ten thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3 for five taxable years beginning with the date of occupancy or completion of rehabilitation.
3. If the cost of a new business purchase or expansion of an existing business, approved as a zone project, exceeds seventy-five thousand dollars, and the business is located in a city with a population of not more than two thousand five hundred, an individual taxpayer may, in lieu of the exemption provided in subsection 2, elect to take an income tax exemption of up to two thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3. The election must be made on the taxpayer's zone project application. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or this subsection. If no election is made on the zone project application, the taxpayer is only eligible for the exemption provided in subsection 2.

**SECTION 7. 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, ~~57-38-29~~, 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 8. 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, ~~57-38-29~~, 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 9. AMENDMENT.** Subsections 1 and 2 of section 57-38-01.7 of the North Dakota Century Code are amended and reenacted as follows:

1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund.
  - a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state.
  - a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

**SECTION 10. AMENDMENT.** Subsections 1 and 4 of section 57-38-01.8 of the North Dakota Century Code are amended and reenacted as follows:

1. ~~Any~~ A taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30 for the cost of a geothermal, solar, wind, or biomass energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and

installation of the geothermal, solar, wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.

4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, wind, or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the corporate partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 11. AMENDMENT.** Section 57-38-01.14 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.14. No gain recognized on property subject to eminent domain sale or transfer.** If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for corporate income tax purposes.

**SECTION 12. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.16. Income tax credit for employment of developmentally disabled or chronically mentally ill persons.** ~~Any~~ A taxpayer filing an income tax return under this chapter, ~~except a return on which liability is determined under section 57-38-30.3,~~ may claim a credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

**SECTION 13. AMENDMENT.** Section 57-38-01.17 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.14. Credit for investments in development corporations.** ~~An individual, estate, trust, or~~ A corporation is allowed, as a credit against a tax otherwise due under section ~~57-38-29 or~~ 57-38-30, the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 10-33-124.

**SECTION 14. AMENDMENT.** Subsection 1 of section 57-38-01.20 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual is entitled to a credit against the tax imposed under section ~~57-38-29 or~~ 57-38-30.3 in the amount of qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year.

**SECTION 15. AMENDMENT.** Subsections 2 and 4 of section 57-38-01.21 of the North Dakota Century Code are amended and reenacted as follows:

2. An individual is allowed a tax credit against the tax imposed by section ~~57-38-29~~ or 57-38-30.3 in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the year to a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for contributions made in a taxable year is ten thousand dollars, or twenty thousand dollars for married individuals filing a joint return. The credit allowed under this section may not exceed the taxpayer's income tax liability.
4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit allowed under this subsection for contributions made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section ~~57-38-29~~, 57-38-30; or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.

**SECTION 16. AMENDMENT.** Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.22. Income tax credit for blending of biodiesel fuel.** A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30; or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

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 this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of 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.

**SECTION 17. AMENDMENT.** Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.23. Income tax credit for biodiesel sales equipment costs.** A seller of biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30; or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel" means fuel meeting the specifications adopted

by the American society for testing and materials. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel fuel begin.

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 this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of 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.

**SECTION 18. AMENDMENT.** Section 57-38-01.24 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.24. Internship employment tax credit.**

1. A taxpayer that is an employer within this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for qualified compensation paid to an intern employed in this state by the taxpayer. To qualify for the credit under this section, the internship program must meet the following qualifications:
  - a. The intern must be an enrolled student in an institution of higher education or vocational technical education program who is seeking a degree or a certification of completion in a major field of study closely related to the work experience performed for the taxpayer;
  - b. The internship must be taken for academic credit or count toward the completion of a vocational technical education program;
  - c. The intern must be supervised and evaluated by the taxpayer; and
  - d. The internship position must be located in this state.
2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend or salary paid to a college intern employed by the taxpayer. A taxpayer may not receive more than three thousand dollars in total credits under this section for all taxable years combined.
  - a. The tax credit under this section applies to a stipend or salary for not more than five interns employed at the same time.
  - b. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is 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.

**SECTION 19. AMENDMENT.** Section 57-38-01.25 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.25. Workforce recruitment credit for hard-to-fill employment positions.** A taxpayer that is an employer in this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for costs the taxpayer incurred during the tax year to recruit and hire employees for hard-to-fill employment positions within this state for which the annual salary for the position meets or exceeds the state average wage.

1. The amount of the credit to which a taxpayer is entitled is five percent of the salary paid for the first twelve consecutive months to the employee hired for the hard-to-fill employment position. To qualify for the credit under this section, the employee must be employed by the taxpayer in the hard-to-fill employment position for twelve consecutive months.
2. For purposes of this section:
  - a. "Extraordinary recruitment methods" means using all of the following:
    - (1) A person with the exclusive business purpose of recruiting employees and for which a fee is charged by that recruiter.
    - (2) An advertisement in a professional trade journal, magazine, or other publication, the main emphasis of which is providing information to a particular trade or profession.
    - (3) A web site, the sole purpose of which is to recruit employees and for which a fee is charged by the web site.
    - (4) Payment of a signing bonus, moving expenses, or nontypical fringe benefits.
  - b. "Hard-to-fill employment position" means a job that requires the employer to use extraordinary recruitment methods and for which the employer's recruitment efforts for the specific position have been unsuccessful for six consecutive calendar months.
  - c. "State average wage" means one hundred twenty-five percent of the state average wage published annually by job service North Dakota and which is in effect at the time the employee is hired.
3. The taxpayer may claim the credit in the first tax year beginning after the employee hired for the hard-to-fill position has completed the employee's first twelve consecutive months of employment in the hard-to-fill position with the taxpayer.
4. The credit under this section may not exceed a taxpayer's liability for the taxable year as determined under this chapter. Any amount of unused credit may be carried forward for up to four taxable years after the taxable year in which the credit could initially be claimed.
5. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit

under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.

**SECTION 20. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.26. Angel fund investment tax credit.** A taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The angel fund must be in compliance with the securities laws of this state for the investment to qualify for the tax credit under this section. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

**SECTION 21. AMENDMENT.** Subsection 6 of section 57-38-01.27 of the North Dakota Century Code is amended and reenacted as follows:

6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 equal to twenty percent of the taxpayer's new investment and new employment in the microbusiness during the taxable year. A taxpayer may not obtain more than ten thousand dollars in credits under this section over any combination of taxable years.

**SECTION 22. AMENDMENT.** Subsection 1 of section 57-38-01.29 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other credit or deduction allowed by law for a homeowner, an individual is entitled to a credit against the tax imposed under section ~~57-38-29~~ or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against the individual's homestead in this state. For purposes of this section, "property taxes" does not include any special assessments.

**SECTION 23. AMENDMENT.** Subsection 1 of section 57-38-01.30 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other credit or deduction allowed by law for a property owner, an individual or corporation is entitled to a credit against the tax imposed under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against commercial property in this state.

For purposes of this section, "property taxes" does not include any special assessments.

- a. The amount of the credit under this section may not exceed one thousand dollars for any taxpayer.
- b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
- c. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individual filing separate returns.

**SECTION 24. AMENDMENT.** Section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-04. Allocation and apportionment of gross income of individuals.**

The gross income of individuals must be allocated and apportioned as follows:

1. a. Income from personal or professional services performed in this state by individuals must be assigned to this state regardless of the residence of the recipients of such income, except that income from such services performed within this state by an individual who resides and has the individual's place of abode in another state to which place of abode the individual customarily returns at least once a month must be excluded from the individual's income for the purposes of this chapter if such income is subject to an income tax imposed by the state in which the individual resides, provided that the state in which the individual resides allows a similar exclusion for income received from similar services performed in that state by residents of North Dakota.
  - b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, must be excluded from income to the extent that the income is subject to an income tax imposed by the state of the individual's residence; provided, that the state allows a similar exclusion of the compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For purposes of this subdivision, the term an individual who performs services for a common carrier engaged in interstate transportation is limited to an individual who performs the services for a common carrier only during the course of making regular runs into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier.
2. a. Income received from personal or professional services performed by residents of this state, regardless of where such services are performed, and income received by residents of this state from intangible personal property must be assigned to this state.

- b. ~~A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also taxable under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:~~
- ~~(1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under this subsection.~~
  - ~~(2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.~~
3. Income and gains received from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if such business consists principally of the holding of such property and collection of income and gains therefrom, must be assigned to this state without regard to the residence of the recipient if such property has a situs within this state.
  4. Income derived from business activity carried on by an individual as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to the residence of the individual if the business activity is conducted wholly within this state. Income derived from gaming activity carried on in this state by an individual must be assigned to this state without regard to the residence of the individual.
  5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.
  6. a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists

principally of the holding of the property and the collection of income and gains from the business, must be assigned to this state without regard to the situs of the property.

b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to where the business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.

e. ~~A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:~~

~~(1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.~~

~~(2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.~~

7. All other items of gross income must be assigned to the taxpayer's domicile.

8. The privileges granted nonresidents apply only when other states grant to the residents of North Dakota the same privilege.

~~This section applies to every income year beginning after December 31, 1956.~~

**SECTION 25. AMENDMENT.** Subsection 2 of section 57-38-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Resident partners, limited to individuals, estates, and trusts, must report their entire distributive share to this state as provided in subdivision b of subsection 6 of section 57-38-04, and may claim a credit for taxes paid to another state on that portion of their distributive share attributable to and taxed by another state, as provided in subdivision e j of subsection ~~6~~ 1 of section ~~57-38-04~~ 57-38-30.3.

**SECTION 26. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.3. Simplified method of computing individual, estate, and trust income tax.**

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$27,050</del> <u>\$33,950</u>	<del>2.10%</del> <u>1.70%</u>
Over <del>\$27,050</del> <u>\$33,950</u> but not over <del>\$65,550</del> <u>\$82,250</u>	<del>\$68.05</del> <u>\$577.15</u> plus <del>3.92%</del> <u>3.40%</u> of amount over <del>\$27,050</del> <u>\$33,950</u>
Over <del>\$65,550</del> <u>\$82,250</u> but not over <del>\$136,750</del> <u>\$171,550</u>	<del>\$2,077.25</del> <u>\$2,219.35</u> plus <del>4.34%</del> <u>3.60%</u> of amount over <del>\$65,550</del> <u>\$82,250</u>
Over <del>\$136,750</del> <u>\$171,550</u> but not over <del>\$297,350</del> <u>\$372,950</u>	<del>\$5,167.33</del> <u>\$5,434.15</u> plus <del>5.04%</del> <u>4.25%</u> of amount over <del>\$136,750</del> <u>\$171,550</u>
Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$13,261.57</del> <u>\$13,993.65</u> plus <del>5.54%</del> <u>5.00%</u> of amount over <del>\$297,350</del> <u>\$372,950</u>

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$45,200</del> <u>\$56,750</u>	<del>2.10%</del> <u>1.70%</u>
Over <del>\$45,200</del> <u>\$56,750</u> but not over <del>\$109,250</del> <u>\$137,050</u>	<del>\$949.20</del> <u>\$964.75</u> plus <del>3.92%</del> <u>3.40%</u> of amount over <del>\$45,200</del> <u>\$56,750</u>
Over <del>\$109,250</del> <u>\$137,050</u> but not over <del>\$166,500</del> <u>\$208,850</u>	<del>\$3,459.96</del> <u>\$3,694.95</u> plus <del>4.34%</del> <u>3.60%</u> of amount over <del>\$109,250</del> <u>\$137,050</u>
Over <del>\$166,500</del> <u>\$208,850</u> but not over <del>\$297,350</del> <u>\$372,950</u>	<del>\$5,944.61</del> <u>\$6,279.75</u> plus <del>5.04%</del> <u>4.25%</u> of amount over <del>\$166,500</del> <u>\$208,850</u>
Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$12,539.45</del> <u>\$13,254</u> plus <del>5.54%</del> <u>5.00%</u> of amount over <del>\$297,350</del> <u>\$372,950</u>

c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$22,600</del> <u>\$28,375</u>	<del>2.10%</del> <u>1.70%</u>
Over <del>\$22,600</del> <u>\$28,375</u> but not	<del>\$474.60</del> <u>\$482.38</u> plus <del>3.92%</del> <u>3.40%</u>

over ~~\$54,625~~ \$68,525  
Over ~~\$54,625~~ \$68,525 but not  
over ~~\$83,250~~ \$104,425  
Over ~~\$83,250~~ \$104,425 but not  
over ~~\$148,675~~ \$186,475  
Over ~~\$148,675~~ \$186,475

of amount over ~~\$22,600~~ \$28,375  
~~\$1,729.98~~ \$1,847.48 plus ~~4.34%~~ 3.60%  
of amount over ~~\$54,625~~ \$68,525  
~~\$2,972.31~~ \$3,139.88 plus ~~5.04%~~ 4.25%  
of amount over ~~\$83,250~~ \$104,425  
~~\$6,269.73~~ \$6,627.01 plus ~~5.54%~~ 5.00%  
of amount over ~~\$148,675~~ \$186,475

d. Head of household.

If North Dakota taxable income is:  
Not over ~~\$36,250~~ \$45,500  
Over ~~\$36,250~~ \$45,500 but not  
over ~~\$93,650~~ \$117,450  
Over ~~\$93,650~~ \$117,450 but not  
over ~~\$151,650~~ \$190,200  
Over ~~\$151,650~~ \$190,200 but not  
over ~~\$297,350~~ \$372,950  
Over ~~\$297,350~~ \$372,950

The tax is equal to:  
~~2.10%~~ 1.70%  
~~\$761.25~~ \$773.50 plus ~~3.92%~~ 3.40%  
of amount over ~~\$36,250~~ \$45,500  
~~\$3,011.33~~ \$3,219.80 plus ~~4.34%~~ 3.60%  
of amount over ~~\$93,650~~ \$117,450  
~~\$5,528.53~~ \$5,838.80 plus ~~5.04%~~ 4.25%  
of amount over ~~\$151,650~~ \$190,200  
~~\$12,871.81~~ \$13,605.68 plus ~~5.54%~~ 5.00%  
of amount over ~~\$297,350~~ \$372,950

e. Estates and trusts.

If North Dakota taxable income is:  
Not over ~~\$1,800~~ \$2,300  
Over ~~\$1,800~~ \$2,300 but not  
over ~~\$4,250~~ \$5,350  
Over ~~\$4,250~~ \$5,350 but not  
over ~~\$6,500~~ \$8,200  
Over ~~\$6,500~~ \$8,200 but not  
over ~~\$8,900~~ \$11,150  
Over ~~\$8,900~~ \$11,150

The tax is equal to:  
~~2.10%~~ 1.70%  
~~\$37.80~~ \$39.10 plus ~~3.92%~~ 3.40%  
of amount over ~~\$1,800~~ \$2,300  
~~\$133.84~~ \$142.80 plus ~~4.34%~~ 3.60%  
of amount over ~~\$4,250~~ \$5,350  
~~\$231.49~~ \$245.40 plus ~~5.04%~~ 4.25%  
of amount over ~~\$6,500~~ \$8,200  
~~\$352.45~~ \$370.78 plus ~~5.54%~~ 5.00%  
of amount over ~~\$8,900~~ \$11,150

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

g. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code

of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.

- h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.
- i. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also taxable under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:

  - (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under this subsection.
  - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
- j. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:

- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivision i.
  - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
- a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
  - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
  - 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.
  - d. Reduced by thirty percent of 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.
  - e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
  - 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.
  - g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.

- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
- i. Reduced by interest and income from bonds issued under chapter 11-37.
- j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
  - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
  - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
  - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
- k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
- l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
- m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.
- n. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.
- o. Reduced by the amount of income of a taxpayer, who resides within the boundaries of any reservation in this state and who is an enrolled

member of a federally recognized Indian tribe, from activities or sources within the boundaries of any reservation in this state.

3. Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.
4.
  - a. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this section for the amount of income tax paid by the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section.
  - b. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subsection may not exceed an amount equal to the tax imposed under this section multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by federal adjusted gross income less the amounts under subdivisions a and b of subsection 2.
  - c. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subsection may not exceed the lesser of the following:
    - (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
    - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
  - d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.
6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if

it would otherwise have been subject to taxation under the provisions of this chapter.

7. A taxpayer filing a return under this section is entitled to the following tax credits:
  - a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. Seed capital investment tax credit under section 57-38.5-03.
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
  - g. Internship employment tax credit under section 57-38-01.24.
  - h. Workforce recruitment credit under section 57-38-01.25.
  - i. Angel fund investment tax credit under section 57-38-01.26.
  - j. Microbusiness tax credit under section 57-38-01.27.
  - k. Marriage penalty credit under section 57-38-01.28.
  - l. Homestead income tax credit under section 57-38-01.29.
  - m. Commercial property income tax credit under section 57-38-01.30.
  - n. Research and experimental expenditures under section 57-38-30.5.
8. A taxpayer filing a return under this section is entitled to the exemption provided under section 40-63-04.
9. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
  - (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
  - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph

to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
  - c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
  - d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
10. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.

**SECTION 27. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.5. Income tax credit for research and experimental expenditures.** A taxpayer is allowed a credit against the tax imposed under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for conducting qualified research in this state.

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
  - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to fourteen and one-half percent of all qualified research expenses for

the taxable year more than one hundred thousand dollars in excess of the base period research expenses.

- d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - f. The maximum annual credit a taxpayer may obtain under this section is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.
2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
    - a. This rate applies through the tenth taxable year beginning after December 31, 2006.
    - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.

4. For purposes of this section:
  - a. "Base period research expenses" means base period research expenses as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.
  - b. "Director" means the director of the department of commerce division of economic development and finance.
  - c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.
  - d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
  - e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
  - f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
6. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
7. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year.
8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The

director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:

- a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
- b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
- c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
- d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
- e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
- f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the

purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

- h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.
9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].
10. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.
11. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section ~~57-38-29~~ or 57-38-30.3.
12. 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 ~~sections 57-38-29 and 57-38-30~~ section 57-38-30.3.

**SECTION 28. AMENDMENT.** Subdivision b of subsection 1 of section 57-38-40 of the North Dakota Century Code is amended and reenacted as follows:

- b. An individual who filed a return of income as a resident of this state and is assessed tax by another state or territory of the United States or the District of Columbia on that income after the time for filing a claim has expired under this section is entitled to a credit or refund for the amount of tax paid to the other jurisdiction, not including penalty or interest, as provided under subsection ~~2 or 6 of section 57-38-04~~ 1 or ~~subsection 4 of section 57-38-30.3~~, notwithstanding the time limitations of this section. The claim for the credit or refund under this subdivision must be submitted to the commissioner within one year from the date the taxes were paid to the other jurisdiction. The taxpayer must submit sufficient proof to show entitlement to a credit or refund under this subdivision.

**SECTION 29. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the

return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 is not eligible for the investment tax credit under this chapter.

**SECTION 30. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. The credit under this section may not exceed the liability for tax under chapter 57-38. If the amount of credit under this section exceeds the liability for tax, the excess may be carried forward for up to ten taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's owners, in proportion to their respective ownership interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purposes of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.

6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business. Real property that qualifies as an investment must be used in, and be an integral part of, the qualified business's North Dakota business operations.
8. If the investment is a contribution of real property:
  - a. The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.
  - b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.
  - c. The qualified business receiving the contribution of real property shall provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
  - d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

**SECTION 31. REPEAL.** Sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code are repealed.

**SECTION 32. EFFECTIVE DATE - EXPIRATION DATE - APPLICATION.**  
This Act is effective for taxable years beginning after December 31, 2009. Section 26 of this Act is effective for the first two taxable years beginning after December 31,

2009, and is thereafter ineffective. The income amounts shown in the tax brackets in the amendment to section 57-38-30.3 in this Act are the income amounts as indexed for taxable year 2009. The tax commissioner shall apply appropriate indexing factors, as determined under subdivision g of subsection 1 of section 57-38-30.3, to the dollar amounts of the brackets to update those amounts for taxable years after 2009."

Renumber accordingly

2009 HOUSE FINANCE AND TAXATION

CONFERENCE COMMITTEE

HB 1324

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1324

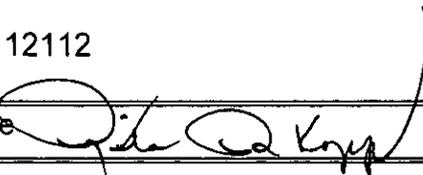
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: April 22, 2009

Recorder Job Number: 12112

Committee Clerk Signature



Minutes:

**Chairman Belter:** I call the conference committee to order for HB 1324. Will the clerk read the roll? I guess what we will do is have you walk us through your amendments and that is probably all we will do today.

**Senator Miller:** The reason the bill is so thick is because we are taking off the ND-2 form; that's the main purpose. Otherwise the changes in the bill are a compromise between the Governor's tax proposal and your tax proposal as far as rates. That is it in a nutshell.

**Senator Cook:** The simplest way to see what is in the bill is just to look at the two fiscal notes that are on top of the packet here. When we passed it out of the Senate Finance and Tax Committee, we changed the brackets, as Senator Miller said, to give you \$114 fiscal effect per biennium. Then we made it effective the second year of this biennium so that is where, if you look at the one fiscal note, you will see a \$57 million fiscal note for 2009-2011. Then 2011-2013 it was \$114 million. Then it went to Senate appropriations and they took a policy position on it and unsettled it after the first year of the second biennium. It is just a two-year income tax reduction. There is \$57 million in the second year of this biennium and \$57 million in the first year of the next biennium. Also, then as Senator Miller said, ND-2 is removed and it would be replaced with the North Dakota Easy Form. The Tax Commissioner would develop that ND

Easy Form. The concept there is just to have two tax forms like we do for federal income tax, basically the long form and the easy form. That is the concept of it. Mr. Chairman, I do think too maybe that is all we need to do. I think the Senate Finance and Tax Committee would like to see if we are going to do this to not sunset it although that is the way it came out of the Senate is with a sunset on it. I would give them a second shot at that.

**Chairman Belter:** Senator Cook, all the exemptions that were in the long form, those are completely done away with then?

**Senator Cook:** Those would be completely done away with. Of course, we have a whole list of exemptions now on the short form.

**Chairman Belter:** We don't have that list in our packet, do we?

**Representative Kelsh:** Essentially the ND-1 form becomes the long form. It stays ND-1 and then there is an easy form where there would be no deductions for credits?

**Senator Cook:** That is correct.

**Representative Kelsh:** And the ND-1 form contains the exemptions and credits and deductions that are already in place. Nothing is changing there?

**Senator Cook:** That is correct.

**Chairman Belter:** Clarification. There are two forms then?

**Senator Cook:** The existing ND-1 form that contains what exists would continue and would have all of the exemptions and subject credits that are now available on it, but the Tax Commissioner would create a ND Easy Form.

**Chairman Belter:** So you would still end up with two?

**Senator Cook:** You would end up with two.

**Representative Headland:** Does somebody want to explain the rationale why we need two forms? ND-1 is considered easy now, isn't it?

**Senator Cook:** I don't know if it is easy now. We can take a look and see if it does turn out to be. The concept is that it is going to be an easier form than ND-1 is now. I think the goal is to get rid of ND-2 which is used by around 2% of tax filers now. I think after the work we have done this session, it will be used by even fewer. If you remember from the study, I think the average benefit is less than \$50. I think a good argument is that a lot of people spend more money trying to find out if they can save money. I also think it was a combination of exemptions that attracted people to use it. One of them was the long-term health care and, of course, we have moved that over to the ND-1 now.

**Chairman Belter:** In our interim study, we had a bill doing away with ND-2. Was there any discussion about just sticking with one form?

**Senator Cook:** Not a whole lot. I think the rationale is that for some reason, we don't seem to find the political will to remove ND-2. Maybe this will help accomplish it or get it done. We will still have a simpler form out there.

**Chairman Belter:** I was wondering if the Tax Department could provide the committee with a list of things that are on the ND-2 for a future meeting that are not included here on ND-1? One other discussion too now, the rates that you have on the income tax, how are those rates set up? Are they the same percentage as existing rates?

**Senator Cook:** I wish I would have brought my chart down that we had before us. We had about four different rates. I think we had the rates for the various brackets that were in the original Governor's bill, we had the rates that were in this one and two other sets of rates that were proposed. One of them would be the rates that are in here. It is basically section 26 of the bill. You can see the 2.10% rate goes to 1.7%, 3.92% goes to 3.4%, 4.34% goes to 3.6%, 5.04% goes to 4.25%, and then the top rate of 5.54% would go to 5%.

**Chairman Belter:** Are those even percentages between each bracket and do they vary some?

**Senator Cook:** No, they were not even percentages. I apologize. I didn't bring that down, but I can certainly get it for you.

**Senator Miller:** They have between 40 and 60 points. There are also changes over on the structure here too.

**Representative Headland:** I was just going to ask with the way they are set up if there is anyone in any bracket who could possibly end up with a tax increase because they could fall in different brackets? I am assuming they would.

**Senator Miller:** It goes down equally everywhere. Then there is a shift up in the brackets. It would be impossible to have a tax increase.

**Representative Headland:** Was it an equal percentage shift up?

**Senator Miller:** Well it is not an equal, it is not a percentage. I think these numbers are pulled from the Governor's...

**Representative Headland:** I would like to see if there is any shift down.

**Senator Cook:** Mr. Chairman, I can see, I think, the biggest difference between the bills here is to compare these. The new rate for the lowest bracket is lower in the bill you have before you than the one you sent. The second bracket is a little higher, the third bracket is a little lower, the fourth bracket is a little lower and then the top bracket is a little higher. This is the bill as it came to us. This is a sheet we can get you.

**Chairman Belter:** Any other issues we need to discuss at this meeting? From a House perspective, Senator Cook, the sunset is a problem. I guess I need to look at those rates. I personally like rates that are all the same percentage.

**Senator Cook:** I believe that is how the bill came to us. You used the same for every bracket, did you not?

**Chairman Belter:** Yes, I believe so.

**Representative Kelsh:** We don't have to do it now, but could we get an explanation from the Tax Department of the difference between the Governor's original proposal and as it came to us?

**Senator Cook:** I will bring it down to our next meeting. We have only two bills left on the table that deal with income tax relief. It is this one and 2199. This one has just income tax in it so it is a good vehicle to have our discussion on, I think, as far as what we might ultimately end up with as far as going home with an income tax policy.

**Chairman Belter:** I guess we will adjourn.

# 2009 HOUSE STANDING COMMITTEE MINUTES

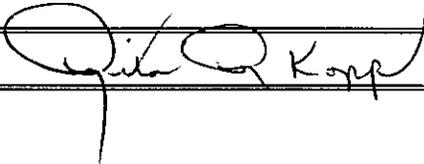
Bill/Resolution No. **HB 1324**

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: April 24, 2009

Recorder Job Number: 12184

Committee Clerk Signature 

Minutes:

**Chairman Belter:** I call the conference committee to order on HB 1324. I had John Walstad put together some information. What I was looking at was trying to get a comparison between the personal income tax rates on HB 1324 versus SB 2199. That is what the one handout does (Attachment 1). This other handout is the information on the tax credits between ND-1 and ND- 2 (Attachment 2). This says optional version.

**Senator Cook:** No, just skip the word "optional", Mr. Chairman.

**Chairman Belter:** Senators, I would like an explanation of how the brackets were derived on 1324. On 2199 we just did an even split on every bracket, a tenth of a percent or two tenths on one. It was our plan to keep all brackets pretty much the same reduction. I see there is a considerable difference here between 11% to 19%.

**Senator Cook:** I think the brackets you see here in 1324 are what I refer to as the Hogue amendments. Of course, Senator Hogue isn't at this table, but he is at the table of 2199. He made a statement on 2199 the other day that he is rethinking what he did with his brackets. Maybe for today, as we try to finish these things out, we can set the income tax part of this discussion aside. We need to have some discussions with our caucuses and find out where we think we might be able to go. Maybe we could just discuss the tax forms and resolve that

issue. Then at our next meeting based on 2199, we can figure out where we want to go. I don't know if Senator Miller feels any different or Senator Anderson, but we are getting to the point where we have to start making some decisions here. I need to visit with some folks.

**Chairman Belter:** We will move on to the next issue then.

**Senator Cook:** Maybe regarding ND-2, we can ask somebody from the Tax Department again just to refresh us on how many people actually use it, which of these deductions seems to attract people to use it and how many they think might no longer be attracted to it after the changes we made to ND-1. I think that I have always looked at ND-2 as being a form that just causes more confusion than it does any good. We would be better off without it whether we create another easy form or not. (4:50)

**Chairman Belter:** Would somebody from the Tax Department like to go over the information on the number of people using ND-2?

**Joe Becker, Tax Department:** To start with, based on 2007 information, total returns in the system 349,226, of which 6,802 are ND-2 filers.

**Chairman Belter:** The 6,802 is included in the 349,226?

**Joe Becker:** That would be just shy of 2% and in term of total dollars coming in with 349,000 returns is \$289.2 million. That would be the net tax liability. Of that amount, the ND-2 portion is \$907,000, which is .31% of the total. That would give you a bird's eye view of the large numbers.

**Chairman Belter:** You said \$289 million?

**Joe Becker:** The total net tax liability for the entire population of forms is \$289.2 million.

**Representative Headland:** Of that 6,800 filers, do you have information how many of them would be residents of the state and how many are out-of-state residents?

**Joe Becker:** Yes. The resident portion is 1,112; the balance then are non-residents and/or part-year residents, which would be 5,524. I am sorry; let me correct that. Non-resident portion was the number I just gave you. There is a part-year resident portion of 163.

**Representative Kelsh:** Do you know what the dollar amount increase or decrease would be to state revenues if all ND-2 filers were forced to use the ND-1 form?

**Joe Becker:** I don't have the dollar figure, but what I can tell you is based on a sampling of ND-2 filers, what would happen if the existing bill passes. I can give you some rough percentages based on our sampling and it goes like this. Roughly 38% of those ND-2 filers would either be the same or better off under this bill. 38% would be better or the same. The other 62% would not be better off so that would result in a slight revenue increase. I will give you some averages from our sample as well. My sampling here is broken down by filing status, but let's see if I can give you a general idea of what is going on. I will use the single category first. Under the current system, the average liability in our sample is \$54.

**Chairman Belter:** On the ND-2?

**Joe Becker:** This is the ND-2 for the single filing status. Again, keeping in mind, this was just our sample. ND-2 under current law, there was an average tax of \$54.

**Representative Kelsh:** Is it possible to get this all in writing?

**Joe Becker:** I certainly can do that.

**Chairman Belter:** Why don't you go through it and then you can get that information to us as long as we are here.

**Joe Becker:** The sampling just indicated that in a single category we saw about an \$18 increase if the bill passes as is. For the married filing joint and the head of household categories, it looks like it dropped anywhere from \$7-\$40 per return. So we know that under the current bill, there would be a positive revenue impact, but it would be slight. I mean we are

talking about a total of \$907,000 we are dealing with to begin with. It is going to be something smaller than that.

**Representative Kelsh:** And it would impact mainly single filers?

**Joe Becker:** Again, based on our sample, that seems to be the case. Fortunately it is a small amount.

**Senator Miller:** Would you say that perhaps a lot of these people who are benefitting from this are active-duty military that are overseas?

**Joe Becker:** Based on this sample and samples we have done in prior interim sessions, no, I am not seeing that. We are finding that for the most part the military deductions on ND-2 have become obsolete. They are making too much money to benefit from them.

**Chairman Belter:** Joe, so many of these ND-2 filers are non-residents. What provisions are there in there that attracts them to the ND-2?

**Joe Becker:** It is a fairly straightforward question to answer. When we look at the form ND-2 structure, the way that works out for the non-resident is they are going to show us their total federal income in one column. But then we want them to isolate what belongs to ND, which means we are going to pull out that portion of the income and tax it as such. It is a different concept than the ND-1. By doing so, we are finding that those amounts are fairly small. Therefore, that, in conjunction with the small federal tax deduction, they are able to break through the rates that ND-1 offers so it is helping them, I think, primarily because the income is low coming in. Then with the small deduction, they are just able to get a lower break.

**Chairman Belter:** Would out-of-state landowners be ones who are using this?

**Joe Becker:** Yes, that is correct. The land rents, royalty income would be pretty common.

There may obviously be some pass-through entities such as oil companies that are sending their profits out to non-resident owners.

**Senator Cook:** The bill that eliminates ND-2 allows for the Tax Commissioner to create a ND easy form. When would tax filers start to use that ND easy form? Is it a form you are going to create and then get legislative approval for or so long as we are just going to create within the scope of ND law right now and all of a sudden have available?

**Joe Becker:** The bill, as it has been drafted, requires us to create that supplemental or smaller simpler form if you will. In that sense, it is very much like the federal system where you have three forms that work, but they all operate under the same set of rates, the same rules. It is just that if your set of facts allow you to move into the simpler form, the IRS prefers you to do that for administrative purposes. So the bill requires us to do that. But I think even without the provision, nothing would prevent us administratively from prescribing a form of that nature if we felt it would save the administrative costs, etc.

**Senator Cook:** But it would fall within the tax brackets and the deductions and everything we have established in code?

**Joe Becker:** That is the idea that we would have a single system governed by the same rules. We would just break out a subset form that says if you have no deductions and credits and don't need to deal with all that, use this form. It will save you some time.

**Senator Cook:** Perfect.

**Representative Kelsh:** Can you tell me where in the bill the sections are that deal with elimination of ND-2 and the creation of the easy form?

**Joe Becker:** Probably the easier way to approach that would be to take you to page 18 of the bill to start on version .0500, section 26 is going to do two things. It is obviously bringing the rate reductions into play on pages 18 and 19. Then if you shift over to page 21, and look at line 6, that is a new provision that is requiring us to create that new easy form. The balance of the changes in that section is really just technical items, moving some things around in the

code because of the ND-2 repeal. They really aren't changing anything in existing law. The balance of the bill is what is required to not only repeal the ND-2 provisions, but to revise technically other sections of the code that make reference to it. That is why the bill is as large as it is.

**Representative Kelsh:** Starting on page 21, line 6 all the way through page 22, line 25, that is all prescribing what is allowed on the easy form?

**Joe Becker:** Let me apologize and clarify that. Lines 6 through 9 on page 21; that is our easy provisional by itself. What you are seeing starting on line 10 through 30 on page 21 and continuing onto the next page, there are two things going on there. All we are doing is dropping into this section of the code, which would be the remaining section for individuals now, the provision for credit for taxes paid in other states. We are just moving it from another provision. Just for fun, on page 22, line 3, that credit for taxes paid to another state language happens to be duplicated in here and could just as well be removed. On lines 3-25 on page 22, that could be removed. We did point that out to legislative council, but apparently they weren't able to deal with that yet. So that is really all there is to it.

**Representative Kelsh:** Following up on Senator Cook's question, you are creating an easy form and then we are leaving it up to you to implement or adopt the rules regarding what that is? Is it subject to legislative approval?

**Joe Becker:** The bill as it has been drafted now is actually requiring us to do something. I don't think that is a great feat for us. It is really just taking the existing entity ND-1, yanking the deductions and credits off of it; it will look essentially the same without those things. The calculation works the same, etc. It is just a shorter version of the same thing.

**Chairman Belter:** So the tax rates between easy and ND-1 would be the same?

**Joe Becker:** Exactly. We would be working under essentially the same set of rules, but this form just says if you don't need any of these other adjustments, go down this path instead. You are going to end up in the same place.

**Chairman Belter:** Any other questions of the Tax Department?

**Representative Headland:** I am not sure where this really fits in this discussion, but I was asked this question by a constituent. He owns a trucking company. He was recently told that he has to file income tax forms in Nebraska. Do we make out-of-state trucking companies file tax here in ND for earnings they have in ND?

**Joe Becker:** I would perhaps like to know a little bit more, but I can give you a general answer to that. Are we talking about the trucking company itself or the employee of the company?

**Representative Headland:** In this particular case, he was the owner of the trucking company.

**Joe Becker:** Do we know if that might be a corporation?

**Representative Headland:** That I can't answer.

**Joe Becker:** I want to separate it because the company is one thing; the employee working for an interstate commerce company is an entirely different matter. There the states by federal law are not supposed to be taxing the, but the company--it depends on whether it has nexus with the state. Mary perhaps could comment further if it were in a corporate realm.

**Mary Loftsgaard, Tax Department:** As far as the business entity, what Joe was talking about was an individual's earnings for working as a trucker. His answer is correct in that regard. We can't tax someone who is a resident of another state. As far as corporations, depending on how much activity that company has in ND, how many trips they make into and out of ND, yes we would apply tax to that business entity based on the amount of their activity in ND. If you are familiar with our regular apportionment formula, where we do the property, payroll and sales in ND, divided by everywhere, and then we sum those and divide by three. There are

some adjustments that we make to that because we have to deal with the mobile property, the trucks that are moving back and forth. There are some adjustments we make for mobile property miles in different states, but the concept is the same. If this gentleman was correctly taxed in the state for his trucking activities there; in essence, if the statute was still open, he should be able to come in and amend. If he had to pay tax on all of his activity in ND, if the statute is still open, he should be able to come in and amend his return and ask for a refund here assuming all the criteria is met. Does that help?

**Representative Headland:** I think so.

**Senator Cook:** What constitutes nexus in another state for a ND-based trucking corporation?

**Mary Loftsgaard:** There are a couple of things. If they had any fiscal property, they might have a place where they warehouse or fuel their trucks or whatever, that is certainly going to create nexus for them in another state. Again, it would depend on the number of miles they are travelling or the number of trips they make in and out of the state. Sometimes it depends on what their activity is. Are they just travelling through or are they delivering or picking up material? States do have different rules about this.

**Senator Cook:** How does another state, like Nebraska, determine then if you have nexus? I am sure we have a lot of trucking corporations who all of a sudden get a notice from another state, telling them they have nexus; therefore, you have to pay our state's income tax. What are they looking for? How do they determine that? What triggers that letter all of a sudden? How do you do it in ND? How do you look for and find out-of-state corporations that are trucking into ND?

**Mary Loftsgaard:** We have to divulge all our secrets. There are a lot of different sources we can use. We work with the Highway Department in terms of various reports and things they have; we work with other states; we work with projects like this to find companies... Many

times these companies, I would be willing to bet that 95% of the time this is not a flagrant violation by these companies. They tend sometimes to be smaller entities that are not that sophisticated about the tax law. If one state determines the company has taxable nexus there, many times those companies will come to us themselves and say, "Here is what happened to us in Nebraska or Kansas. Do we owe tax in ND too?" because they realize they have been travelling through here and not paying tax. A good deal of it is also just the self reporting when these entities find out in another state.

**Chairman Belter:** Any more questions of Mary? Joe, this handout of the various deductions between the ND-1 and the ND-2, if we are doing away with the ND-2, it is my understanding that in the Senate version; these ND-2s are just not transferred over to the ND-1. Which one of these is going to have the biggest impact to those ND-2 taxpayers?

**Joe Becker:** I would answer that two ways. One, I can provide you a copy of a page that will show you the numbers in dollars for each one of those items that we can register. To answer your question at this point, there are two that jump off the page. On the deduction list, they would be items 15 and 16, which would be the medical expense deduction and the federal income tax deduction. They are by and large the two that take up the most space on the back side of that form. For the balance of the deductions, we are talking anywhere from 58 to 100 entries depending on which ones you are looking at. The other ones are fairly narrow, but those are the two that most folks can get at. That really is what we have told the committees in the interim is that when you combine someone who has an income on the lower end of the scale (in the \$25,000-\$30,000 range), then they happen to have excess medical expenses, some of which are allowed on the federal side but the state will allow them to pick up.

Combining that with the federal tax deduction, they are just able to keep below that rate on the

short form. How much of a break again will depend on the taxpayer. Sometimes it is not great; other cases, we are talking, \$40, \$50 or \$100, depending on the situation.

**Chairman Belter:** Are most of those in-state people then that are taking the medical deduction?

**Joe Becker:** That is a tough one to answer because both of those are open to any filer. I can't really say it is one or the other.

**Senator Cook:** Joe, if we were to lower the brackets, like we are in 1324, we could greatly reduce a lot of these?

**Joe Becker:** Exactly. What is happening is a combination of more than one deduction or credit is able to break that ND-1 rate; but if you bring ND-1 rates down, you are going to start sending some of these folks, as our sample indicated, at least somewhere in the neighborhood of 30% of those folks are going to shift over to the other form immediately for that reason. That is assuming their situations are constant each year.

**Chairman Belter:** I forget what session we dealt with this, but I can remember a couple from Bismarck coming in and testifying about the medical. That was the issue.

**Joe Becker:** If I can add to that, I think the couple also had a long-term care insurance credit which was playing a larger role for them. I don't know how else to put it. They were the classic case of someone who belongs on ND-2 because of their situation, their retirement point, they were just going to stay there. That situation never changed.

**Representative Kelsh:** Can you tell us what reductions have been moved from ND-2 to ND-1 this session that have passed and are on their way to the Governor?

**Joe Becker:** There is only one that has moved over and it happens to be the geo-thermal energy device credit. It is part of a statute that allows a credit for wind energy and now the geo-thermal portion was brought over. That is the only one. The only one bill that would be

● somewhat related, but it is really different, is the long-term care insurance credit. The one that is on the ND-2 applies to any long-term care policy. The one that was placed on the ND-1 is only for the so-called partnership plan, which is a narrower group.

**Chairman Belter:** So the one we passed this year is different than the one we had on the ND-2?

**Joe Becker:** That is correct. We are talking about two different one. ND-2 is wide open to any long-term care policy. The one that will show up on ND-1 now for the first time is the narrower group, those who are getting into the partnership type long-term care policies.

**Chairman Belter:** I guess we burned up our time for today so we will meet at a future date. I don't think you will meet tomorrow.

●

●

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1324

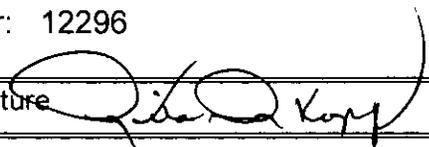
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: April 27, 2009

Recorder Job Number: 12296

Committee Clerk Signature



Minutes:

**Chairman Belter:** I call the conference committee on HB 1324 to order. Thank you, committee members. Joe Becker put together this handout for us and I thought we should just have Joe walk us through it. If you have any specific questions on the aspects of ND-2, we should go over that today. Joe, I don't know if you have a presentation you want to start with.

**Joe Becker, Tax Department:** No.

**Chairman Belter:** My question is on the net tax liability reporting. The actual tax liability that was collected for non-residents is \$815,748. Generally what are the circumstances that those people would have that liability for?

**Joe Becker:** The sampling that we did most recently really bears out what we have found from samples we have done in the past. What I can tell you is this, in general, you are going to be looking at individuals whose incomes are on the lower end of the scale. From our sample, single filers have an AGI of around \$22,000; for married joints, it was around \$30,000; and then head of household was something less than that. That is the start. Then there are usually going to be more than one deduction and/or credit on that form that in combination is allowing them to beat the ND-1 rates. The key that we found also is that the amount they are beating it by is slim. Our particular sample here showed an average savings in the

neighborhood of \$30 so when you are looking at \$815,000 for non-residents, for example, you have to keep in mind that if we are going to put them on the form ND-1, they are going to generate a dollar amount as well. We are really trying to figure out what that differential is, why are they over there? That is generally it. There is no particular deduction that stands out among the others. If there is a credit that stands out, it is the long-term care credit, simply because that is usually an automatic \$100-\$200 off the tax. That one has been a major deduction.

**Chairman Belter:** For the non-resident?

**Joe Becker:** No, for any ND-2 filers.

**Senator Cook:** If we were to get to the Governor and get the bill we passed out of committee this morning signed that has a 12.3% reduction for all brackets in the personal income tax, would that not pretty much wash away this average savings of \$30 and probably greatly reduce the number of ND-2 forms that are used? (04:40)

**Joe Becker:** Looking at SB 2199 as it was amended this morning, it has dropped the rates just a bit more. Our sampling and that average that I gave you was based on using those lower rates. The samples show that about 60% of those ND-2 filers are going to stay put with an average savings of \$30.

**Senator Cook:** You considered the reduction in 2199.

**Joe Becker:** We did and we found that about 38-40% of those ND-2 filers now would move over to the ND-1 system or would do better or be the same under SB 2199 as amended.

There is no getting away from the fact that there are some ND-2 filers that have simply zeroed their tax out and there is no way with one of the credits like the long-term care credit that they can do better on ND-1. You can't get lower than zero and they can't bring that credit over with them so.

**Representative Headland:** I understand that the credits available on ND-2 are not available on ND-1, but how about deductions? Are these deductions you have listed here also available on ND-1?

**Joe Becker:** Those deductions that you see there, there is only one there that would be on both. That is the interest from U.S. obligations. Other than that, the rest of those are unique to the ND-2. They are not on the ND-1. With the exception of the medical expense item and additional exemption of \$300 for filing joint head of household to qualifying widower, you can kind of see there has been at trend at least since 2003 that those numbers are dropping. With the passage of 2199 or for that matter, this bill with the rates as they are, those numbers obviously will drop again. But, as I said, there is no getting around it, there will be some that will stay put. I had indicated in the memorandum I sent as a cover to the two charts that from our experience over the last twenty plus odd years as well as the sampling work we have done, there are going to be a handful of folks whose situations may not change and they may stay but. But the thing that is important here is that tax situations do changes. There is nothing that says our current ND-2 filer is going to stay there down the road. It depends upon what their tax situation is.

**Senator Miller:** In summation, we can safely assume that our ND-2 policy greatly benefits non-residents as opposed to resident almost threefold. Right?

**Joe Becker:** The numbers are showing that they are the greater population of ND-2 filers, that is correct. In that sheet, showing the number of returns filed and the tax liability associated with them, I thought that footnote 4 was important to note. When all is said and done, either this bill passes with its rates or 2199 passes with those rates, and we are probably looking at about \$22,000 as a positive fiscal impact of the change with respect to our resident population.

When we look at the 1,112 residents currently on the ND-2, that will drop down to about 689 and their total savings would be about \$22,000, that average of (inaudible).

**Senator Miller:** Do you think that the \$22,000 will be evenly spread amongst the larger 1,100 residents or are you going to see 100 residents that are going to be working that bill more so? I mean we are not going to have 20 residents paying \$1,000 extra in taxes versus 1,000 residents paying \$20 bucks extra, are we?

**Joe Becker:** That is based on our sample, which is indicating on average a \$32 savings. We went anywhere from zero tax on the ND-2 up to perhaps somewhere in the neighborhood of \$250 of tax. There is no norm here; it is all over the board.

**Senator Cook:** Joe, I want to make sure I am clear on this. 689 ND residents, \$32 average per resident, total \$22,000. That sampling reflects what tax rate? Current tax rate, current law?

**Joe Becker:** That reflects a comparison between the ND-1 rates under HB 1324 as we are looking at it now, which are the lower rates.

**Senator Cook:** Okay, the 1324 rates.

**Joe Becker:** The 2199 rates are just a bit lower than that.

**Senator Cook:** I forgot that 1324 has income tax in it.

**Joe Becker:** So that is what we are basing the amendments on.

**Chairman Belter:** The one here for civil service, firefighters, ND highway patrol pension funds and stuff, how much extra tax is this group going to have to pay in would you guess on average?

**Joe Becker:** I think that on average it is that \$32, Mr. Chairman.

**Chairman Belter:** You have several different pension funds listed here. Is there one group that uses it more than others or is it a mix? Are there some unique situations where somebody should use it and others don't?

**Joe Becker:** I can't say with certainty, Mr. Chairman, without looking at all those returns. We are talking about a population of 58. If I had to take a shot in the dark, I would say it is probably the federal civil service would be the greater group.

**Chairman Belter:** If we do away with the ND-2, what group is going to come crying to us next session?

**Joe Becker:** All 689 with \$32 savings that they are losing. In all seriousness, our sampling is showing that there is no single pattern driving that vote; it is all over the board. The only thing we found trend wise is their AGIs are generally down \$30,000 or less and they have a deduction or more and/or credit that is just getting them below the ND-1 rates. I don't know how else to put it.

**Chairman Belter:** Is the ND-2 more complicated? Are people who are using the ND-2 versus the ND-1 probably using a tax accountant to derive which is the best deal for them? Would you know at all?

**Joe Becker:** Approximately 60% of all returns are done by practitioners. Is ND-2 more complicated than the ND-1? In some regards, yes, because of the various deductions and credits and they have to look at them to see if they apply. The ND-1 has grown in size with this deduction and credits so it is getting to be not such a disparaging one in that regard.

(14:56)

**Chairman Belter:** I would assume that an accountant that is running it both ways; he is obviously charging for time so the average of \$30 probably gets more than chewed up.

**Joe Becker:** That is a good point. They certainly do charge for their time and that is something that I think is worthwhile noting.

**Chairman Belter:** Any other questions on this particular issue?

**Representative Headland:** Just so I am clear, could you explain part-year residents and how this may impact that?

**Joe Becker:** That category just indicates that we have a taxpayer that has either moved into ND or has moved out—that their legal residency has changed. We just categorize them that way.

**Representative Kelsh:** Can you tell me a little bit more about the new easy form. Is that a standard deduction form similar to a federal 1040-K. How do you intend to make that work?

**Joe Becker:** First of all, it is going to be a form that will work off the one system that this bill is going to leave with us. What I envision it to be is we know that we start with federal taxable incomes. We are not going to be doing anything more than the federal return has already dealt with on standard deductions and exemptions. It has already been done so the simplicity in the form will be that we will drop that number into a form. We can immediately drop it into the rates and we are done. We are basically going to take all the deductions off that and place it on our long form, if you will. It is much like the 1040-EZ at the federal level. It is just a subset of the larger 1040.

**Chairman Belter:** Committee members, I guess I am not going to take a vote or anything today, but I would like to have a general consensus among us so that if we get to the point where we want to draft amendments... Are we all in support of doing away with the ND-2 form?

**Representative Kelsh:** Was there a hearing on the Senate side on this and was there any opposition to it as far as doing away with the ND-2 form and adding this other form?

**Senator Cook:** We added that onto 1324 so no, there was no testimony taken on it. There has been testimony given on the issue plenty of times in the past, of course. I think what drives the issue right now is the rate reduction issue.

**Senator Miller:** I don't have a lot of background to support my hypothesis here; but in looking at some of these deductions we have, I kind of wonder if some group goes to a national conference and decides let's try to get everyone to pass a deduction for firefighters or whatever it might be. They come back to ND and put that out there without really any idea as to what the real benefit to that is. We say it is probably a good idea; it is not a bad idea, but it doesn't really help. So I think cleaning up the code is a good idea.

**Senator Cook:** I would support it.

**Representative Kelsh:** I do not have strong feelings about whether we do away with ND-2 or not.

**Chairman Belter:** Any other issues anyone else wants to discuss on this today? I think as far as the income tax portion goes, I think we will wait and see what the results of the settlement of 2199 does and then we will have direction after that closes. Are there any other issues?

**Senator Cook:** I should probably talk to Senator Hogue. He raised a question at a meeting Saturday morning on 2199 about the state's corporation income and division of that income. It might have some merit to put a study resolution on here to study that issue. Let me visit with him and see if it is something that he sees. I think that is an issue that might have some merit during the interim to study.

**Chairman Belter:** Any other issues? If not, we will adjourn until further notice.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1324

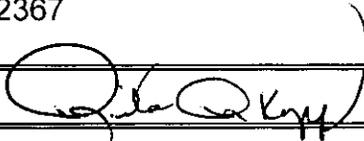
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: April 29, 2009

Recorder Job Number: 12367

Committee Clerk Signature



Minutes:

**Chairman Belter:** I call the conference committee on HB 1324 to order. Will the clerk read the roll? (Everyone was present except Senator Anderson.)

**Senator Cook:** There is a lot of smoke flying around here yet. Let's just postpone this until this afternoon if this is alright. I have got a lot of things going on right now.

**Chairman Belter:** We can do that. I will go and reschedule for this afternoon. We will meet back.

**Senator Cook:** I have got some things that maybe we want to consider.

**Chairman Belter:** Thank you. We will adjourn until this afternoon.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1324**

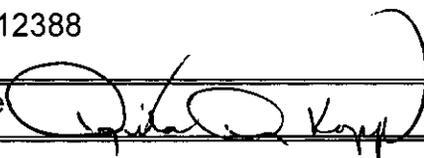
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: April 29, 2009

Recorder Job Number: 12388

Committee Clerk Signature



Minutes:

**Chairman Belter:** I call the conference committee on 1324 to order. Will the clerk read the roll? (All six members were present.)

**Chairman Belter:** Thank you committee members. I have got a red envelope with some amendments and I see there are others here with amendments. Since the income tax bill passed, I know my amendments here take out the income tax portion of it and also the ND-2.

**Senator Cook:** It leaves the easy form?

**Chairman Belter:** Yes. Does anybody have anything in particular? Otherwise, I will just have John Walstad start walking us through some of the amendments that we have.

**Senator Cook:** I am perfectly comfortable with these. If it just removes the ND-2, the income tax and leaves the easy form, I would be happy with these.

**Chairman Belter:** John, maybe you should walk us though the .0314 amendment just to make sure we are all on the same page here and explain what has been done.

**John Walstad, Legislative Council:** This amendment (**Attachment 1**) is identical to the Senate amendment with one change. That change is on page 12 and 13. As you can see on 12 and 13, the individual income tax brackets now have no overstrike or underscore in them.

That means this bill makes absolutely no changes to those rates and brackets. Those rates

and brackets are changed in 2199. That will be inserted; I happen to know the guy who does that. This bill and that bill will be blended together. The rate changes from that bill will go in here where these tables show no change. But the other changes made in this bill in that same section, we can see on 14, 15, 16, 17, 18 and 19, the other stuff in this bill in that same section will be also incorporated. The 2199 rates and brackets will go in; everything else here will also go in. Everything else here relates to getting rid of the ND-2 form and references.

**Senator Cook:** I assume that what we are going to do is go through all of these, understand to what degree we have consensus on them and then they will all get bundled into one amendment that we would approve.

**Chairman Belter:** Yes, that is my intent.

**Senator Cook:** Mr. Walstad, I understand there is a small glitch with the math that somebody did on HB 1304 and these amendments .0317 (**Attachment 2**) are meant to correct that little issue on HB 1304 that has already passed both chambers.

**John Walstad:** That is correct. On Saturday, the Tax Department did some calculations on how to prevent school districts from getting a windfall because of the oil tax allocation changes in 1304. Those calculations were done; we turned it into an amendment which was adopted. The Tax Department has done some further calculating. I think they were trying to prepare a run to show the impacts and realized that a mistake was made. In 1304 up to \$4.6 million at the county level was to be allocated, according to the existing allocation formula; revenue above \$4.6 million according to the different infrastructure fund allocation, and that higher allocation fund substituted a grant program for townships and school districts for the allocation of 35% under the \$4.6 million. Then under the \$4.6 million, some reductions had to be made for school districts. The amount reduced from there got transferred to the infrastructure fund so that there was no windfall to schools. In doing the run, the Tax Department determined that

there is a problem at \$4.6 million as the ceiling where that change occurs; some schools actually don't get a windfall. They end up short so the suggestion was made this morning that the \$4.6 million be raised to \$5.3 million before that change from the regular allocation to that infrastructure fund allocation occurs at the county level. Then those schools will be receiving basically what they would receive under current law. They wouldn't lose anything; there wouldn't be any windfall to them because there is still that carve out from the other language that we put in 1304. Shortly before I came down here, I got a call from Kathy Strombeck saying the \$5.3 million is probably not right. It should be \$5.35 million, \$5,350,000. I had written the amendment at \$5.3 million. Kathy promised she would come down and explain all this and she isn't here. I am just the guy that writes this; I don't do the math. We did those changes Saturday anticipating that that took care of the problem. The math people have determined that the actual number in subsection 3, which is what is being amended here, should at last count say \$5,350,000. That would be the cut-off point. There wouldn't be any revenue lost to any other subdivisions because of this change. Above or below whatever the number is, counties and cities get the same share. It is only above or below the number where schools are affected. Below the number we put in that reduction that applies to schools below the number and that would still be there with this change so there would be no windfall. This would allow them to suffer no loss. I wish Kathy was here to explain the math part. (08:45)

**Senator Cook:** So there was an error done in the math and this is one way to fix it. Would the other way to fix it be, if we could, (and I know you had a challenge drafting the amendments that we put in 1304 to do what it is that those who had the concern wanted to do), you used these off a spreadsheet and now I hear the spreadsheet numbers were a little bit wrong. Is it safe for me to assume that we could also have, if we had the time, change your language here?

**John Walstad:** What they tell me is that language all works the way it is supposed to. It is just the revenue they were feeding into that model needs to be a higher number at the county level. That is why the \$4.6 million can be raised to \$5.3 million. Then it feeds the right amount of money in there and then that all works the way it is supposed to. That is my layman's understanding of how the math goes.

**Senator Cook:** How does this \$5.3 million number then affect the school district that could be located in the county that has very little oil production and all of a sudden could realize a considerable amount of oil production?

**John Walstad:** The way the thing is structured is intended to deal with that like when Burke County begins to achieve the expected level of exploration and production. A school district coming on line with revenue from oil, the first \$350,000 the school gets to keep all of that; the next \$350,000, there is a reduction. I believe the objective is for existing schools in producing counties and for schools in areas where it is not an existing production area, the formula will work the same. When a Burke County school district gets to the level of a Bowman County school district for revenue, the effect for them should be identical.

**Senator Cook:** Just a suggestion, Mr. Chairman. I certainly would support putting the accurate amendments on this bill to correct that. Representative Skarphol is the one that talked me into that. Maybe it would be best before the final amendments are drafted, if you don't mind, that John and I and anybody else that was on that 1304 conference committee that would have an interest in it could just sit down with Ken Herman, John and Kathy and make sure that we all understand it because we are going to have to explain it and make sure it is right.

**Chairman Belter:** Are there any other amendments?

**Senator Cook:** I have a couple more. These are for an issue that Representative Headland brought up. Amendment .0315 (**Attachment 3**) would allow for a study and allow the council to consider studying corporate income taxes with emphasis on a uniform division of income tax act, the apportionment formula applied to multi-state corporations doing business in ND, the impact of how other states have adjusted apportionment factors under this act. Representative Headland brought up a trucking company. I don't know if there is anything we need to say we are studying this because we want to change. I think it is a study that we should certainly consider if not for any reason other than just to make sure that a lot of the policy makers who sit on the Finance and Tax Committee get brought up to speed and understand this issue. I think there are a lot of questions of it. It is an issue that could very easily come to our table one way or another through other efforts. I know that Uniform Law Code Commission have this as an issue now to try to find some way to bring uniformity to states on how we all approach this issue. Considering the attention it is getting around the country and elsewhere, a good understanding of this issue would be important for legislators so I would like to offer this study be put on 1324. Mr. Chairman, if there are no questions or concerns on that one, this is the last one (**Attachment 4 – Amendment .0316**). HB 2199, of course, has dealt with property tax and has passed both chambers. We have had our share of debates in both chambers. We have gone down this road now and we are always going to continue, I think as legislators, to debate property tax and the role that the legislatures should play in it. Some of the comments that have been made to me during the session, and especially these last few days during the debate, give other options of how we might do this. One option that our neighboring state to the east does, and seems to do somewhat successfully, and other states do is the homestead tax credit that is available for all of the state's citizens on their primary residence. All this does is suggest that the legislative council should consider studying the

homestead credit for all ND residential property and occupants. I think that is a study that could have some merits to understanding and it won't hurt us. We always hear about property tax relief that goes out of state versus keeping it in state, etc. This is I think why other states do it is to give different property tax treatment to their in-state residents versus their out-of-state residents. Whether that is the route one should take, I don't know but I don't think there is anything wrong with having a good study of this issue. That takes care of all I would bring to 1324.

**Chairman Belter:** Any other issues from any members of the committee they would like to bring before the committee?

**Representative Kelsh:** I have an amendment that would undo the provisions of 2199.  
(Laughter).

**Chairman Belter:** Are there any other issues? Committee members, on the issues we have talked about here today, is everybody comfortable with the ones presented here at this meeting? Then I think what we will do is we have requested that Skarphol, Drovdal, and I would like to be involved in looking at 1304 and anybody on this committee that so wishes, we need to discuss that. What I will do is arrange for a conference committee tomorrow morning.  
(Discussion of timing of meeting and final action.)

**Senator Cook:** How about 11:00 a.m.

**Chairman Belter:** I will set one up for 11:00. Then as soon as we get 1304 squared away, we can have John put this all together for us and we should be out of here.

**John Walstad:** Does there seem to be a consensus then that the three amendments that were brought forward would end up being incorporated because I can go ahead and do that now? Then it would just be a blink of an eye and we would be set.

**Chairman Belter:** Committee members, is there any disagreement with John putting this together and getting it ready?

**Senator Cook:** If he wants to go ahead and get that all drafted and completed and you can have the people we need to have down here to make sure we understand that one amendment tomorrow morning.

**Chairman Belter:** If we have enough time to do 1304, maybe we should meet tomorrow afternoon.

**Senator Cook:** We could do it right here in the conference committee, if Drovdal or somebody can be here to make sure we understand it.

**Chairman Belter:** I will try to set one up for 11:00 and see if we can get everybody here for 11:00 and set it up for an hour if a time slot is available. If there is no further business, we will adjourn. Committee members, here is a handout from the Tax Commissioner. **(Attachment 5)**. I am not sure if these are the same handouts.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1324**

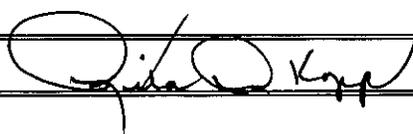
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: April 30, 2009

Recorder Job Number: 12407

Committee Clerk Signature



Minutes:

**Chairman Belter:** Committee to order on HB 1324. (All six members were present.) Thank you, committee members. John, I am assuming the .0318 amendments are a summation, putting these four different amendments together into one. Do you want to just walk us

through it?

**John Walstad, Legislative Council:** The .0318 version (**Attachment 1**) incorporates the long amendment the committee was looking at yesterday that basically does nothing to the ND-1 rates, but is twenty six pages. All that remains in it is the elimination of the ND-2 form and all the various things that need to be cleaned up or moved because of that. The committee had three separate amendments. If you look at page 25 of this version, all three of them now appear on this page. The one in the middle, section 31 is the repair job that is needed in 1304 so that school districts in oil producing counties don't suffer any loss of allocations because of the provisions of 1304. What is necessary is to raise the cap at which funding, instead of the long-existing allocation formula, pours over into the county infrastructure fund under which instead of the 35 % allocation to schools, there is a 35% allocation that goes to the county and is available for grants to townships on application by organized townships or use by the county on behalf of unorganized townships or for grants to school districts for funding for school

buses damaged by impacted road travel. What is necessary to make the math work is instead of a \$4.6 million pour over point, it is \$5,350,000. Funding above that level goes to the infrastructure fund; funding below that level stays in traditional allocation except for that step that was put into 1304, where there is an allocation within each tier. Some of that money, instead of going to schools, goes to the infrastructure fund so that there is no windfall for schools. Hopefully everybody is familiar enough with how that works. Then the other two additions, section 33 is a legislative council study provision. Section 34 is a legislative study provision. These are the two separate amendments the committee looked at yesterday. I did make some changes in the effective date. The date in 1324 had an expiration in it that related to the short form rates; that expiration date isn't needed any more. Now the effective date just says everything in here is effective beginning the tax year 2009. It does not expire. It is permanent with the exception of section 31, which takes effect July 1. That is that oil tax allocation provision to match up with the effective date of HB 1304. I might also point out that I made a couple of technical changes in the text of all of this. Joe Becker pointed out a couple things that were duplicative that we didn't need so I just took those out.

**Chairman Belter:** Everything then up to section 31 is just the elimination of the ND-2?

**John Walstad:** Yes.

**Chairman Belter:** Are there any questions of committee members?

**Senator Cook:** All of the repeal is there relative to eliminating ND-2, right?

**John Walstad:** Yes, all the repealed sections are sections that related formerly to ND-2?

**Chairman Belter:** Except maybe section 32?

**Senator Cook:** Except maybe subsection 15 of 57-02-08, that is elsewhere?

**John Walstad:** Yes. I have got that.

**Chairman Belter:** Any other questions?

**Senator Cook:** Can we add that other? We should add one more repeal to subsection 15 on 57-02-08.

**John Walstad:** It is just a cleanup thing.

**Chairman Belter:** I don't think so.

**Senator Cook:** Why not? It is just a minor little subsection.

**Chairman Belter:** I don't think so.

**Senator Cook:** Well, I suppose we can leave it out and leave the farm resident's exemption for next session.

**John Walstad:** Senator, do you want these other ones?

**Senator Cook:** We had better stop right here and leave that for next session.

**Chairman Belter:** Just for the record, it's not in here some place, is it?

**Senator Cook:** I wouldn't do that to you. Trust me. I move a "do pass as amended".

**Chairman Belter:** We have a motion for a "do pass" from Senator Cook with the .0318 amendments.

**Senator Cook:** The Senate recedes from the Senate amendments and then we further amend.

**Chairman Belter:** Okay, is there a second?

**Representative Headland:** Before I second it, I have some real concern now that I maybe need to go and read this. No, I am just kidding. I believe you.

**Senator Anderson:** I think if it is in there, Mr. Chairman, we might smell hot tar being warmed up for you.

**Representative Headland:** Second.

**Chairman Belter:** Any discussion?

**Senator Kelsh:** On the record, that section of the amendment that describes the new easy form, which is also on page 14, not only does it repeal the long form, but it describes the short form.

**Senator Cook:** Subsection h, half way down.

**Chairman Belter:** Any other questions? **(A roll call vote resulted in 6 ayes, 0 nays, 0 absent.)**

**John Walstad:** Before you close the hearing, I was just going to suggest that if it isn't already there that the data sheets the Tax Department prepared should be put in the record to indicate why the \$5.35 million is inserted. **(Attachment 2 – related to HB 1304)**

**Chairman Belter:** Okay, thank you committee members. We are adjourned.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1324

That the Senate recede from its amendments as printed on pages 1220-1242 of the House Journal and pages 1037-1059 of the Senate Journal and that Reengrossed House Bill No. 1324 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 6-09.8-01, subsection 4 of section 10-33-124, subsection 5 of section 11-37-08, sections 27-17-06 and 37-28-07, subsections 1 and 3 of section 40-63-04, section 40-63-06, subsection 4 of section 40-63-07, subsections 1 and 2 of section 57-38-01.7, subsections 1 and 4 of section 57-38-01.8, sections 57-38-01.14, 57-38-01.16, and 57-38-01.17, subsection 1 of section 57-38-01.20, subsections 2 and 4 of section 57-38-01.21, sections 57-38-01.22, 57-38-01.23, 57-38-01.24, 57-38-01.25, and 57-38-01.26, subsection 6 of section 57-38-01.27, subsection 1 of section 57-38-01.29, subsection 1 of section 57-38-01.30, section 57-38-04, subsection 2 of section 57-38-08.1, sections 57-38-30.3 and 57-38-30.5, subdivision b of subsection 1 of section 57-38-40, and sections 57-38.5-03 and 57-38.6-03 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return; to repeal sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09.8-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Beginning farmer" means ~~a person~~ an individual who qualifies as a beginning farmer ~~under subsection 2 of section 57-38-67~~ who:
  - a. Is a resident of this state;
  - b. Receives more than half of that person's gross annual income from farming, unless the person initially commences farming during the year of the application under this chapter;
  - c. Intends to use any farmland to be purchased or rented for agricultural purposes;
  - d. Is adequately trained by education in the type of farming operation which the person wishes to begin on the purchased or rented land referred to in subdivision c through satisfactory participation in the adult farm management education program of the state board for career and technical education or an equivalent program approved by the agriculture commissioner; and
  - e. Has, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

**SECTION 2. AMENDMENT.** Subsection 4 of section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

4. a. ~~An individual or a~~ A corporation that buys membership in, or pays dues or contributes to, a nonprofit development corporation is entitled to an income tax credit against the tax liability under section 57-38-30 equal to twenty-five percent of the amount paid.
- b. This credit may not be claimed by ~~an individual who elects to file an income tax return under section 57-38-30.3 or by~~ a corporation that is recognized as a subchapter S corporation under section 57-38-01.4.
- c. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.
- d. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.

**SECTION 3. 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, ~~57-38-29~~, 57-38-30, and 57-38-30.3.

**SECTION 4. AMENDMENT.** Section 27-17-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-17-06. Immediate withdrawal of present active judges from judges retirement fund.**

1. From and after July 1, 1973, each judge of the supreme or district court serving on that date and each former judge of the supreme or district court, not receiving judicial retirement salary, may elect to withdraw the judge's previous contributions made pursuant to this chapter, and thereafter not participate in a judicial retirement program provided for by law. This option ceases to be available and may not be exercised after June 30, 1975. If a judge selects this option, the judge is entitled to receive the combined total of the following sums:
  - ~~1.~~ a. The entire amount of the judge's previous contributions made pursuant to this chapter, to be calculated to the date of election under this section; plus
  - ~~2.~~ b. An amount calculated by applying the vesting schedule set forth in section 54-52-11 to an amount equal to sixty percent of the judge's individual contributions as calculated in subsection 1, plus earnings thereon as calculated in subsection 3; plus
  - ~~3.~~ c. An amount calculated by applying the figure .05625 to the periodic annual or partial annual balances in the individual judge's account during the judge's years of service prior to selecting the option provided by this section. The figure applied pursuant to this ~~subsection~~ subdivision must be compounded annually.
2. The total amounts received pursuant to this section may not be considered taxable income for the purposes of chapter 57-38 ~~and may be treated as~~

~~an additional adjustment reducing the amount of taxable income in addition to those provided in section 57-38-01.2.~~ Selection of the option provided by this section must be made in writing to the director of the office of management and budget.

**SECTION 5. AMENDMENT.** Section 37-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-07. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted.** Payments under this chapter are exempt from all state and local taxes, including taxes determined under section ~~57-38-29~~ or 57-38-30.3, and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under this chapter is void and payment to the veteran may not be denied because of any sums owed to the state or any political subdivisions, except as provided in section 37-26-05.

**SECTION 6. AMENDMENT.** Subsections 1 and 3 of section 40-63-04 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual taxpayer who purchases or rehabilitates single-family residential property for the individual's primary place of residence as a zone project is exempt from up to ten thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3 for five taxable years beginning with the date of occupancy or completion of rehabilitation.
3. If the cost of a new business purchase or expansion of an existing business, approved as a zone project, exceeds seventy-five thousand dollars, and the business is located in a city with a population of not more than two thousand five hundred, an individual taxpayer may, in lieu of the exemption provided in subsection 2, elect to take an income tax exemption of up to two thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3. The election must be made on the taxpayer's zone project application. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or this subsection. If no election is made on the zone project application, the taxpayer is only eligible for the exemption provided in subsection 2.

**SECTION 7. 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, ~~57-38-29~~, 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 8. 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, ~~57-38-29~~, 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 9. AMENDMENT.** Subsections 1 and 2 of section 57-38-01.7 of the North Dakota Century Code are amended and reenacted as follows:

1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund.
  - a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
  
2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state.
  - a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

**SECTION 10. AMENDMENT.** Subsections 1 and 4 of section 57-38-01.8 of the North Dakota Century Code are amended and reenacted as follows:

1. ~~Any~~ A taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30 for the cost of a geothermal, solar, wind, or biomass energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
  
4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, wind, or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect

to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the corporate partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 11. AMENDMENT.** Section 57-38-01.14 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.14. No gain recognized on property subject to eminent domain sale or transfer.** If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for corporate income tax purposes.

**SECTION 12. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.16. Income tax credit for employment of developmentally disabled or chronically mentally ill persons.** ~~Any A taxpayer filing an income tax return under this chapter, except a return on which liability is determined under section 57-38-30.3,~~ may claim a credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

**SECTION 13. AMENDMENT.** Section 57-38-01.17 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.14. Credit for investments in development corporations.** ~~An individual, estate, trust, or A corporation~~ is allowed, as a credit against a tax otherwise due under section ~~57-38-29 or~~ 57-38-30, the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 10-33-124.

**SECTION 14. AMENDMENT.** Subsection 1 of section 57-38-01.20 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual is entitled to a credit against the tax imposed under section ~~57-38-29 or~~ 57-38-30.3 in the amount of qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year.

**SECTION 15. AMENDMENT.** Subsections 2 and 4 of section 57-38-01.21 of the North Dakota Century Code are amended and reenacted as follows:

2. An individual is allowed a tax credit against the tax imposed by section ~~57-38-29 or~~ 57-38-30.3 in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the year to a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for contributions made in a taxable year is ten thousand dollars, or twenty thousand dollars for married individuals filing a joint return. The credit allowed under this section may not exceed the taxpayer's income tax liability.

4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit allowed under this subsection for contributions made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section ~~57-38-29~~, 57-38-30, or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.

**SECTION 16. AMENDMENT.** Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.22. Income tax credit for blending of biodiesel fuel.** A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

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 this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of 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.

**SECTION 17. AMENDMENT.** Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.23. Income tax credit for biodiesel sales equipment costs.** A seller of biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel fuel begin.

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 this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of 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.

**SECTION 18. AMENDMENT.** Section 57-38-01.24 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.24. Internship employment tax credit.**

1. A taxpayer that is an employer within this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for qualified compensation paid to an intern employed in this state by the taxpayer. To qualify for the credit under this section, the internship program must meet the following qualifications:
  - a. The intern must be an enrolled student in an institution of higher education or vocational technical education program who is seeking a degree or a certification of completion in a major field of study closely related to the work experience performed for the taxpayer;
  - b. The internship must be taken for academic credit or count toward the completion of a vocational technical education program;
  - c. The intern must be supervised and evaluated by the taxpayer; and
  - d. The internship position must be located in this state.
2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend or salary paid to a college intern employed by the taxpayer. A taxpayer may not receive more than three thousand dollars in total credits under this section for all taxable years combined.
  - a. The tax credit under this section applies to a stipend or salary for not more than five interns employed at the same time.
  - b. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is 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.

**SECTION 19. AMENDMENT.** Section 57-38-01.25 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.25. Workforce recruitment credit for hard-to-fill employment positions.** A taxpayer that is an employer in this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for costs the taxpayer incurred during the tax year to recruit and hire employees for hard-to-fill employment positions within this state for which the annual salary for the position meets or exceeds the state average wage.

1. The amount of the credit to which a taxpayer is entitled is five percent of the salary paid for the first twelve consecutive months to the employee hired for the hard-to-fill employment position. To qualify for the credit under this section, the employee must be employed by the taxpayer in the hard-to-fill employment position for twelve consecutive months.

2. For purposes of this section:
  - a. "Extraordinary recruitment methods" means using all of the following:
    - (1) A person with the exclusive business purpose of recruiting employees and for which a fee is charged by that recruiter.
    - (2) An advertisement in a professional trade journal, magazine, or other publication, the main emphasis of which is providing information to a particular trade or profession.
    - (3) A web site, the sole purpose of which is to recruit employees and for which a fee is charged by the web site.
    - (4) Payment of a signing bonus, moving expenses, or nontypical fringe benefits.
  - b. "Hard-to-fill employment position" means a job that requires the employer to use extraordinary recruitment methods and for which the employer's recruitment efforts for the specific position have been unsuccessful for six consecutive calendar months.
  - c. "State average wage" means one hundred twenty-five percent of the state average wage published annually by job service North Dakota and which is in effect at the time the employee is hired.
3. The taxpayer may claim the credit in the first tax year beginning after the employee hired for the hard-to-fill position has completed the employee's first twelve consecutive months of employment in the hard-to-fill position with the taxpayer.
4. The credit under this section may not exceed a taxpayer's liability for the taxable year as determined under this chapter. Any amount of unused credit may be carried forward for up to four taxable years after the taxable year in which the credit could initially be claimed.
5. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.

**SECTION 20. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.26. Angel fund investment tax credit.** A taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The angel fund must be in compliance with the securities laws of this state for the investment to qualify for the tax credit under this section. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this

chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

**SECTION 21. AMENDMENT.** Subsection 6 of section 57-38-01.27 of the North Dakota Century Code is amended and reenacted as follows:

6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 equal to twenty percent of the taxpayer's new investment and new employment in the microbusiness during the taxable year. A taxpayer may not obtain more than ten thousand dollars in credits under this section over any combination of taxable years.

**SECTION 22. AMENDMENT.** Subsection 1 of section 57-38-01.29 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other credit or deduction allowed by law for a homeowner, an individual is entitled to a credit against the tax imposed under section ~~57-38-29~~ or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against the individual's homestead in this state. For purposes of this section, "property taxes" does not include any special assessments.

**SECTION 23. AMENDMENT.** Subsection 1 of section 57-38-01.30 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other credit or deduction allowed by law for a property owner, an individual or corporation is entitled to a credit against the tax imposed under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against commercial property in this state. For purposes of this section, "property taxes" does not include any special assessments.
  - a. The amount of the credit under this section may not exceed one thousand dollars for any taxpayer.
  - b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
  - c. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individual filing separate returns.

**SECTION 24. AMENDMENT.** Section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-04. Allocation and apportionment of gross income of individuals.** The gross income of individuals must be allocated and apportioned as follows:

1. a. Income from personal or professional services performed in this state by individuals must be assigned to this state regardless of the residence of the recipients of such income, except that income from such services performed within this state by an individual who resides and has the individual's place of abode in another state to which place

of abode the individual customarily returns at least once a month must be excluded from the individual's income for the purposes of this chapter if such income is subject to an income tax imposed by the state in which the individual resides, provided that the state in which the individual resides allows a similar exclusion for income received from similar services performed in that state by residents of North Dakota.

- b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, must be excluded from income to the extent that the income is subject to an income tax imposed by the state of the individual's residence; provided, that the state allows a similar exclusion of the compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For purposes of this subdivision, the term an individual who performs services for a common carrier engaged in interstate transportation is limited to an individual who performs the services for a common carrier only during the course of making regular runs into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier.
2. a. Income received from personal or professional services performed by residents of this state, regardless of where such services are performed, and income received by residents of this state from intangible personal property must be assigned to this state.
  - b. ~~A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in these jurisdictions that is also taxable under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and c of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:~~
    - (1) ~~The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under this subsection.~~
    - (2) ~~The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided~~

~~by federal adjusted gross income derived from sources in the other states.~~

3. Income and gains received from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if such business consists principally of the holding of such property and collection of income and gains therefrom, must be assigned to this state without regard to the residence of the recipient if such property has a situs within this state.
4. Income derived from business activity carried on by an individual as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to the residence of the individual if the business activity is conducted wholly within this state. Income derived from gaming activity carried on in this state by an individual must be assigned to this state without regard to the residence of the individual.
5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.
6.
  - a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists principally of the holding of the property and the collection of income and gains from the business, must be assigned to this state without regard to the situs of the property.
  - b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to where the business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.
  - ~~c. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in these jurisdictions that is also subject to tax under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and b of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:~~

~~(1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.~~

~~(2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.~~

7. All other items of gross income must be assigned to the taxpayer's domicile.
8. The privileges granted nonresidents apply only when other states grant to the residents of North Dakota the same privilege.

~~This section applies to every income year beginning after December 31, 1956.~~

**SECTION 25. AMENDMENT.** Subsection 2 of section 57-38-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Resident partners, limited to individuals, estates, and trusts, must report their entire distributive share to this state as provided in subdivision b of subsection 6 of section 57-38-04, and may claim a credit for taxes paid to another state on that portion of their distributive share attributable to and taxed by another state, as provided in subdivision e j of subsection ~~6 1~~ of section ~~57-38-04~~ 57-38-30.3.

**SECTION 26. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.3. Simplified method of computing individual, estate, and trust income tax.**

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$27,050	2.10%
Over \$27,050 but not over \$65,550	\$568.05 plus 3.92% of amount over \$27,050
Over \$65,550 but not over \$136,750	\$2,077.25 plus 4.34% of amount over \$65,550
Over \$136,750 but not	\$5,167.33 plus 5.04%

over \$297,350  
Over \$297,350

of amount over \$136,750  
\$13,261.57 plus 5.54%  
of amount over \$297,350

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:

Not over \$45,200  
Over \$45,200 but not  
over \$109,250  
Over \$109,250 but not  
over \$166,500  
Over \$166,500 but not  
over \$297,350  
Over \$297,350

The tax is equal to:  
2.10%  
\$949.20 plus 3.92%  
of amount over \$45,200  
\$3,459.96 plus 4.34%  
of amount over \$109,250  
\$5,944.61 plus 5.04%  
of amount over \$166,500  
\$12,539.45 plus 5.54%  
of amount over \$297,350

c. Married filing separately.

If North Dakota taxable income is:

Not over \$22,600  
Over \$22,600 but not  
over \$54,625  
Over \$54,625 but not  
over \$83,250  
Over \$83,250 but not  
over \$148,675  
Over \$148,675

The tax is equal to:  
2.10%  
\$474.60 plus 3.92%  
of amount over \$22,600  
\$1,729.98 plus 4.34%  
of amount over \$54,625  
\$2,972.31 plus 5.04%  
of amount over \$83,250  
\$6,269.73 plus 5.54%  
of amount over \$148,675

d. Head of household.

If North Dakota taxable income is:

Not over \$36,250  
Over \$36,250 but not  
over \$93,650  
Over \$93,650 but not  
over \$151,650  
Over \$151,650 but not  
over \$297,350  
Over \$297,350

The tax is equal to:  
2.10%  
\$761.25 plus 3.92%  
of amount over \$36,250  
\$3,011.33 plus 4.34%  
of amount over \$93,650  
\$5,528.53 plus 5.04%  
of amount over \$151,650  
\$12,871.81 plus 5.54%  
of amount over \$297,350

e. Estates and trusts.

If North Dakota taxable income is:

Not over \$1,800  
Over \$1,800 but not  
over \$4,250  
Over \$4,250 but not  
over \$6,500  
Over \$6,500 but not  
over \$8,900  
Over \$8,900

The tax is equal to:  
2.10%  
\$37.80 plus 3.92%  
of amount over \$1,800  
\$133.84 plus 4.34%  
of amount over \$4,250  
\$231.49 plus 5.04%  
of amount over \$6,500  
\$352.45 plus 5.54%  
of amount over \$8,900

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and

- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

- g. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.
- h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.
- i. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also taxable under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:
- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under this subsection.
- (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
- j. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in

those jurisdictions that is also subject to tax under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:

- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivision i.
  - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
- a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
  - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
  - 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.
  - d. Reduced by thirty percent of 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.
  - e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.

- 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.
- g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
- i. Reduced by interest and income from bonds issued under chapter 11-37.
- j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
  - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
  - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
  - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
- k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
- l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
- m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.

- n. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.
  - o. Reduced by the amount of income of a taxpayer, who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources within the boundaries of any reservation in this state.
3. Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.
4. a. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this section for the amount of income tax paid by the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section.
- b. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subsection may not exceed an amount equal to the tax imposed under this section multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by federal adjusted gross income less the amounts under subdivisions a and b of subsection 2.
- c. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subsection may not exceed the lesser of the following:
- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
  - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
- d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.
6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may

prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.

7. A taxpayer filing a return under this section is entitled to the following tax credits:
  - a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. Seed capital investment tax credit under section 57-38.5-03.
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
  - g. Internship employment tax credit under section 57-38-01.24.
  - h. Workforce recruitment credit under section 57-38-01.25.
  - i. Angel fund investment tax credit under section 57-38-01.26.
  - j. Microbusiness tax credit under section 57-38-01.27.
  - k. Marriage penalty credit under section 57-38-01.28.
  - l. Homestead income tax credit under section 57-38-01.29.
  - m. Commercial property income tax credit under section 57-38-01.30.
  - n. Research and experimental expenditures under section 57-38-30.5.
8. A taxpayer filing a return under this section is entitled to the exemption provided under section 40-63-04.
9. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
  - (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
  - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase

in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
  - c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
  - d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
10. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.

**SECTION 27. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.5. Income tax credit for research and experimental expenditures.** A taxpayer is allowed a credit against the tax imposed under section ~~57-38-29~~, 57-38-30; or 57-38-30.3 for conducting qualified research in this state.

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
  - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.

- d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - f. The maximum annual credit a taxpayer may obtain under this section is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.
2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
    - a. This rate applies through the tenth taxable year beginning after December 31, 2006.
    - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  4. For purposes of this section:
    - a. "Base period research expenses" means base period research expenses as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.

- b. "Director" means the director of the department of commerce division of economic development and finance.
  - c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.
  - d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
  - e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
  - f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
6. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
7. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year.
8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:
- a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.

- b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
  - c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
  - d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
  - e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
  - f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
  - g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
  - h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.
9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].

10. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.
11. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section ~~57-38-29~~ or 57-38-30.3.
12. 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 ~~sections 57-38-29 and 57-38-30~~ section 57-38-30.3.

**SECTION 28. AMENDMENT.** Subdivision b of subsection 1 of section 57-38-40 of the North Dakota Century Code is amended and reenacted as follows:

- b. An individual who filed a return of income as a resident of this state and is assessed tax by another state or territory of the United States or the District of Columbia on that income after the time for filing a claim has expired under this section is entitled to a credit or refund for the amount of tax paid to the other jurisdiction, not including penalty or interest, as provided under subsection ~~2 or 6 of section 57-38-04~~ 1 or ~~subsection 4 of section 57-38-30.3~~, notwithstanding the time limitations of this section. The claim for the credit or refund under this subdivision must be submitted to the commissioner within one year from the date the taxes were paid to the other jurisdiction. The taxpayer must submit sufficient proof to show entitlement to a credit or refund under this subdivision.

**SECTION 29. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in

this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.

5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.
10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 is not eligible for the investment tax credit under this chapter.

**SECTION 30. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit

against state income tax liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. The credit under this section may not exceed the liability for tax under chapter 57-38. If the amount of credit under this section exceeds the liability for tax, the excess may be carried forward for up to ten taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's owners, in proportion to their respective ownership interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purposes of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business. Real property that qualifies as an investment must be used in, and be an integral part of, the qualified business's North Dakota business operations.
8. If the investment is a contribution of real property:
  - a. The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.

- b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.
  - c. The qualified business receiving the contribution of real property shall provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
  - d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

**SECTION 31. REPEAL.** Sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code are repealed.

**SECTION 32. EFFECTIVE DATE - EXPIRATION DATE - APPLICATION.** This Act is effective for taxable years beginning after December 31, 2009. Section 26 of this Act is effective for the first two taxable years beginning after December 31, 2009, and is thereafter ineffective. The income amounts shown in the tax brackets in the amendment to section 57-38-30.3 in this Act are the income amounts as indexed for taxable year 2009. The tax commissioner shall apply appropriate indexing factors, as determined under subdivision g of subsection 1 of section 57-38-30.3, to the dollar amounts of the brackets to update those amounts for taxable years after 2009."

Renumber accordingly

90715.0315  
Title.

Prepared by the Legislative Council staff for  
Senator Cook

April 29, 2009

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1324

**SECTION \_\_\_\_\_.** During the 2009-10 interim, the legislative council shall consider studying corporate income taxes, with emphasis on the Uniform Division of Income Tax Act and the apportionment formula applied to multistate corporations doing business in North Dakota and the impact of how other states have adjusted apportionment factors under the Act. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Renumber accordingly

90715.0316  
Title.

Prepared by the Legislative Council staff for  
Senator Cook

April 29, 2009

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1324

**SECTION \_\_\_\_.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of providing a homestead credit for all North Dakota residential property owners and occupants. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-second legislative assembly.

Renumber accordingly

90715.0317  
Title.

Prepared by the Legislative Council staff for  
Senator Cook

April 29, 2009

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1324

**SECTION \_\_\_\_\_. AMENDMENT.** Subsection 3 of section 57-51-15 of the North Dakota Century Code as amended by House Bill No. 1304, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

3. The amount to which each county is entitled under subsection 2 must be allocated within the county so the first ~~four~~ five million ~~six~~ three hundred thousand dollars is allocated under subsection 4 for each fiscal year and any amount received by a county exceeding ~~four~~ five million ~~six~~ three hundred thousand dollars is credited by the county treasurer to the county infrastructure fund and allocated under subsection 5.

Renumber accordingly

VR  
4/30/09  
18 26

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1324

That the Senate recede from its amendments as printed on pages 1220-1242 of the House Journal and pages 1037-1059 of the Senate Journal and that Reengrossed House Bill No. 1324 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 6-09.8-01, subsection 4 of section 10-33-124, subsection 5 of section 11-37-08, sections 27-17-06 and 37-28-07, subsections 1 and 3 of section 40-63-04, section 40-63-06, subsection 4 of section 40-63-07, subsections 1 and 2 of section 57-38-01.7, subsections 1 and 4 of section 57-38-01.8, sections 57-38-01.14, 57-38-01.16, and 57-38-01.17, subsection 1 of section 57-38-01.20, subsections 2 and 4 of section 57-38-01.21, sections 57-38-01.22, 57-38-01.23, 57-38-01.24, 57-38-01.25, and 57-38-01.26, subsection 6 of section 57-38-01.27, subsection 1 of section 57-38-01.29, subsection 1 of section 57-38-01.30, section 57-38-04, subsection 2 of section 57-38-08.1, sections 57-38-30.3 and 57-38-30.5, subdivision b of subsection 1 of section 57-38-40, sections 57-38.5-03 and 57-38.6-03, and subsection 3 of section 57-51-15 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return and allocation of oil and gas gross production tax revenues to political subdivisions; to repeal sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return; to provide for legislative council studies; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09.8-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Beginning farmer" means ~~a person~~ an individual who qualifies as a beginning farmer ~~under subsection 2 of section 57-38-67~~ who:
  - a. Is a resident of this state;
  - b. Receives more than half of that person's gross annual income from farming, unless the person initially commences farming during the year of the application under this chapter;
  - c. Intends to use any farmland to be purchased or rented for agricultural purposes;
  - d. Is adequately trained by education in the type of farming operation which the person wishes to begin on the purchased or rented land referred to in subdivision c through satisfactory participation in the adult farm management education program of the state board for career and technical education or an equivalent program approved by the agriculture commissioner; and
  - e. Has, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household

goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

2 of 26

**SECTION 2. AMENDMENT.** Subsection 4 of section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

4. a. ~~An individual or a~~ A corporation that buys membership in, or pays dues or contributes to, a nonprofit development corporation is entitled to an income tax credit against the tax liability under section 57-38-30 equal to twenty-five percent of the amount paid.
- b. This credit may not be claimed by ~~an individual who elects to file an income tax return under section 57-38-30.3 or~~ by a corporation that is recognized as a subchapter S corporation under section 57-38-01.4.
- c. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.
- d. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.

**SECTION 3. 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, ~~57-38-20~~, 57-38-30, and 57-38-30.3.

**SECTION 4. AMENDMENT.** Section 27-17-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-17-06. Immediate withdrawal of present active judges from judges retirement fund.**

1. From and after July 1, 1973, each judge of the supreme or district court serving on that date and each former judge of the supreme or district court, not receiving judicial retirement salary, may elect to withdraw the judge's previous contributions made pursuant to this chapter, and thereafter not participate in a judicial retirement program provided for by law. This option ceases to be available and may not be exercised after June 30, 1975. If a judge selects this option, the judge is entitled to receive the combined total of the following sums:
  - ~~1.~~ a. The entire amount of the judge's previous contributions made pursuant to this chapter, to be calculated to the date of election under this section; plus
  - ~~2.~~ b. An amount calculated by applying the vesting schedule set forth in section 54-52-11 to an amount equal to sixty percent of the judge's individual contributions as calculated in subsection 1, plus earnings thereon as calculated in subsection 3; plus
  - ~~3.~~ c. An amount calculated by applying the figure .05625 to the periodic annual or partial annual balances in the individual judge's account during the judge's years of service prior to selecting the option provided by this section. The figure applied pursuant to this ~~subsection~~ subdivision must be compounded annually.

- 2. The total amounts received pursuant to this section may not be considered taxable income for the purposes of chapter 57-38 and ~~may be treated as an additional adjustment reducing the amount of taxable income in addition to those provided in section 57-38-01.2.~~ Selection of the option provided by this section must be made in writing to the director of the office of management and budget.

**SECTION 5. AMENDMENT.** Section 37-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-07. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted.** Payments under this chapter are exempt from all state and local taxes, including taxes determined under section ~~57-38-29~~ or 57-38-30.3, and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under this chapter is void and payment to the veteran may not be denied because of any sums owed to the state or any political subdivisions, except as provided in section 37-26-05.

**SECTION 6. AMENDMENT.** Subsections 1 and 3 of section 40-63-04 of the North Dakota Century Code are amended and reenacted as follows:

- 1. An individual taxpayer who purchases or rehabilitates single-family residential property for the individual's primary place of residence as a zone project is exempt from up to ten thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3 for five taxable years beginning with the date of occupancy or completion of rehabilitation.
- 3. If the cost of a new business purchase or expansion of an existing business, approved as a zone project, exceeds seventy-five thousand dollars, and the business is located in a city with a population of not more than two thousand five hundred, an individual taxpayer may, in lieu of the exemption provided in subsection 2, elect to take an income tax exemption of up to two thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3. The election must be made on the taxpayer's zone project application. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or this subsection. If no election is made on the zone project application, the taxpayer is only eligible for the exemption provided in subsection 2.

**SECTION 7. 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, ~~57-38-29~~, 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 8. 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, ~~57-38-29~~, 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 9. AMENDMENT.** Subsections 1 and 2 of section 57-38-01.7 of the North Dakota Century Code are amended and reenacted as follows:

- 1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund.
  - ~~a. In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - ~~b. In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
  
- 2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state.
  - ~~a. In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - ~~b. In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

**SECTION 10. AMENDMENT.** Subsections 1 and 4 of section 57-38-01.8 of the North Dakota Century Code are amended and reenacted as follows:

- 1. ~~Any~~ A taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit ~~against the tax liability under section 57-38-30~~ for the cost of a geothermal, solar, wind, or biomass energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
  
- 4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar,

wind, or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the corporate partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 11. AMENDMENT.** Section 57-38-01.14 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.14. No gain recognized on property subject to eminent domain sale or transfer.** If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for corporate income tax purposes.

**SECTION 12. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.16. Income tax credit for employment of developmentally disabled or chronically mentally ill persons.** Any A taxpayer filing an income tax return under this chapter, ~~except a return on which liability is determined under section 57-38-30.3,~~ may claim a credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

**SECTION 13. AMENDMENT.** Section 57-38-01.17 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.17. Credit for investments in development corporations.** ~~An individual, estate, trust, or~~ A corporation is allowed, as a credit against a tax otherwise due under section ~~57-38-29 or~~ 57-38-30, the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 10-33-124.

**SECTION 14. AMENDMENT.** Subsection 1 of section 57-38-01.20 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual is entitled to a credit against the tax imposed under section ~~57-38-29 or~~ 57-38-30.3 in the amount of qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year.

**SECTION 15. AMENDMENT.** Subsections 2 and 4 of section 57-38-01.21 of the North Dakota Century Code are amended and reenacted as follows:

2. An individual is allowed a tax credit against the tax imposed by section ~~57-38-29 or~~ 57-38-30.3 in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the year to a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for contributions made in a taxable year is ten thousand

dollars, or twenty thousand dollars for married individuals filing a joint return. The credit allowed under this section may not exceed the taxpayer's income tax liability.

- 4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit allowed under this subsection for contributions made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section ~~57-38-29~~, 57-38-30, or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.

**SECTION 16. AMENDMENT.** Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.22. Income tax credit for blending of biodiesel fuel.** A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

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 this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of 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.

**SECTION 17. AMENDMENT.** Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.23. Income tax credit for biodiesel sales equipment costs.** A seller of biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel fuel begin.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must

7826

be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of 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.

**SECTION 18. AMENDMENT.** Section 57-38-01.24 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.24. Internship employment tax credit.**

1. A taxpayer that is an employer within this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for qualified compensation paid to an intern employed in this state by the taxpayer. To qualify for the credit under this section, the internship program must meet the following qualifications:
  - a. The intern must be an enrolled student in an institution of higher education or vocational technical education program who is seeking a degree or a certification of completion in a major field of study closely related to the work experience performed for the taxpayer;
  - b. The internship must be taken for academic credit or count toward the completion of a vocational technical education program;
  - c. The intern must be supervised and evaluated by the taxpayer; and
  - d. The internship position must be located in this state.
2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend or salary paid to a college intern employed by the taxpayer. A taxpayer may not receive more than three thousand dollars in total credits under this section for all taxable years combined.
  - a. The tax credit under this section applies to a stipend or salary for not more than five interns employed at the same time.
  - b. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is 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.

**SECTION 19. AMENDMENT.** Section 57-38-01.25 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.25. Workforce recruitment credit for hard-to-fill employment positions.** A taxpayer that is an employer in this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for costs the taxpayer incurred during the tax year to recruit and hire employees for hard-to-fill employment positions within this state for which the annual salary for the position meets or exceeds the state average wage.

1. The amount of the credit to which a taxpayer is entitled is five percent of the salary paid for the first twelve consecutive months to the employee hired for the hard-to-fill employment position. To qualify for the credit under

this section, the employee must be employed by the taxpayer in the hard-to-fill employment position for twelve consecutive months.

2. For purposes of this section:

a. "Extraordinary recruitment methods" means using all of the following:

- (1) A person with the exclusive business purpose of recruiting employees and for which a fee is charged by that recruiter.
- (2) An advertisement in a professional trade journal, magazine, or other publication, the main emphasis of which is providing information to a particular trade or profession.
- (3) A web site, the sole purpose of which is to recruit employees and for which a fee is charged by the web site.
- (4) Payment of a signing bonus, moving expenses, or nontypical fringe benefits.

b. "Hard-to-fill employment position" means a job that requires the employer to use extraordinary recruitment methods and for which the employer's recruitment efforts for the specific position have been unsuccessful for six consecutive calendar months.

c. "State average wage" means one hundred twenty-five percent of the state average wage published annually by job service North Dakota and which is in effect at the time the employee is hired.

3. The taxpayer may claim the credit in the first tax year beginning after the employee hired for the hard-to-fill position has completed the employee's first twelve consecutive months of employment in the hard-to-fill position with the taxpayer.

4. The credit under this section may not exceed a taxpayer's liability for the taxable year as determined under this chapter. Any amount of unused credit may be carried forward for up to four taxable years after the taxable year in which the credit could initially be claimed.

5. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.

**SECTION 20. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.26. Angel fund investment tax credit.** A taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The angel fund must be in compliance with the securities laws of this state for the investment to qualify for the tax credit under this section. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed

in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

**SECTION 21. AMENDMENT.** Subsection 6 of section 57-38-01.27 of the North Dakota Century Code is amended and reenacted as follows:

- 6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax liability as determined under section ~~57-38-29~~, 57-38-30; or 57-38-30.3 equal to twenty percent of the taxpayer's new investment and new employment in the microbusiness during the taxable year. A taxpayer may not obtain more than ten thousand dollars in credits under this section over any combination of taxable years.

**SECTION 22. AMENDMENT.** Subsection 1 of section 57-38-01.29 of the North Dakota Century Code is amended and reenacted as follows:

- 1. In addition to any other credit or deduction allowed by law for a homeowner, an individual is entitled to a credit against the tax imposed under section ~~57-38-29~~ or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against the individual's homestead in this state. For purposes of this section, "property taxes" does not include any special assessments.

**SECTION 23. AMENDMENT.** Subsection 1 of section 57-38-01.30 of the North Dakota Century Code is amended and reenacted as follows:

- 1. In addition to any other credit or deduction allowed by law for a property owner, an individual or corporation is entitled to a credit against the tax imposed under section ~~57-38-29~~, 57-38-30; or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against commercial property in this state. For purposes of this section, "property taxes" does not include any special assessments.
  - a. The amount of the credit under this section may not exceed one thousand dollars for any taxpayer.
  - b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
  - c. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individual filing separate returns.

**SECTION 24. AMENDMENT.** Section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-04. Allocation and apportionment of gross income of individuals.**

The gross income of individuals must be allocated and apportioned as follows:

- 1. a. Income from personal or professional services performed in this state by individuals must be assigned to this state regardless of the

residence of the recipients of such income, except that income from such services performed within this state by an individual who resides and has the individual's place of abode in another state to which place of abode the individual customarily returns at least once a month must be excluded from the individual's income for the purposes of this chapter if such income is subject to an income tax imposed by the state in which the individual resides, provided that the state in which the individual resides allows a similar exclusion for income received from similar services performed in that state by residents of North Dakota.

- b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, must be excluded from income to the extent that the income is subject to an income tax imposed by the state of the individual's residence; provided, that the state allows a similar exclusion of the compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For purposes of this subdivision, the term an individual who performs services for a common carrier engaged in interstate transportation is limited to an individual who performs the services for a common carrier only during the course of making regular runs into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier.
2. a. Income received from personal or professional services performed by residents of this state, regardless of where such services are performed, and income received by residents of this state from intangible personal property must be assigned to this state.
- b. ~~A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also taxable under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and c of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:~~
- (1) ~~The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under this subsection.~~

~~(2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.~~

- 3. Income and gains received from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if such business consists principally of the holding of such property and collection of income and gains therefrom, must be assigned to this state without regard to the residence of the recipient if such property has a situs within this state.
- 4. Income derived from business activity carried on by an individual as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to the residence of the individual if the business activity is conducted wholly within this state. Income derived from gaming activity carried on in this state by an individual must be assigned to this state without regard to the residence of the individual.
- 5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.
- 6.
  - a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists principally of the holding of the property and the collection of income and gains from the business, must be assigned to this state without regard to the situs of the property.
  - b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to where the business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.
  - e. ~~A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and b of subsection 1 of~~

~~section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:~~

- ~~(1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.~~
- ~~(2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.~~

- 7. All other items of gross income must be assigned to the taxpayer's domicile.
- 8. The privileges granted nonresidents apply only when other states grant to the residents of North Dakota the same privilege.

~~This section applies to every income year beginning after December 31, 1956.~~

**SECTION 25. AMENDMENT.** Subsection 2 of section 57-38-08.1 of the North Dakota Century Code is amended and reenacted as follows:

- 2. Resident partners, limited to individuals, estates, and trusts, must report their entire distributive share to this state as provided in subdivision b of subsection 6 of section 57-38-04, and may claim a credit for taxes paid to another state on that portion of their distributive share attributable to and taxed by another state, as provided in subdivision e j of subsection 6 1 of section ~~57-38-04~~ 57-38-30.3.

**SECTION 26. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.3. Simplified method of computing individual, estate, and trust income tax.**

- 1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$27,050	2.10%
Over \$27,050 but not	\$568.05 plus 3.92%

over \$65,550  
Over \$65,550 but not  
over \$136,750  
Over \$136,750 but not  
over \$297,350  
Over \$297,350

of amount over \$27,050  
\$2,077.25 plus 4.34%  
of amount over \$65,550  
\$5,167.33 plus 5.04%  
of amount over \$136,750  
\$13,261.57 plus 5.54%  
of amount over \$297,350

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:

The tax is equal to:

Not over \$45,200  
Over \$45,200 but not  
over \$109,250  
Over \$109,250 but not  
over \$166,500  
Over \$166,500 but not  
over \$297,350  
Over \$297,350

2.10%  
\$949.20 plus 3.92%  
of amount over \$45,200  
\$3,459.96 plus 4.34%  
of amount over \$109,250  
\$5,944.61 plus 5.04%  
of amount over \$166,500  
\$12,539.45 plus 5.54%  
of amount over \$297,350

c. Married filing separately.

If North Dakota taxable income is:

The tax is equal to:

Not over \$22,600  
Over \$22,600 but not  
over \$54,625  
Over \$54,625 but not  
over \$83,250  
Over \$83,250 but not  
over \$148,675  
Over \$148,675

2.10%  
\$474.60 plus 3.92%  
of amount over \$22,600  
\$1,729.98 plus 4.34%  
of amount over \$54,625  
\$2,972.31 plus 5.04%  
of amount over \$83,250  
\$6,269.73 plus 5.54%  
of amount over \$148,675

d. Head of household.

If North Dakota taxable income is:

The tax is equal to:

Not over \$36,250  
Over \$36,250 but not  
over \$93,650  
Over \$93,650 but not  
over \$151,650  
Over \$151,650 but not  
over \$297,350  
Over \$297,350

2.10%  
\$761.25 plus 3.92%  
of amount over \$36,250  
\$3,011.33 plus 4.34%  
of amount over \$93,650  
\$5,528.53 plus 5.04%  
of amount over \$151,650  
\$12,871.81 plus 5.54%  
of amount over \$297,350

e. Estates and trusts.

If North Dakota taxable income is:

The tax is equal to:

Not over \$1,800  
Over \$1,800 but not  
over \$4,250  
Over \$4,250 but not  
over \$6,500  
Over \$6,500 but not  
over \$8,900  
Over \$8,900

2.10%  
\$37.80 plus 3.92%  
of amount over \$1,800  
\$133.84 plus 4.34%  
of amount over \$4,250  
\$231.49 plus 5.04%  
of amount over \$6,500  
\$352.45 plus 5.54%  
of amount over \$8,900

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

14826

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

- g. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.
- h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.

- 2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
  - a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
  - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
  - 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.
  - d. Reduced by thirty percent of 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.
  - e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does

not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.

- 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.
- g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
- i. Reduced by interest and income from bonds issued under chapter 11-37.
- j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
  - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
  - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
  - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
- k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
- l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
- m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled

to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.

- n. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.
  - o. Reduced by the amount of income of a taxpayer, who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources within the boundaries of any reservation in this state.
3. Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.
4. a. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this section for the amount of income tax paid by the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section.
- b. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subsection may not exceed an amount equal to the tax imposed under this section multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by federal adjusted gross income less the amounts under subdivisions a and b of subsection 2.
- c. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subsection may not exceed the lesser of the following:
- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
  - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
- d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.

- 6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.
- 7. A taxpayer filing a return under this section is entitled to the following tax credits:
  - a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. Seed capital investment tax credit under section 57-38.5-03.
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
  - g. Internship employment tax credit under section 57-38-01.24.
  - h. Workforce recruitment credit under section 57-38-01.25.
  - i. Angel fund investment tax credit under section 57-38-01.26.
  - j. Microbusiness tax credit under section 57-38-01.27.
  - k. Marriage penalty credit under section 57-38-01.28.
  - l. Homestead income tax credit under section 57-38-01.29.
  - m. Commercial property income tax credit under section 57-38-01.30.
  - n. Research and experimental expenditures under section 57-38-30.5.
- 8. A taxpayer filing a return under this section is entitled to the exemption provided under section 40-63-04.
- 9. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
  - (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
  - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax

under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
  - c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
  - d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
10. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.

**SECTION 27. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.5. Income tax credit for research and experimental expenditures.**

A taxpayer is allowed a credit against the tax imposed under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for conducting qualified research in this state.

- 1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
  - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.

1982c

- d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - f. The maximum annual credit a taxpayer may obtain under this section is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.
2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
- a. This rate applies through the tenth taxable year beginning after December 31, 2006.
  - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
4. For purposes of this section:
- a. "Base period research expenses" means base period research expenses as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.

200826

- b. "Director" means the director of the department of commerce division of economic development and finance.
  - c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.
  - d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
  - e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
  - f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
- 5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
  - 6. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
  - 7. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year.
  - 8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:
    - a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.

- b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
  - c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
  - d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
  - e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
  - f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
  - g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
  - h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.
9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].

- 22826
10. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.
  11. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section ~~57-38-29~~ or 57-38-30.3.
  12. 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 ~~sections 57-38-29 and 57-38-30~~ section 57-38-30.3.

**SECTION 28. AMENDMENT.** Subdivision b of subsection 1 of section 57-38-40 of the North Dakota Century Code is amended and reenacted as follows:

- b. An individual who filed a return of income as a resident of this state and is assessed tax by another state or territory of the United States or the District of Columbia on that income after the time for filing a claim has expired under this section is entitled to a credit or refund for the amount of tax paid to the other jurisdiction, not including penalty or interest, as provided under subsection ~~2 or 6 of section 57-38-04~~ 1 or subsection 4 of section 57-38-30.3, notwithstanding the time limitations of this section. The claim for the credit or refund under this subdivision must be submitted to the commissioner within one year from the date the taxes were paid to the other jurisdiction. The taxpayer must submit sufficient proof to show entitlement to a credit or refund under this subdivision.

**SECTION 29. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in

this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.

5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.
10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 is not eligible for the investment tax credit under this chapter.

**SECTION 30. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit

against state income tax liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

24 of 26

1. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. The credit under this section may not exceed the liability for tax under chapter 57-38. If the amount of credit under this section exceeds the liability for tax, the excess may be carried forward for up to ten taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's owners, in proportion to their respective ownership interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purposes of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business. Real property that qualifies as an investment must be used in, and be an integral part of, the qualified business's North Dakota business operations.
8. If the investment is a contribution of real property:
  - a. The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.

25 of 26

- b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.
  - c. The qualified business receiving the contribution of real property shall provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
  - d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

**SECTION 31. AMENDMENT.** Subsection 3 of section 57-51-15 of the North Dakota Century Code as amended by House Bill No. 1304, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

- 3. The amount to which each county is entitled under subsection 2 must be allocated within the county so the first ~~four~~ five million ~~six~~ three hundred fifty thousand dollars is allocated under subsection 4 for each fiscal year and any amount received by a county exceeding ~~four~~ five million ~~six~~ three hundred fifty thousand dollars is credited by the county treasurer to the county infrastructure fund and allocated under subsection 5.

**SECTION 32. REPEAL.** Sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code are repealed.

**SECTION 33. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying corporate income taxes, with emphasis on the Uniform Division of Income Tax Act and the apportionment formula applied to multistate corporations doing business in North Dakota and the impact of how other states have adjusted apportionment factors under the Act. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 34. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of providing a homestead credit for all North Dakota residential property owners and occupants. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 35. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008, except section 31 of this Act, which is effective for taxable events occurring after June 30, 2009."

26 of 26

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number HB 1324 (as (re)engrossed):

Date: 4/22/09

Your Conference Committee \_\_\_\_\_

4/24/09  
4/27/09  
4/29/09 X2  
4/30/09

For the Senate:

For the House:

		YES / NO				YES / NO	
X <sup>6</sup>	Sen. Miller	X		X <sup>6</sup>	Rep. Belter	X	
X <sup>6</sup>	Sen. Cook	X		X <sup>6</sup>	Rep. Headland	X	
X <sup>6</sup>	Sen. Anderson	X		X <sup>6</sup>	Rep. S. Kelsh	X	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1220 - 1242

and place \_\_\_\_\_ on the Seventh order.

adopt (further) amendments as follows, and place 1324 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1324 was placed on the Seventh order of business on the calendar.

DATE: 4-30-09

CARRIER: Belter

LC NO. 90715.0318 of amendment	0600
LC NO.	of engrossment
Emergency clause added or deleted	Hoghouse Bill
Statement of purpose of amendment	

MOTION MADE BY: Senator Cook

SECONDED BY: Representative Headland

VOTE COUNT 6 YES 0 NO 0 ABSENT

**REPORT OF CONFERENCE COMMITTEE**

**HB 1324, as reengrossed:** Your conference committee (Sens. Miller, Cook, Anderson and Reps. Belter, Headland, S. Kelsh) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1220-1242, adopt amendments as follows, and place HB 1324 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1220-1242 of the House Journal and pages 1037-1059 of the Senate Journal and that Reengrossed House Bill No. 1324 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 6-09.8-01, subsection 4 of section 10-33-124, subsection 5 of section 11-37-08, sections 27-17-06 and 37-28-07, subsections 1 and 3 of section 40-63-04, section 40-63-06, subsection 4 of section 40-63-07, subsections 1 and 2 of section 57-38-01.7, subsections 1 and 4 of section 57-38-01.8, sections 57-38-01.14, 57-38-01.16, and 57-38-01.17, subsection 1 of section 57-38-01.20, subsections 2 and 4 of section 57-38-01.21, sections 57-38-01.22, 57-38-01.23, 57-38-01.24, 57-38-01.25, and 57-38-01.26, subsection 6 of section 57-38-01.27, subsection 1 of section 57-38-01.29, subsection 1 of section 57-38-01.30, section 57-38-04, subsection 2 of section 57-38-08.1, sections 57-38-30.3 and 57-38-30.5, subdivision b of subsection 1 of section 57-38-40, sections 57-38.5-03 and 57-38.6-03, and subsection 3 of section 57-51-15 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return and allocation of oil and gas gross production tax revenues to political subdivisions; to repeal sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return; to provide for legislative council studies; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09.8-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Beginning farmer" means ~~a person~~ an individual who qualifies as a beginning farmer ~~under subsection 2 of section 57-38-67~~ who:
  - a. Is a resident of this state;
  - b. Receives more than half of that person's gross annual income from farming, unless the person initially commences farming during the year of the application under this chapter;
  - c. Intends to use any farmland to be purchased or rented for agricultural purposes;
  - d. Is adequately trained by education in the type of farming operation which the person wishes to begin on the purchased or rented land referred to in subdivision c through satisfactory participation in the adult farm management education program of the state board for career and technical education or an equivalent program approved by the agriculture commissioner; and
  - e. Has, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one

personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

**SECTION 2. AMENDMENT.** Subsection 4 of section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

4. a. ~~An individual or a~~ A corporation that buys membership in, or pays dues or contributes to, a nonprofit development corporation is entitled to an income tax credit against the tax liability under section 57-38-30 equal to twenty-five percent of the amount paid.
- b. This credit may not be claimed by ~~an individual who elects to file an income tax return under section 57-38-30.3 or by~~ a corporation that is recognized as a subchapter S corporation under section 57-38-01.4.
- c. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.
- d. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.

**SECTION 3. 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, ~~57-38-29~~, 57-38-30, and 57-38-30.3.

**SECTION 4. AMENDMENT.** Section 27-17-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-17-06. Immediate withdrawal of present active judges from judges retirement fund.**

1. From and after July 1, 1973, each judge of the supreme or district court serving on that date and each former judge of the supreme or district court, not receiving judicial retirement salary, may elect to withdraw the judge's previous contributions made pursuant to this chapter, and thereafter not participate in a judicial retirement program provided for by law. This option ceases to be available and may not be exercised after June 30, 1975. If a judge selects this option, the judge is entitled to receive the combined total of the following sums:
  - ~~1-~~ a. The entire amount of the judge's previous contributions made pursuant to this chapter, to be calculated to the date of election under this section; plus
  - ~~2-~~ b. An amount calculated by applying the vesting schedule set forth in section 54-52-11 to an amount equal to sixty percent of the judge's individual contributions as calculated in subsection 1, plus earnings thereon as calculated in subsection 3; plus

- ~~2.~~ c. An amount calculated by applying the figure .05625 to the periodic annual or partial annual balances in the individual judge's account during the judge's years of service prior to selecting the option provided by this section. The figure applied pursuant to this ~~subsection~~ subdivision must be compounded annually.
2. The total amounts received pursuant to this section may not be considered taxable income for the purposes of chapter 57-38 ~~and may be treated as an additional adjustment reducing the amount of taxable income in addition to those provided in section 57-38-01.2.~~ Selection of the option provided by this section must be made in writing to the director of the office of management and budget.

**SECTION 5. AMENDMENT.** Section 37-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-07. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted.** Payments under this chapter are exempt from all state and local taxes, including taxes determined under section ~~57-38-29~~ or 57-38-30.3, and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under this chapter is void and payment to the veteran may not be denied because of any sums owed to the state or any political subdivisions, except as provided in section 37-26-05.

**SECTION 6. AMENDMENT.** Subsections 1 and 3 of section 40-63-04 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual taxpayer who purchases or rehabilitates single-family residential property for the individual's primary place of residence as a zone project is exempt from up to ten thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3 for five taxable years beginning with the date of occupancy or completion of rehabilitation.
3. If the cost of a new business purchase or expansion of an existing business, approved as a zone project, exceeds seventy-five thousand dollars, and the business is located in a city with a population of not more than two thousand five hundred, an individual taxpayer may, in lieu of the exemption provided in subsection 2, elect to take an income tax exemption of up to two thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3. The election must be made on the taxpayer's zone project application. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or this subsection. If no election is made on the zone project application, the taxpayer is only eligible for the exemption provided in subsection 2.

**SECTION 7. 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, ~~57-38-29~~, 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 8. 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, ~~57-38-29~~, 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 9. AMENDMENT.** Subsections 1 and 2 of section 57-38-01.7 of the North Dakota Century Code are amended and reenacted as follows:

1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund.
  - a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state.
  - a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

**SECTION 10. AMENDMENT.** Subsections 1 and 4 of section 57-38-01.8 of the North Dakota Century Code are amended and reenacted as follows:

1. ~~Any~~ A taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30 for the cost of a geothermal, solar, wind, or biomass

energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.

4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, wind, or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the corporate partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 11. AMENDMENT.** Section 57-38-01.14 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.14. No gain recognized on property subject to eminent domain sale or transfer.** If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for corporate income tax purposes.

**SECTION 12. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.16. Income tax credit for employment of developmentally disabled or chronically mentally ill persons.** ~~Any~~ A taxpayer filing an income tax return under this chapter, ~~except a return on which liability is determined under section 57-38-30.3,~~ may claim a credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

**SECTION 13. AMENDMENT.** Section 57-38-01.17 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.17. Credit for investments in development corporations.** ~~An individual, estate, trust, or~~ A corporation is allowed, as a credit against a tax otherwise due under section ~~57-38-29 or~~ 57-38-30, the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 10-33-124.

**SECTION 14. AMENDMENT.** Subsection 1 of section 57-38-01.20 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual is entitled to a credit against the tax imposed under section ~~57-38-29~~ or 57-38-30.3 in the amount of qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year.

**SECTION 15. AMENDMENT.** Subsections 2 and 4 of section 57-38-01.21 of the North Dakota Century Code are amended and reenacted as follows:

2. An individual is allowed a tax credit against the tax imposed by section ~~57-38-29~~ or 57-38-30.3 in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the year to a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for contributions made in a taxable year is ten thousand dollars, or twenty thousand dollars for married individuals filing a joint return. The credit allowed under this section may not exceed the taxpayer's income tax liability.
4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit allowed under this subsection for contributions made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section ~~57-38-29~~, 57-38-30, or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.

**SECTION 16. AMENDMENT.** Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.22. Income tax credit for blending of biodiesel fuel.** A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

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 this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of 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.

**SECTION 17. AMENDMENT.** Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.23. Income tax credit for biodiesel sales equipment costs.** A seller of biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel fuel begin.

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 this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of 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.

**SECTION 18. AMENDMENT.** Section 57-38-01.24 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.24. Internship employment tax credit.**

1. A taxpayer that is an employer within this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for qualified compensation paid to an intern employed in this state by the taxpayer. To qualify for the credit under this section, the internship program must meet the following qualifications:
  - a. The intern must be an enrolled student in an institution of higher education or vocational technical education program who is seeking a degree or a certification of completion in a major field of study closely related to the work experience performed for the taxpayer;
  - b. The internship must be taken for academic credit or count toward the completion of a vocational technical education program;
  - c. The intern must be supervised and evaluated by the taxpayer; and
  - d. The internship position must be located in this state.
2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend or salary paid to a college intern employed by the taxpayer. A taxpayer may not receive more than three thousand dollars in total credits under this section for all taxable years combined.
  - a. The tax credit under this section applies to a stipend or salary for not more than five interns employed at the same time.

- b. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is 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.

**SECTION 19. AMENDMENT.** Section 57-38-01.25 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.25. Workforce recruitment credit for hard-to-fill employment positions.** A taxpayer that is an employer in this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for costs the taxpayer incurred during the tax year to recruit and hire employees for hard-to-fill employment positions within this state for which the annual salary for the position meets or exceeds the state average wage.

1. The amount of the credit to which a taxpayer is entitled is five percent of the salary paid for the first twelve consecutive months to the employee hired for the hard-to-fill employment position. To qualify for the credit under this section, the employee must be employed by the taxpayer in the hard-to-fill employment position for twelve consecutive months.
2. For purposes of this section:
  - a. "Extraordinary recruitment methods" means using all of the following:
    - (1) A person with the exclusive business purpose of recruiting employees and for which a fee is charged by that recruiter.
    - (2) An advertisement in a professional trade journal, magazine, or other publication, the main emphasis of which is providing information to a particular trade or profession.
    - (3) A web site, the sole purpose of which is to recruit employees and for which a fee is charged by the web site.
    - (4) Payment of a signing bonus, moving expenses, or nontypical fringe benefits.
  - b. "Hard-to-fill employment position" means a job that requires the employer to use extraordinary recruitment methods and for which the employer's recruitment efforts for the specific position have been unsuccessful for six consecutive calendar months.
  - c. "State average wage" means one hundred twenty-five percent of the state average wage published annually by job service North Dakota and which is in effect at the time the employee is hired.
3. The taxpayer may claim the credit in the first tax year beginning after the employee hired for the hard-to-fill position has completed the employee's first twelve consecutive months of employment in the hard-to-fill position with the taxpayer.

4. The credit under this section may not exceed a taxpayer's liability for the taxable year as determined under this chapter. Any amount of unused credit may be carried forward for up to four taxable years after the taxable year in which the credit could initially be claimed.
5. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.

**SECTION 20. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.26. Angel fund investment tax credit.** A taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The angel fund must be in compliance with the securities laws of this state for the investment to qualify for the tax credit under this section. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

**SECTION 21. AMENDMENT.** Subsection 6 of section 57-38-01.27 of the North Dakota Century Code is amended and reenacted as follows:

6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 equal to twenty percent of the taxpayer's new investment and new employment in the microbusiness during the taxable year. A taxpayer may not obtain more than ten thousand dollars in credits under this section over any combination of taxable years.

**SECTION 22. AMENDMENT.** Subsection 1 of section 57-38-01.29 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other credit or deduction allowed by law for a homeowner, an individual is entitled to a credit against the tax imposed under section ~~57-38-29~~ or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against the individual's homestead in this state. For purposes of this section, "property taxes" does not include any special assessments.

**SECTION 23. AMENDMENT.** Subsection 1 of section 57-38-01.30 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other credit or deduction allowed by law for a property owner, an individual or corporation is entitled to a credit against the tax imposed under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against commercial property in this state. For purposes of this section, "property taxes" does not include any special assessments.
  - a. The amount of the credit under this section may not exceed one thousand dollars for any taxpayer.
  - b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
  - c. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individual filing separate returns.

**SECTION 24. AMENDMENT.** Section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-04. Allocation and apportionment of gross income of individuals.** The gross income of individuals must be allocated and apportioned as follows:

1.
  - a. Income from personal or professional services performed in this state by individuals must be assigned to this state regardless of the residence of the recipients of such income, except that income from such services performed within this state by an individual who resides and has the individual's place of abode in another state to which place of abode the individual customarily returns at least once a month must be excluded from the individual's income for the purposes of this chapter if such income is subject to an income tax imposed by the state in which the individual resides, provided that the state in which the individual resides allows a similar exclusion for income received from similar services performed in that state by residents of North Dakota.
  - b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, must be excluded from income to the extent that the income is subject to an income tax imposed by the state of the individual's residence; provided, that the state allows a similar exclusion of the compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For purposes of this subdivision, the term an individual who performs services for a common carrier engaged in interstate transportation is limited to an individual who performs the services for a common carrier only during the course of making regular runs into North Dakota or from within North Dakota to outside

North Dakota, or both, on the transportation system of the common carrier.

2. a. Income received from personal or professional services performed by residents of this state, regardless of where such services are performed, and income received by residents of this state from intangible personal property must be assigned to this state.
- b. ~~A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also taxable under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:~~
  - (1) ~~The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under this subsection.~~
  - (2) ~~The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.~~
3. Income and gains received from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if such business consists principally of the holding of such property and collection of income and gains therefrom, must be assigned to this state without regard to the residence of the recipient if such property has a situs within this state.
4. Income derived from business activity carried on by an individual as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to the residence of the individual if the business activity is conducted wholly within this state. Income derived from gaming activity carried on in this state by an individual must be assigned to this state without regard to the residence of the individual.
5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the

entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.

6. a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists principally of the holding of the property and the collection of income and gains from the business, must be assigned to this state without regard to the situs of the property.
  - b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to where the business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.
  - e. ~~A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:~~
    - (1) ~~The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.~~
    - (2) ~~The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.~~
7. All other items of gross income must be assigned to the taxpayer's domicile.

8. The privileges granted nonresidents apply only when other states grant to the residents of North Dakota the same privilege.

~~This section applies to every income year beginning after December 31, 1956.~~

**SECTION 25. AMENDMENT.** Subsection 2 of section 57-38-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Resident partners, limited to individuals, estates, and trusts, must report their entire distributive share to this state as provided in subdivision b of subsection 6 of section 57-38-04, and may claim a credit for taxes paid to another state on that portion of their distributive share attributable to and taxed by another state, as provided in subdivision e j of subsection ~~6 1~~ of section ~~57-38-04~~ 57-38-30.3.

**SECTION 26. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.3. Simplified method of computing individual, estate, and trust income tax.**

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$27,050	2.10%
Over \$27,050 but not over \$65,550	\$568.05 plus 3.92% of amount over \$27,050
Over \$65,550 but not over \$136,750	\$2,077.25 plus 4.34% of amount over \$65,550
Over \$136,750 but not over \$297,350	\$5,167.33 plus 5.04% of amount over \$136,750
Over \$297,350	\$13,261.57 plus 5.54% of amount over \$297,350

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$45,200	2.10%
Over \$45,200 but not over \$109,250	\$949.20 plus 3.92% of amount over \$45,200
Over \$109,250 but not over \$166,500	\$3,459.96 plus 4.34% of amount over \$109,250
Over \$166,500 but not	\$5,944.61 plus 5.04%

over \$297,350  
Over \$297,350

of amount over \$166,500  
\$12,539.45 plus 5.54%  
of amount over \$297,350

c. Married filing separately.

If North Dakota taxable income is:

Not over \$22,600  
Over \$22,600 but not  
over \$54,625  
Over \$54,625 but not  
over \$83,250  
Over \$83,250 but not  
over \$148,675  
Over \$148,675

The tax is equal to:  
2.10%  
\$474.60 plus 3.92%  
of amount over \$22,600  
\$1,729.98 plus 4.34%  
of amount over \$54,625  
\$2,972.31 plus 5.04%  
of amount over \$83,250  
\$6,269.73 plus 5.54%  
of amount over \$148,675

d. Head of household.

If North Dakota taxable income is:

Not over \$36,250  
Over \$36,250 but not  
over \$93,650  
Over \$93,650 but not  
over \$151,650  
Over \$151,650 but not  
over \$297,350  
Over \$297,350

The tax is equal to:  
2.10%  
\$761.25 plus 3.92%  
of amount over \$36,250  
\$3,011.33 plus 4.34%  
of amount over \$93,650  
\$5,528.53 plus 5.04%  
of amount over \$151,650  
\$12,871.81 plus 5.54%  
of amount over \$297,350

e. Estates and trusts.

If North Dakota taxable income is:

Not over \$1,800  
Over \$1,800 but not  
over \$4,250  
Over \$4,250 but not  
over \$6,500  
Over \$6,500 but not  
over \$8,900  
Over \$8,900

The tax is equal to:  
2.10%  
\$37.80 plus 3.92%  
of amount over \$1,800  
\$133.84 plus 4.34%  
of amount over \$4,250  
\$231.49 plus 5.04%  
of amount over \$6,500  
\$352.45 plus 5.54%  
of amount over \$8,900

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.



- g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
- i. Reduced by interest and income from bonds issued under chapter 11-37.
- j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
  - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
  - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
  - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
- k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
- l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
- m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.

- n. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.
  - o. Reduced by the amount of income of a taxpayer, who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources within the boundaries of any reservation in this state.
3. Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.
  4.
    - a. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this section for the amount of income tax paid by the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section.
    - b. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subsection may not exceed an amount equal to the tax imposed under this section multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by federal adjusted gross income less the amounts under subdivisions a and b of subsection 2.
    - c. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subsection may not exceed the lesser of the following:
      - (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
      - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
    - d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
  5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.

6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.
7. A taxpayer filing a return under this section is entitled to the following tax credits:
  - a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. Seed capital investment tax credit under section 57-38.5-03.
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
  - g. Internship employment tax credit under section 57-38-01.24.
  - h. Workforce recruitment credit under section 57-38-01.25.
  - i. Angel fund investment tax credit under section 57-38-01.26.
  - j. Microbusiness tax credit under section 57-38-01.27.
  - k. Marriage penalty credit under section 57-38-01.28.
  - l. Homestead income tax credit under section 57-38-01.29.
  - m. Commercial property income tax credit under section 57-38-01.30.
  - n. Research and experimental expenditures under section 57-38-30.5.
8. A taxpayer filing a return under this section is entitled to the exemption provided under section 40-63-04.
9.
  - a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
    - (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
    - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior

taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
  - c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
  - d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
10. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.

**SECTION 27. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.5. Income tax credit for research and experimental expenditures.**

A taxpayer is allowed a credit against the tax imposed under section ~~57-38-29~~, 57-38-30; or 57-38-30.3 for conducting qualified research in this state.

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
  - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.

- c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - f. The maximum annual credit a taxpayer may obtain under this section is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.
2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
    - a. This rate applies through the tenth taxable year beginning after December 31, 2006.
    - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of

the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.

4. For purposes of this section:
  - a. "Base period research expenses" means base period research expenses as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.
  - b. "Director" means the director of the department of commerce division of economic development and finance.
  - c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.
  - d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
  - e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
  - f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
6. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
7. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year.

8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:
  - a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
  - b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
  - c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
  - d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
  - e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
  - f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this

subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.

- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
  - h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.
9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].
  10. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.
  11. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section ~~57-38-29~~ or 57-38-30.3.
  12. 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 ~~sections 57-38-29 and 57-38-30~~ section 57-38-30.3.

**SECTION 28. AMENDMENT.** Subdivision b of subsection 1 of section 57-38-40 of the North Dakota Century Code is amended and reenacted as follows:

- b. An individual who filed a return of income as a resident of this state and is assessed tax by another state or territory of the United States or the District of Columbia on that income after the time for filing a claim has expired under this section is entitled to a credit or refund for the amount of tax paid to the other jurisdiction, not including penalty or interest, as provided under subsection ~~2 or 6 of section 57-38-04~~ 1 or subsection 4 of section 57-38-30.3, notwithstanding the time limitations of this section. The claim for the credit or refund under this subdivision must be submitted to the commissioner within one year from the date the taxes were paid to the other jurisdiction. The taxpayer must submit sufficient proof to show entitlement to a credit or refund under this subdivision.

**SECTION 29. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for

certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 is not eligible for the investment tax credit under this chapter.

**SECTION 30. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. The credit under this section may not exceed the liability for tax under chapter 57-38. If the amount of credit under this section exceeds the liability for tax, the excess may be carried forward for up to ten taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's owners, in proportion to their respective ownership interests in the passthrough entity.

5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purposes of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business. Real property that qualifies as an investment must be used in, and be an integral part of, the qualified business's North Dakota business operations.
8. If the investment is a contribution of real property:
  - a. The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.
  - b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.
  - c. The qualified business receiving the contribution of real property shall provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
  - d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

**SECTION 31. AMENDMENT.** Subsection 3 of section 57-51-15 of the North Dakota Century Code as amended by House Bill No. 1304, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

3. The amount to which each county is entitled under subsection 2 must be allocated within the county so the first ~~four~~ five million ~~six~~ three hundred fifty thousand dollars is allocated under subsection 4 for each fiscal year and any amount received by a county exceeding ~~four~~ five million ~~six~~ three hundred fifty thousand dollars is credited by the county treasurer to the county infrastructure fund and allocated under subsection 5.

**SECTION 32. REPEAL.** Sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code are repealed.

**SECTION 33. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying corporate income taxes, with emphasis on the Uniform Division of Income Tax Act and the apportionment formula applied to multistate corporations doing business in North Dakota and the impact of how other states have adjusted apportionment factors under the Act. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 34. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of providing a homestead credit for all North Dakota residential property owners and occupants. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 35. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008, except section 31 of this Act, which is effective for taxable events occurring after June 30, 2009."

Renumber accordingly

Reengrossed HB 1324 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1324

## Taxpayers' Dividend Stimulus Package

- This is a simple measure. It embraces the Governor's plan for reducing personal income tax. But, rather than delaying these tax breaks for North Dakota people, HB 1324 returns \$100 million of the estimated \$1 billion surplus back to North Dakota taxpayers on May 1<sup>st</sup> of this year.
- With HB 1324, every North Dakota who paid personal income taxes in April of 2008 will receive 34 percent of their 2007 tax liability back this spring.
- The State of North Dakota collected \$290 million in personal income tax last year (2007). Today, the state treasury is flush with money. The state doesn't need all of this money.
- This bill says, "Hey North Dakota taxpayers, you overpaid. Here's one-third of your tax dollars back."
- Anyone who overpays a bill receives money back or a credit on account. This measure treats North Dakota taxpayers like customers who paid too much and are owed a check back for their overpayment.
- Clearly, legislators and state agencies could find ways to spend this money. Even with this Taxpayer's Dividend Stimulus package, the state will have plenty of money to invest generously in priority causes.
- This measure has no effect on the 09-11 general fund revenue, as \$100 million is already built into the budget. To put the money in taxpayer's hands now rather than July, this bill uses \$100 million from the POTF for 60 days until the new biennium starts.
- This bill mirrors the rest of the governor's proposal and permanently lowers the personal income tax rate by 13 percent beginning in the 2011 tax year.



**Testimony of Jeb Oehlke**  
**North Dakota Chamber of Commerce**  
**HB 1324**  
**January 26, 2009**

Mr. Chairman and members of the committee, my name is Jeb Oehlke and I am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing thirteen local chambers with total membership over 5,760 members. A list of those associations is attached. As a group we stand in support of HB 1324 and urge a do pass from the committee on this bill.

More than 90% of businesses in North Dakota pay their taxes through personal income tax. Proprietorships, partnerships, LP's, LLP's, LLLP's, LLC's and subchapter S corporations are all pass through entities for tax purposes and taxable income is reported on individual returns. HB 1324 reduces the income tax North Dakota businesses and individuals pay and allows them to invest that income into North Dakota's economy.

Much of the pre-session discussion centered around the enviable position we are in due the substantial budget surplus that was created in the current biennium. This body has the difficult task of deciding how much to keep in reserve, how much to spend and where to

*THE VOICE OF NORTH DAKOTA BUSINESS*

spend it. We have the opportunity to say to the rest of the country that North Dakota is open for business and business opportunity. We can do that by creating a climate for business to succeed. What better message can we send than to lower personal income taxes, visibly demonstrating that our actions back up our words when we tell businesses they will be welcome when they choose to do business in North Dakota? It is the best economic development tool we can use to support our other initiatives.

Thank you for the opportunity to appear before you today in support of HB 1324. I am happy to answer any questions.



**The following chambers are members of a coalition that support our 2009 Legislative Policy Statements:**

- Beulah Chamber of Commerce – 130 members
- Bismarck-Mandan Chamber of Commerce – 1,200 members
- Chamber of Commerce of Fargo Moorhead – 1,800 members
- Devils Lake Area Chamber of Commerce
- Grafton Area Chamber of Commerce
- Greater Bottineau Area Chamber of Commerce – 155 members
- Harvey Area Chamber of Commerce
- Hettinger Area Chamber of Commerce – 145 members
- Jamestown Area Chamber of Commerce – 360 members
- Kenmare Association of Commerce
- Minot Chamber of Commerce – 700 members
- North Dakota Chamber of Commerce – 1100 members
- Oakes Area Chamber of Commerce – 170 members
  
- Total Businesses Represented = 5,760 members

*THE VOICE OF NORTH DAKOTA BUSINESS*

Josh Askvig  
North Dakota Education Association  
Testimony on HB 1324

Mr. Chairman, members of the committee my name is Josh Askvig with the North Dakota Education Association. I appreciate the chance to testify on House Bill 1324 this morning. The NDEA opposes HB1324.

Our opposition is based on two factors, balance and sustainability. As you know, Governor Hoeven has proposed his own version of income tax relief (HB1279) and property tax relief (SB2199). According to the fiscal notes, these two bills would provide a total tax relief package of \$400 million in the next biennium. Also, as part of his proposal he also included an additional \$100 million for K-12 education funding (HB1013), which will further reduce property tax burdens. These proposals are a more balanced approach to funding, tax relief, and saving priorities in this state than the proposal contained in HB1324.

Also, many have asked the last few weeks about how to sustain the proposed increases in funding. It would be imprudent to further reduce revenues in the manner contained in HB1324 and at the same time raise the question of sustainability. Our state has many needs now, and we are finally in a position to make the necessary investments and improvements in infrastructure, growth, and people.

Again, Mr. Chairman and members of the committee thank you for the time. We hope that you will give this bill a Do Not Pass Recommendation. I would be happy to answer any questions.

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

**TAXATION COMMITTEE**

Thursday, October 2, 2008  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Bob Stenehjem, Chairman called the meeting to order at 9:00 a.m.

**Members present:** Senators Bob Stenehjem, Dwight Cook, Ben Tollefson, Constance Triplett, Herbert Urlacher; Representatives Larry Bellew, Wesley R. Belter, Glen Froseth, Craig Headland, Gil Herbel, Jim Kasper, Scot Kelsh, Arlo Schmidt, Benjamin A. Vig, Dave Weiler, Dwight Wrangham

**Members absent:** Representatives David Drovdal, Mark S. Owens

**Others present:** Representative Shirley Meyer, member of the Legislative Council, was also in attendance.

See Appendix A for additional persons present.

**It was moved by Representative Bellew, seconded by Senator Cook, and carried on a voice vote that the minutes of the July 2, 2008, meeting be approved as distributed.**

**INCOME TAX STUDY**

Chairman Stenehjem called on committee counsel for presentation of a bill draft [90018.0200] to eliminate individual income tax Form ND-2. Committee counsel said the bill draft has only minimal changes from the version previously reviewed by the committee. He said the previous version would have repealed North Dakota Century Code (NDCC) Sections 57-38-02 and 57-38-03 and it was suggested by the Tax Department that these sections not be repealed because they might be useful in administration of remaining income tax laws. He said the sections were removed from the repeal. He said the committee requested that the bill draft be adjusted to make it revenue-neutral. He said the estimated fiscal effect of the bill draft was a revenue gain of approximately \$150,000. He said a very small rate change on the lowest income tax brackets in Section 57-38-30.3 is included in the bill draft, which would reduce the lowest bracket tax rate from 2.10 percent to 2.099 percent. He said this is a very small rate change because of the small fiscal effect. He said the income amounts in the income brackets on the five filing categories under Section 57-38-30.3 appear to be substantial increases. He said the reason the increases appear so large is that the statutory income amounts in the brackets are from taxable year 2001 and the underscored income amounts are for taxable year 2009. He said the income brackets are indexed for inflation and nine years of income increases from

indexing account for the apparent sizable income increase.

In response to a question from Representative Belter, committee counsel said the bill draft eliminates all of the deductions in NDCC Section 57-38-01.2 which apply only on Form ND-2. He said those exemptions are not transferred by the bill draft to Form ND-1.

Representative Froseth said he receives inquiries from constituents about why they are unable to use their income tax deduction. He said because some deductions are available only on Form ND-2, taxpayers cannot use the deduction on Form ND-1, and they are disappointed that the deduction is not usable.

Committee counsel said the bill draft was prepared to be revenue-neutral, based on current income tax rates. He said if the initiated measure to reduce income tax rates on the November general election ballot is approved by the voters, the income tax bracket changes in the bill draft could be eliminated because revenue neutrality will not be an issue if the Form ND-1 rates are reduced by 50 percent.

Chairman Stenehjem called on Ms. Kathy Strombeck, Research Analyst, Tax Department, for a presentation of information (Appendix B) on the estimated fiscal effect if initiated measure No. 2 is enacted by the voters. Ms. Strombeck said the estimated biennial fiscal impact is a revenue reduction of \$414,237,000, which is a revenue reduction for individual income tax of \$375,983 and for corporation income tax of \$38,254,000.

Ms. Strombeck said the information provided also has statistics relating to the potential effect of initiated measure No. 2 if there is a continuation of the property tax relief income tax credit in 2007 Senate Bill No. 2032. She said through September 30, 2008, 28,613 property tax certificates have been issued to taxpayers. She said if a property tax credit program is continued and initiated measure No. 2 is enacted by the voters, the number of certificates would increase to approximately 43,118.

Ms. Strombeck said of the estimated corporate income tax reduction that would be provided by enactment of initiated measure No. 2, approximately 42 percent of the tax relief would go to the top 25 corporations. She said approximately 93 percent of the tax reduction would go to multistate and multinational corporations. She said this effect is

because these corporations pay the greatest share of corporate income taxes.

Ms. Strombeck said the tables provided on the information she distributed to committee members show the approximate tax reduction for taxpayers in each designated income bracket if initiated measure No. 2 is enacted.

In discussion of the bill draft to eliminate Form ND-2, Senator Cook asked whether taxpayers making contributions or other expenditures for which a deduction is available in February or March 2009 would lose that deduction if the bill draft is enacted by the 2009 Legislative Assembly. Committee counsel said the effective date of the bill makes it apply to the 2009 taxable year and if taxpayers make contributions or expenditures in February or March in anticipation of a tax deduction on Form ND-2, the deduction would be lost for that taxable year if the bill is enacted. He said taxpayers making contributions or expenditures in anticipation of deductions on Form ND-2 already face the possibility that the deduction will not be available if their tax liability on Form ND-1 ends up being lower at the end of the tax year.

Senator Cook said he believes it is inappropriate to recommend the bill draft and make it effective for the 2009 tax year if taxpayers might qualify for deductions that would be taken away by passage of the bill.

**It was moved by Senator Cook, seconded by Senator Triplett, and carried on a voice vote that the effective date of the bill draft be amended to be effective for taxable years beginning after December 31, 2009.**

Representative Kasper asked Ms. Strombeck what savings would exist for the Tax Department by elimination of Form ND-2. Ms. Strombeck said savings to the Tax Department would total about \$25,000 per biennium. Representative Kasper said it appears there would be minimal savings to the state from elimination of Form ND-2. He said he does not see the problem that would be solved by eliminating Form ND-2.

In response to a question from Senator Stenehjem, Ms. Strombeck said many individuals who file the Form ND-2 return do so in error. She said they would be helped by eliminating that filing approach because they would have to file on the correct form to minimize income tax liability. She said eliminating Form ND-2 would reduce tax preparation confusion and expenses for taxpayers.

Representative Kasper asked whether any taxpayer would have to pay more income tax without Form ND-2. Ms. Strombeck said some taxpayers would pay more income taxes without Form ND-2.

Senator Triplett asked whether it would be possible to move deductions and credits available on Form ND-2 to make them available on Form ND-1. Committee counsel said deductions and credits could be moved individually or as a group from Form ND-2 to Form ND-1. He said the bill draft does not move any deductions or credits currently available only on

Form ND-2 and all of those deductions and credits are eliminated by the bill draft.

Representative Kasper said he would not favor elimination of Form ND-2. He said eliminating that filing option amounts to a tax increase for certain citizens, many of whom are retired.

Representative Wrangham said many people do not get to use deductions or credits because they are available only on Form ND-2. He said these individuals would benefit from moving those deductions or credits to Form ND-1. Senator Stenehjem said that is true but the deductions and credits available only on the long form would have a substantial fiscal impact from moving them to the short form. He said this is where it becomes difficult for the Legislative Assembly to make a judgment about the appropriateness of each credit or deduction and whether it should be available on Form ND-1, which has a lower tax rate.

Representative Kasper said if the bill draft addressed moving deductions to Form ND-1, it would be more appropriate but without that change he cannot support the bill draft.

Representative Belter said each deduction or credit is an individual issue. He said each deduction or credit has been approved separately by the Legislative Assembly at some time in the past. He said it would not be appropriate to move all of the deductions or credits to Form ND-1 without individual consideration of each one.

## AGRICULTURAL ASSESSMENT

Chairman Stenehjem called on committee counsel to review a bill draft [90249.0100] to extend the deadline for county implementation of use of soil survey data in agricultural property assessments. Committee counsel said a provision was added to NDCC Section 57-02-27.2 by 2007 legislation to impose a penalty of 5 percent of the county's allocation from the state aid distribution fund if the county has not fully implemented use of soil type and soil classification data from soil surveys for taxable years after 2009. He said the bill draft extends the deadline through taxable year 2011. He said the committee has received information on county efforts to implement use of soil survey data in assessments. He said the information received indicates that all counties are at least in the process of trying to implement use of soil surveys but it appears some counties will not be able to meet the 2010 deadline.

Senator Urlacher said a few counties remain which have not implemented use of soil surveys. He said if an extension of time is warranted that is fine with him, but the Legislative Assembly needs to keep the penalty requirement in the law to achieve uniform assessment of agricultural property in the state.

In response to a question from Senator Stenehjem, Ms. Sara Hewson, Tax Department, said she has completed a recent review of county efforts to implement use of soil surveys in assessments. She said 19 counties are in the early stages of

North Dakota's  
individual and  
corporate income  
taxes are often  
misunderstood...

**Proposal:** Shift more of the mandated social services costs, currently delivered by local units of government, to state level revenue sources.

**Pros:**

- (1) This may conform better to both equity criteria (i.e., benefits received and ability to pay).
- (2) The mandate for social service activities would be funded by those imposing the directive.

**Con:** The reduced local property tax revenues would need to be replaced by another source at the state level, requiring a close examination of the ultimate tax incidence.

**Property Tax Equalization**

Property tax equalization across/among taxing jurisdictions is difficult to keep current. There may be many, under-trained individuals across the state charged with keeping property value assessments equalized across jurisdictions. The natural administrative lag within jurisdictions is a lesser issue if it is somewhat consistent across jurisdictions. Unless property tax equalization across/among jurisdictions is current, the burden of the tax is not spread according to the intent.

**Proposal:** Consider Montana's system, where all property tax assessment is accomplished by equally trained, state-level employees.

**Pro:** Consistently administered property tax statewide would lead to enhanced equity in the system.

**Con:** Property tax rates may increase slightly in total to cover the added cost of enhanced assessment and may increase for those who previously benefited from the lack of consistency.

**Individual and Corporate Income Taxes**

North Dakota's individual and corporate income taxes are often misunderstood, with people frequently thinking the rates are much higher than they actually are. For example, a recent CFO magazine story showed North Dakota having the highest corporate income tax rate in the country. Unfortunately, this type of national notoriety is far from limited to this one article. Having two alternative filing methods for individuals (short and long forms) contributes to confusion, complexities, and inconsistencies. Additionally, both of the existing individual income tax forms provide a misconception that we are a very high tax state. One return reflects a 14 percent tax rate and the other a 12 percent tax rate. Tying North Dakota

income taxes almost entirely to federal income tax obligation brings about both confusion with respect to the rates and state tax collections that are subject to the whims of federal policy makers. Having an individual long form creates confusion regarding the actual taxes that almost all North Dakotans pay and increases administrative costs.

**Proposal regarding Individual Income Taxes:** Eliminate both of the existing individual income tax returns (short and long forms) and replace them with one individual income tax return that starts with either federal adjusted gross income or taxable income.

**Pros:**

- (1) Tax rates would be much more reflective of actual revenues and tax rates.
- (2) Reduces the impact of changes in federal tax policy, since most of the tax from this source is significantly tied to changes by the federal government.
- (3) One form rather than two.
- (4) The lost deductions and credits on the long form would not really be lost because very few people can currently take advantage of them.

**Cons:**

- (1) Tax burdens would be shifted.
- (2) A lower nominal rate may tempt subsequent legislatures to increase the tax rates.
- (3) Many taxpayers would lose the possibility of using the special deductions that are currently on the long form.
- (4) Special interest groups may convince lawmakers to put the deductions and credits from the existing long form onto a new state form.

**Proposal regarding Corporate Income Taxes:** Eliminate the federal tax deduction and reduce rates accordingly.

**Pro:** The printed tax rates would be much more reflective of the real or effective rates.

**Cons:**

- (1) Tax burdens would be shifted.
- (2) With a lower nominal rate, subsequent legislatures may be tempted to increase the rates.

Having an individual long form creates confusion regarding the actual taxes...



#2

### HOUSE BILL NO. 1324

Existing Law	Representative Berg	Governor	Senator Hogue	Senator Cook
2.10%	1.81%	1.68%	1.70%	1.47%
3.92%	3.38%	3.50%	3.40%	3.29%
4.34%	3.75%	3.92%	3.60%	3.71%
5.04%	4.35%	4.62%	4.25%	4.41%
5.54%	4.78%	5.12%	5.00%	4.91%
<b>Fiscal Impact</b>	\$ 100 million	\$ 100 million	\$ 114 million	\$ 150 million



#1

Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1324  
March 4, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical associations cross section of North Dakota's private sector and also includes state, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. As a group we stand in support of HB 1324 and urge a do pass from the committee on this bill.

HB 1324 is the third tax cut bill heard by this committee, the first two being the property tax bill heard before crossover and the corporate tax bill heard on Monday. Together the three make a comprehensive tax policy statement that represents the reality of our current fiscal state. Some will say we should not enact this legislation because of the vote on Measure 2 last fall. We disagree. That vote was on a 50% reduction and was voted on in conjunction with Measure 1. Governor Hoeven and many others talked about a reduction in personal income taxes at an appropriate level and the \$100 million in this bill is a measured and proper level for this tax.

On behalf of the 20,000 plus business filers who pay their business taxes through their personal income taxes and all of the citizens of North Dakota who pay personal income taxes, I want to thank you for the opportunity to appear before you today in support of HB 1324. I would be happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*



**Distribution of Forecasted Gross Production Tax Revenues to Counties and Schools - Current Law:**

	Current County Distribution of Feb Leg Fcst Based on Jan 2009 Production and Current Law Distribution Formula			Current Law Distribution of Schools' Share 35% Up to \$3.9 M/ \$4.1 M / \$4.6 M		
	FY 10	FY 11	Biennium	FY 10	FY 11	Biennium
Billings	\$ 3,677,118	\$ 4,017,785	\$ 7,694,903	1,286,991	1,365,000	\$ 2,651,991
Bottineau	2,536,777	2,699,009	5,235,786	887,872	944,653	1,832,525
Bowman	5,100,000	5,100,000	10,200,000	1,435,000	1,435,000	2,870,000
Burke	1,980,147	2,172,636	4,152,783	693,052	760,423	1,453,474
Divide	1,364,984	1,539,452	2,904,436	477,744	538,808	1,016,552
Dunn	4,709,804	5,100,000	9,809,804	1,435,000	1,435,000	2,870,000
Golden Valley	1,128,983	1,266,523	2,395,506	395,144	443,283	838,427
McHenry	64,272	74,328	138,600	22,495	26,015	48,510
McKenzie	5,100,000	5,100,000	10,200,000	1,435,000	1,435,000	2,870,000
McLean				-	-	
Mountrail	5,600,000	5,600,000	11,200,000	1,610,000	1,610,000	3,220,000
Renville	1,233,416	1,387,297	2,620,713	431,695	485,554	917,249
Slope	78,251	90,495	168,746	27,388	31,673	59,061
Stark	2,030,913	2,231,346	4,262,259	710,820	780,971	1,491,791
Ward	103,056	119,182	222,238	36,070	41,714	77,783
Williams	5,217,279	5,600,000	10,817,279	1,610,000	1,610,000	3,220,000
	\$ 39,925,000	\$ 42,098,053	\$ 82,023,053	\$ 12,494,271	\$ 12,943,094	\$ 25,437,365

(Targeted Amounts to be Dist Under HB 1304)



#3

# North Dakota Taxpayers' Association

HB 1324 Testimony and Supporting Data

- March 4<sup>th</sup>, 2009 -

---

Mr. Chairman and Members of the Committee,

HB 1324 is probably the most timely you will hear testimony on this session. As it was passed by the House, it offers \$100 million up-front in the form of a 30% refund of every North Dakotan's income tax return. I will say up front that the major problem with this bill is that it does not do enough.

By now, I am sure you have heard of the Minneapolis Federal Reserve report that says personal income in North Dakota will decrease by 15.4% this year. I have attached it to my testimony for the record.

15% less personal income means:

- 15% less individual income tax
- 15% less personal spending -> 15% less sales tax revenue
- Lower market prices for housing -> less property tax revenue -> higher property tax mill rates -> higher property taxes

This 15% reduction in personal income will affect all 3-legs of the so-called 3-legged stool.

The more of the surplus that can be back injected into the economy, the less local governments will have to increase property taxes because of sales tax shortfalls and a glut in the housing market.

For this reason, I would like to suggest to this committee to increase the upfront refund. I won't suggest how much, but the economic situation dictates that the more of the surplus that is reinjected into the economy the better.

If the legislature truly wants to prevent future and immediate property tax increases it will pass HB 1324.

Finally, if the legislature chooses to sit on this surplus, and not put it to work in the economy, it is doing the exact same thing that banks who took bailout money and are not lending it out.

- Dustin Gawrylow (Lobbyist #198)



**Attached Data**

1. Federal Reserve Report
2. Data – Personal Income vs. State Spending (1989-2009)\*
3. Graphs
  - a. Personal Income vs. General Fund Spending (1989-2009)\*
  - b. General Fund Spending as a Percentage of Personal Income (1989-2009)\*
4. General Fund Revenues By Source (1998-2008)\*\*
5. General Fund Revenues by Major Source (1998-2008)\*\*
6. State vs. Local Tax Collections (2007)\*\*

\*Source: North Dakota Taxpayers' Association Analysis

\*\*Source: N.D. Tax Commissioner's Office





**THE FEDERAL RESERVE BANK of MINNEAPOLIS**

[HOME](#) [CAREERS](#) [CONTACT US](#)

SEARCH

[Other Federal Reserve Sites](#)

- Events
- News Releases
- President's Messages
- Beige Book



**News Release**

Contacts: Patti Lorenzen  
Media Representative  
612-204-5261  
Patti.Lorenzen@mpls.frb.org

Toby Madden  
Regional Economist  
612-204-5372  
Toby.Madden@mpls.frb.org

- [fedgazette](#)
- [The Region](#)
- [Career Opportunities](#)
- [Too Big To Fail](#)
- [The Way Forward](#)
- [Managing the Expanded Safety Net](#)
- [Read more...](#)

**MINNEAPOLIS FED FORECASTS ECONOMIC DOWNTURN WILL CONTINUE THROUGH 2009 IN THE NINTH DISTRICT**

**MINNEAPOLIS, Feb. 11, 2009**—The economic downturn will continue through 2009 in the Ninth Federal Reserve District, according to the Federal Reserve Bank of Minneapolis' forecasting model. The Ninth District includes Minnesota, Montana, North and South Dakota, northwestern Wisconsin and the Upper Peninsula of Michigan. Employment by year-end is expected to be down from year-earlier levels and unemployment rates are expected to increase.

"Even though the employment forecast is disappointing, some good news is forecast for personal income which is forecast to increase modestly, and for housing units authorized, which are expected to increase after reaching historically low levels in fourth quarter 2008," said Toby Madden, regional economist at the Minneapolis Fed.

The 2009 forecast is based on predicted changes from fourth quarter 2008 to fourth quarter 2009, except for the unemployment rate, which is expressed in percent over the fourth quarter. The model is based on data through fourth quarter 2008 and does not incorporate recent and proposed monetary and fiscal policy actions.

**Nonfarm Employment**

Employment is expected to contract in 2009. Nonfarm employment will decrease in all areas except North Dakota, where growth of 1.1 percent is expected. The largest drop (6 percent) is expected in the Upper Peninsula of Michigan, followed by Wisconsin (3.2 percent), South Dakota (2.6 percent), Minnesota (2.3 percent) and Montana (0.5 percent).

**Unemployment Rate**

Unemployment rates in the fourth quarter of 2009 are predicted to climb above historical averages in all areas of the district. The highest unemployment rates are expected in the Upper Peninsula (14 percent), followed by Minnesota (7.8 percent), Wisconsin (6.9 percent), Montana (5.8 percent), North Dakota (4.4 percent) and South Dakota (4.2 percent).

**Personal Income**

Personal income is expected to grow modestly, but nevertheless slightly faster than in 2008. Personal income is expected to rise in 2009 in all states except North Dakota. The expected decrease in North Dakota (-15.4 percent) is likely attributed to the volatile nature of farm income.

**Housing Units Authorized**

After falling for several years to historically low levels, housing units authorized in 2009 are expected to increase in all states. In Minnesota, housing units authorized are expected to increase 102.9 percent to a seasonally adjusted annual 17,700 units in fourth quarter 2009 from a seasonally adjusted annual 8,700 units in fourth quarter 2008. The large percent increase is relative to the historically low level reached in the fourth quarter; the series peaked in Minnesota during fourth quarter 2003 at 41,500 units. Other increases in housing units authorized include Montana (18.1 percent), Wisconsin (10 percent), North Dakota (4.4 percent) and South Dakota (4.1 percent).

As one of the 12 Federal Reserve Banks, the Federal Reserve Bank of Minneapolis contributes to a variety of Federal Reserve System functions, including operation of a nationwide payments system, distribution of the nation's currency and coin, supervision and regulation of member banks and bank holding companies, and serving as a fiscal agent for the U.S. Treasury. Additionally, the president of the Minneapolis Fed serves as a member of the Federal Open Market Committee, the monetary policymaking arm of the Federal Reserve's Board of Governors. Together with its branch in Helena, Mont., the Minneapolis Fed serves the Ninth Federal Reserve District, which includes Minnesota.

**Related Links**

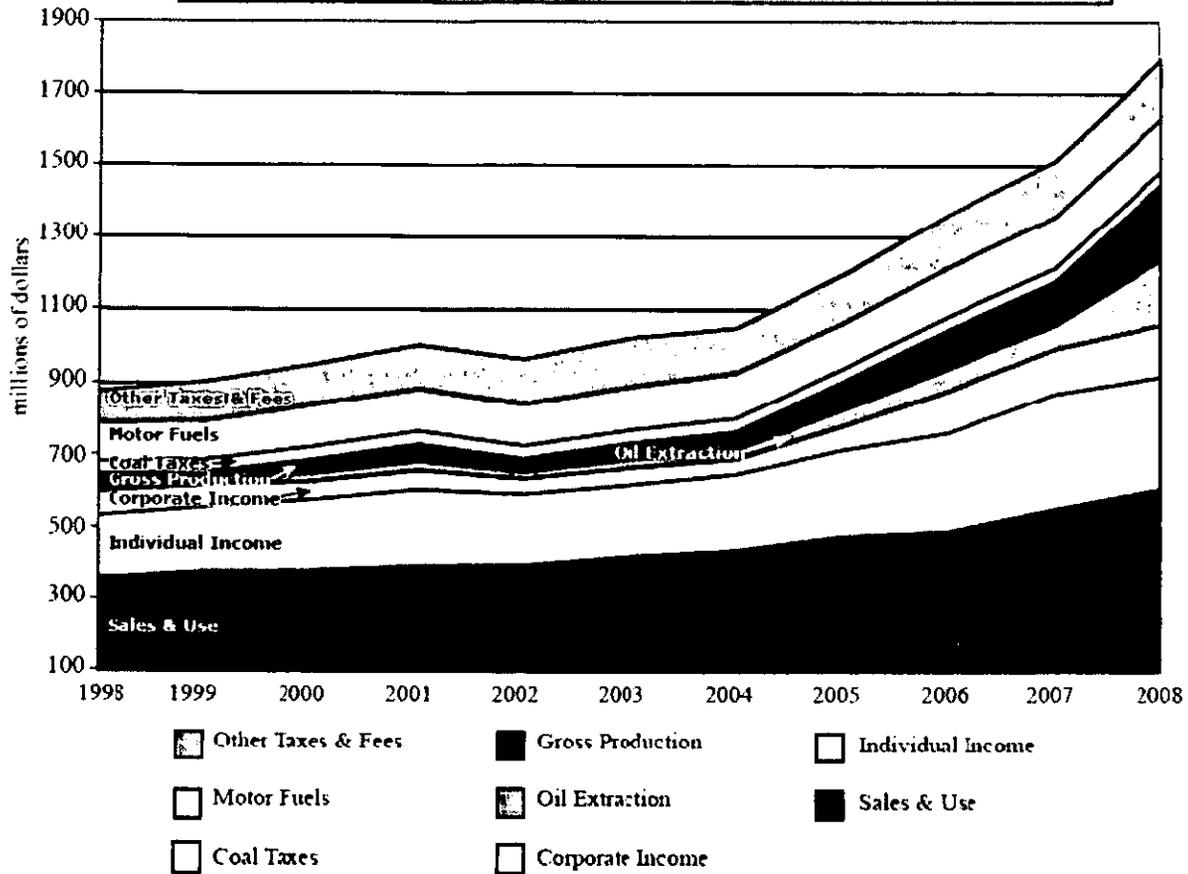
- [Ninth District Economic Forecasts](#)
- [Ninth District Data](#)
- [United States Data](#)

**External Links**

- [Bureau of Labor Statistics](#)



## Office of State Tax Commissioner Net Collections Fiscal Years 1998-2008



1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008

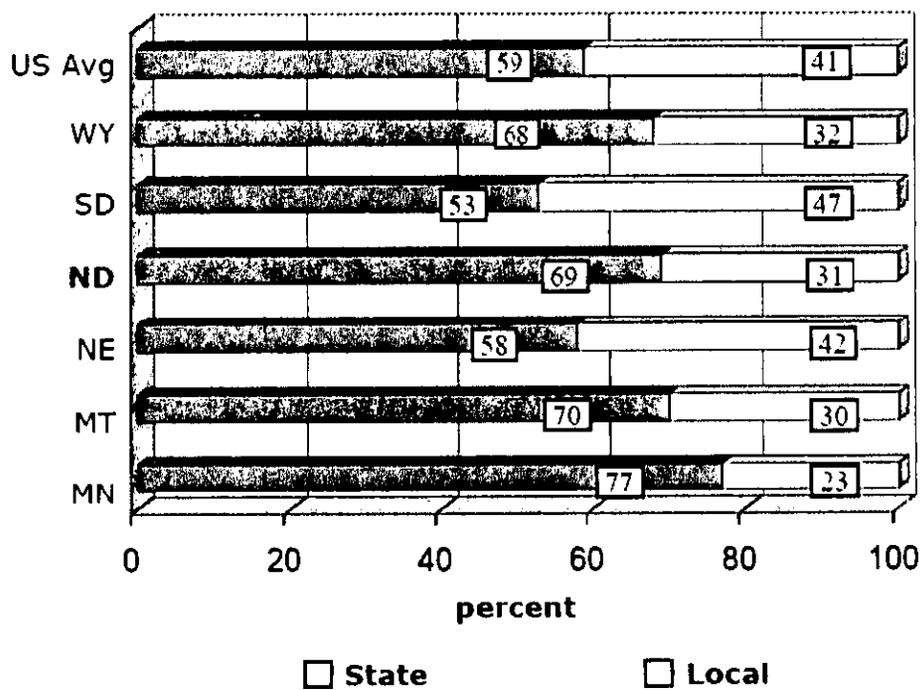
- Other Taxes & Fees
- Gross Production
- Individual Income
- Motor Fuels
- Oil Extraction
- Sales & Use
- Coal Taxes
- Corporate Income

Tax Type	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Sales & Use	363.2	383.2	386.6	398.6	401.6	424.9	441.4	480.6	495.6	556.0	611.6
Ind. Income	177.9	181.4	198.3	213.4	198.9	200.5	214.1	241.3	274.6	318.4	308.9
Corp. Income	65.5	57.9	47.5	51.6	41.6	46.0	40.3	62.7	111.8	120.0	140.7
Oil Extraction	15.3	12.1	21.0	24.8	17.1	22.6	25.6	45.6	61.8	67.2	182.4
Gross Production	29.5	22.7	38.0	46.0	36.5	43.5	47.5	74.0	104.4	118.8	209.4
Coal Taxes	37.3	38.3	39.0	39.5	38.2	39.4	40.6	37.7	39.8	40.9	39.0
Motor Fuels	105.1	103.1	111.8	112.7	111.7	115.3	119.9	122.2	134.1	140.0	144.0
Other Taxes & Fees	86.0	106.9	108.9	117.7	121.3	131.2	121.9	135.5	148.0	158.5	165.3
<b>Total Net Collections*</b>	<b>879.8</b>	<b>905.4</b>	<b>951.1</b>	<b>1004.3</b>	<b>966.9</b>	<b>1023.4</b>	<b>1051.3</b>	<b>1199.7</b>	<b>1370.0</b>	<b>1,519.8</b>	<b>1,801.3</b>

\*Totals may not sum due to rounding

SOURCE: Office of State Tax Commissioner

**State vs. Local Tax Collections**  
**Regional Comparison - 2007**



SOURCE: State Government Tax Collections: 2007 [www.census.gov/govs/statetax](http://www.census.gov/govs/statetax)

## North Dakota

### Personal Income vs. General Fund Spending

### 1989-2009

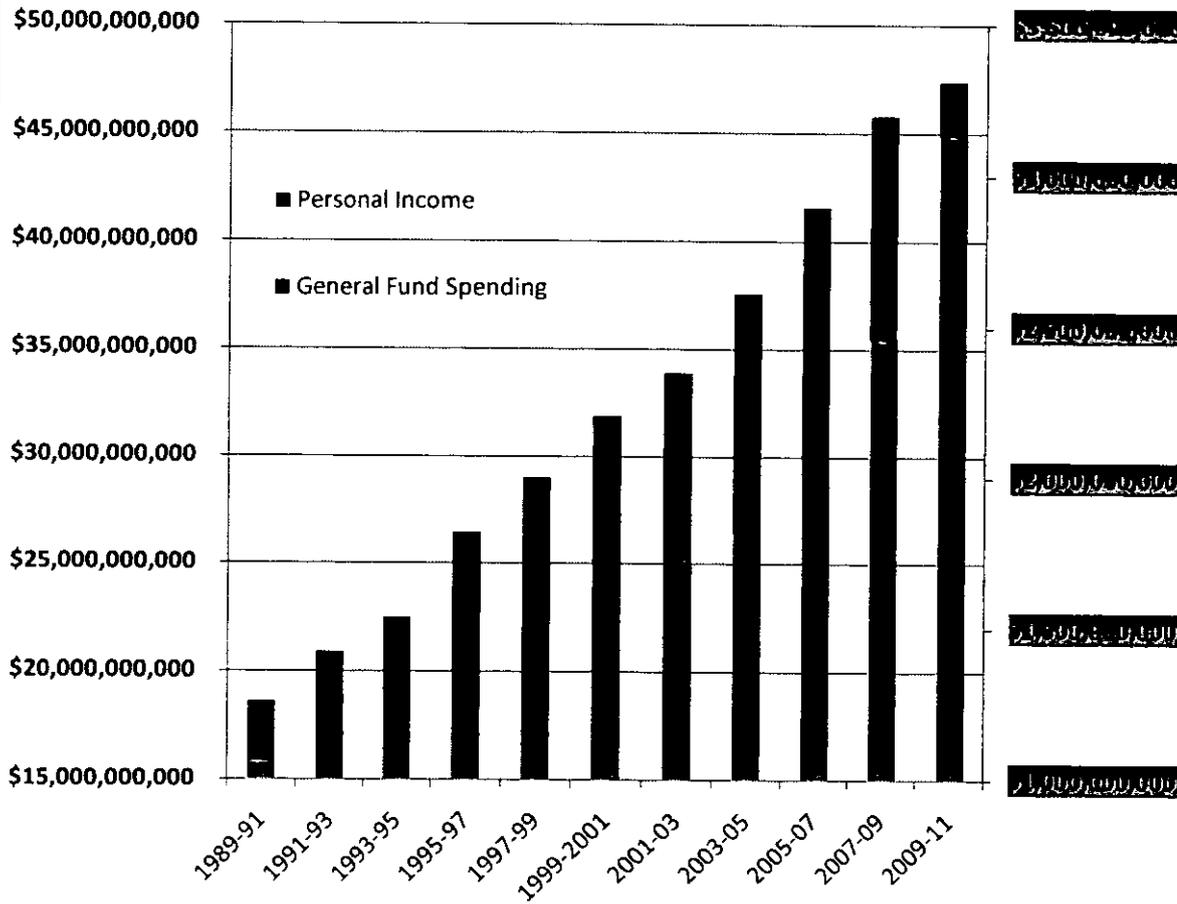
	<u>General Fund Spending</u> <sup>1</sup>	<u>General Fund Change %</u>	<u>Personal Income</u> <sup>1</sup>	<u>Income Change %</u>	<u>General Fund Spending As Percentage of Personal Income</u>
1989-91	\$1,061,507,822	0.26%	\$18,600,000,000	10.1%	5.71%
1991-93	\$1,202,891,103	13.3%	\$20,900,000,000	12.4%	5.76%
1993-95	\$1,251,925,967	4.1%	\$22,500,000,000	7.7%	5.56%
1995-97	\$1,352,467,281	8.0%	\$26,462,000,000	17.6%	5.11%
1997-99	\$1,510,747,421	11.7%	\$29,003,000,000	9.6%	5.21%
1999-2001	\$1,614,882,210	6.9%	\$31,879,000,000	9.9%	5.07%
2001-03	\$1,728,640,384	7.0%	\$33,908,000,000	6.4%	5.10%
2003-05	\$1,816,885,505	5.1%	\$37,571,000,000	10.8%	4.84%
2005-07	\$2,000,537,074	10.1%	\$41,553,000,000	10.6%	4.81%
2007-09	\$2,461,973,956	23.1%	\$45,799,000,000	10.2%	5.38%
2009-11	\$3,135,581,237 <sup>2</sup>	27.4%	\$47,381,472,900 <sup>3</sup>	3.5% <sup>3</sup>	6.62%

<sup>1</sup> <http://www.legis.nd.gov/fiscal/biennium-reports/60-2007/budgetanalysis/legislative/pdf/legislativebudget/apprpersonalincome.pdf>

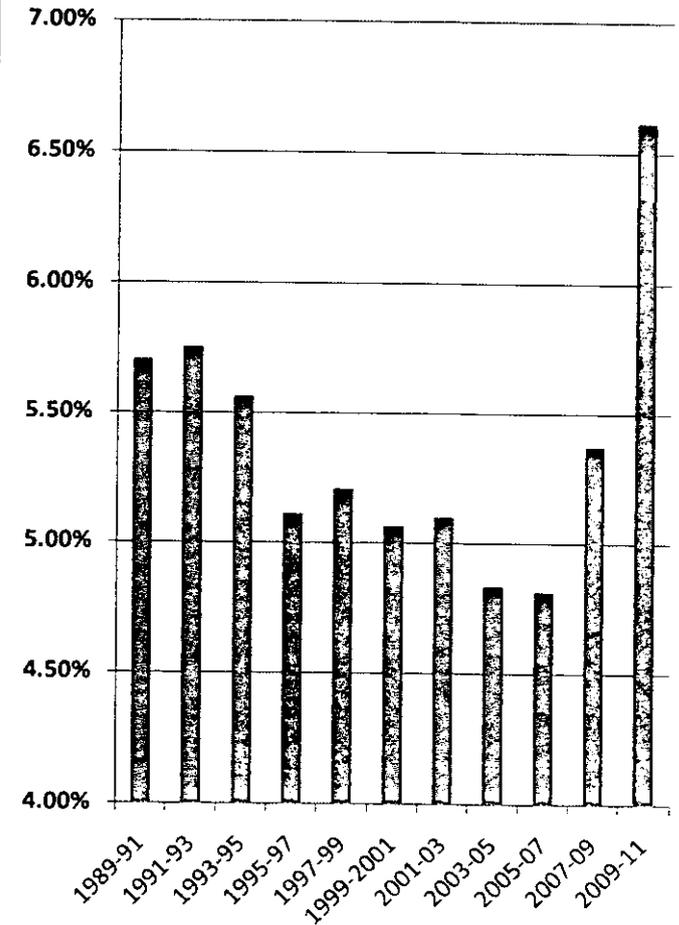
<sup>2</sup> <http://www.legis.nd.gov/fiscal/biennium-reports/61-2009/budget-status/prevapprops.pdf>

<sup>3</sup> Based on 15.4% reduction in 2009 (Source: [http://www.minneapolisfed.org/news\\_events/rel/2009/forecast.cfm](http://www.minneapolisfed.org/news_events/rel/2009/forecast.cfm)), and a 6% increase in 2010

### Personal Income vs. General Fund Spending (1989-2009)



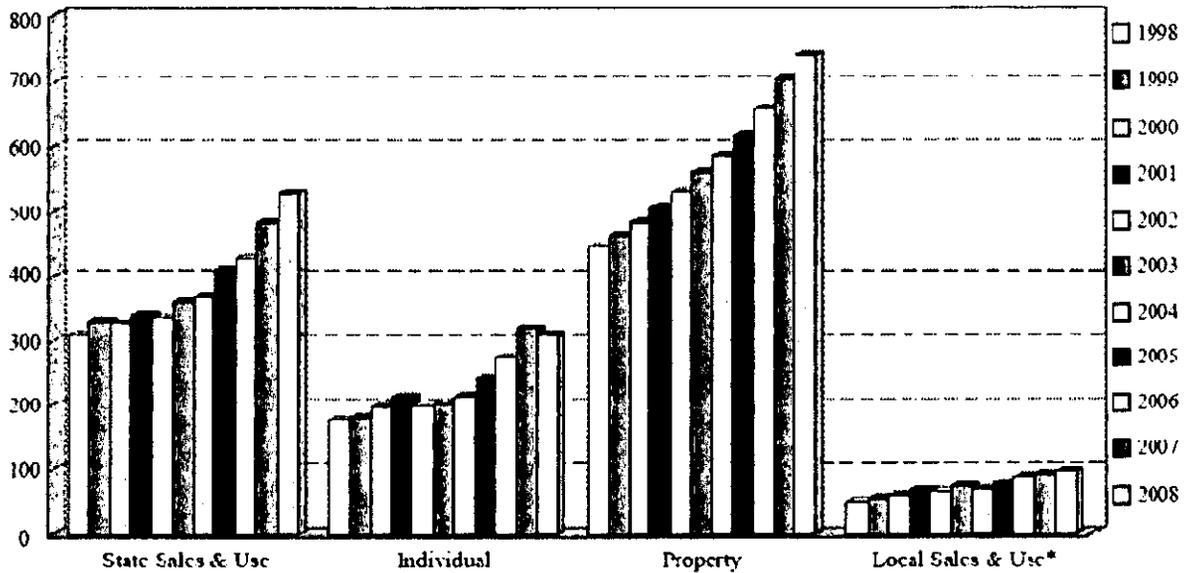
### General Fund Spending As Percentage of Personal Income



- 2009-11 General Fund spending on-pace for a 55% increase over the 2005-07 budget.
- 2009-11 Personal Income on-pace for a 14% increase over 2005-07 levels.
- General Fund Spending as a percentage of Personal Income on-pace to exceed 20-year highs.

## Source of Major State and Local Taxes 1998-2008

Millions



Major State Sources

Major Local Sources

Fiscal Year	State Sales & Use Tax	Individual Income Tax	Property Tax	Local Sales & Use Tax*
1998	308,636,371	177,904,251	447,582,274	48,929,646
1999	331,027,859	181,389,034	465,203,396	54,058,001
2000	326,261,978	197,101,325	486,194,264	58,711,263
2001	340,114,569	213,447,150	509,037,721	66,961,363
2002	335,598,693	198,922,525	532,629,675	65,368,838
2003	360,908,220	200,528,205	560,751,909	73,666,551
2004	368,323,637	214,145,899	586,412,017	68,644,854
2005	411,553,511	241,319,731	618,065,693	78,761,151
2006	428,906,406	274,621,741	659,789,376	87,563,544
2007	485,986,114	318,433,494	706,427,621	92,143,032
2008	530,283,623	308,889,352	740,540,738	96,566,720

\* The local sales tax figures do not include city occupancy or city restaurant and lodging taxes.

#4

Chairman and members of Senate Finance and Taxation

My name is Wayne Papke, I am here today representing Citizens for Responsible Government, a volunteer group. I am a financial advisor by profession.

I am here today to ask your support of HB 1324.

The Federal Reserve bank out of Minneapolis recently released their forecast that personal income for North Dakota residents is expected to decline 15.4% just in 2009.

We are facing pressures on the energy market, the agriculture markets and many other industries. Recently Goodrich Corporation from Jamestown, Bobcat, MDU and Microsoft, just to mention a few, have all announced sizeable layoffs here in North Dakota.

We all feel the pain of our capital markets in that our stock market is down approximately 50% off its highs. We have a tough situation.

We are always approximately 6 months behind the national economy in the effects of an economic downturn. We have just begun to feel the effects.

We need to lessen the impact of the recession we are entering here in this state. We can avert deepening problems like many states where stimulus money and tax cuts are coming too late and a lot of damage has been done to individuals as well as the negative impact to state and local budgets. This bill will pay you back. Stimulating our North Dakota economy now before the recession deepens here will provide returns for years to come on this investment. Keeping our business' healthy and profitable will in turn generate tax revenue.

We are the lucky ones if this bill is acted on favorably. This bill serves a timely purpose to save us from a deeper recession in this state. Most states did not have the opportunity nor the foresight we can have in returning money to the people who paid it in the first place, our citizens. We are doubly fortunate in that unlike 48 other states, we have a surplus. Let's not waste this surplus by spending it, let's return it as an investment to the citizens of this state in this time of need.

I ask you to support HB 1324 as a timely and fortunate investment in maintaining a healthy economy in North Dakota.

#16

*Also given to Senate Appropri.*

**Distribution of Fiscal Impact of HB 1279 - Individual Income Tax Rate Reduction**  
**Top Rate of 5.12% and all other Rates Reduced by 42 Basis Points**  
**Fiscal Impact shown by Tax Bracket and by Taxable Income Category**  
**(Based on Actual 2006 Liabilities)**

		Fiscal Impact by Tax Bracket					
Current Rate	Proposed Rate	Single	Married-joint	Married-separate	Head of Household	Qual widow	Total
2.10%	1.68%	(6,930,643)	(17,647,941)	(178,118)	(1,028,677)	(15,995)	(25,801,374)
3.92%	3.50%	(1,389,018)	(5,730,104)	(56,025)	(133,812)	(3,855)	(7,312,814)
4.34%	3.92%	(409,165)	(1,458,815)	(14,142)	(29,908)	(1,048)	(1,913,078)
5.04%	4.62%	(250,219)	(1,500,455)	(15,963)	(26,583)	(1,212)	(1,794,432)
5.54%	5.12%	(526,740)	(3,909,684)	(79,823)	(83,779)		(4,600,026)
		(9,505,785)	(30,246,999)	(344,071)	(1,302,759)	(22,110)	(41,421,724)

In the above statistics, all filers share in the benefit of \$25.8 million in the bottom bracket, because all income is subject to taxation in the bottom bracket. It is **not accurate** to conclude that \$25.8 million in benefit accrues to taxpayers in the bottom bracket. In fact, it accrues to all taxpayers who have income taxed in that bracket.

An alternative method of examining the distribution of the tax relief is to view it by taxable income category, instead of by tax bracket. Here, the entire impact of all applicable rate reductions for taxpayers in the category are combined.

		Fiscal Impact by Taxable Income Category					
Taxable Income Category		Single	Married-joint	Married-separate	Head of Household	Qual widow	Total
\$0	to \$50,000	(6,479,269)	(7,541,018)	(173,136)	(882,320)	(8,851)	(15,084,594)
\$50,000	to \$100,000	(1,480,657)	(10,079,731)	(47,049)	(192,676)	(7,052)	(11,807,165)
\$100,000	to \$250,000	(624,090)	(5,429,716)	(33,381)	(93,936)	(2,743)	(6,183,866)
\$250,000	to \$500,000	(283,677)	(2,376,233)	(13,298)	(39,419)	(3,464)	(2,716,091)
Over	\$500,000	(638,092)	(4,820,301)	(77,207)	(94,408)		(5,630,008)
		(9,505,785)	(30,246,999)	(344,071)	(1,302,759)	(22,110)	(41,421,724)

		Count of 2006 Taxpayers in Taxable Income Category					
Taxable Income Category		Single	Married-joint	Married-separate	Head of Household	Qual widow	Total
\$0	to \$50,000	109,739	73,187	2,501	14,556	126	200,109
\$50,000	to \$100,000	6,452	40,225	220	782	29	47,708
\$100,000	to \$250,000	1,433	11,724	72	202	10	13,441
\$250,000	to \$500,000	313	2,426	23	42	3	2,807
Over	\$500,000	301	1,987	52	33		2,373
		118,238	129,549	2,868	15,615	168	266,438

		Average Reduction per Taxpayer in Taxable Income Category					
Taxable Income Category		Single	Married-joint	Married-separate	Head of Household	Qual widow	Total
\$0	to \$50,000	(59)	(103)	(69)	(61)	(70)	(75)
\$50,000	to \$100,000	(229)	(251)	(214)	(246)	(243)	(247)
\$100,000	to \$250,000	(436)	(463)	(464)	(465)	(274)	(460)
\$250,000	to \$500,000	(906)	(979)	(578)	(939)	(1,155)	(968)
Over	\$500,000	(2,120)	(2,426)	(1,485)	(2,861)		(2,373)

		Average Percent Reduction per Taxpayer in Taxable Income Category					
Taxable Income Category		Single	Married-joint	Married-separate	Head of Household	Qual widow	Total
\$0	to \$50,000	-19.09%	-20.12%	-18.19%	-20.01%	-20.19%	-19.52%
\$50,000	to \$100,000	-13.76%	-16.59%	-13.11%	-15.38%	-17.61%	-15.29%
\$100,000	to \$250,000	-11.17%	-12.54%	-10.29%	-12.03%	-13.03%	-11.81%
\$250,000	to \$500,000	-9.49%	-9.86%	-8.39%	-9.98%	-10.32%	-9.61%
Over	\$500,000	-8.39%	-8.07%	-7.76%	-7.66%		-7.97%

The fiscal impact shown here is computed using the actual 2006 returns filed with the Office of Tax Commissioner. If enacted, HB 1279 will become effective on 2009 income tax returns. The revenue loss associated with these rate reductions is expected to grow approximately 5.5% per year. Therefore, the fiscal impact of HB 1279 is approximately -\$100 million for the 2009-11 biennium.

#7

90532.0100

Sixty-first  
Legislative Assembly  
of North Dakota

HOUSE BILL NO. 1279

Introduced by

Representatives Drovdal, Headland, S. Meyer, Nathe

Senators Christmann, Miller

1 A BILL for an Act to amend and reenact subsection 1 of section 57-38-30.3 of the North Dakota  
2 Century Code, relating to a reduction in income tax rates for individuals, estates, and trusts; and  
3 to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 57-38-30.3 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 1. A tax is hereby imposed for each taxable year upon income earned or received in  
8 that taxable year by every resident and nonresident individual, estate, and trust. A  
9 taxpayer computing the tax under this section is only eligible for those adjustments  
10 or credits that are specifically provided for in this section. Provided, that for  
11 purposes of this section, any person required to file a state income tax return under  
12 this chapter, but who has not computed a federal taxable income figure, shall  
13 compute a federal taxable income figure using a pro forma return in order to  
14 determine a federal taxable income figure to be used as a starting point in  
15 computing state income tax under this section. The tax for individuals is equal to  
16 North Dakota taxable income multiplied by the rates in the applicable rate schedule  
17 in subdivisions a through d corresponding to an individual's filing status used for  
18 federal income tax purposes. For an estate or trust, the schedule in subdivision e  
19 must be used for purposes of this subsection.

20 a. Single, other than head of household or surviving spouse.

21	If North Dakota taxable income is:	The tax is equal to:
22	Not over <del>\$27,050</del> <u>\$33,950</u>	<del>2.40%</del> <u>1.68%</u>
23	Over <del>\$27,050</del> <u>\$33,950</u> but not	<del>\$568.05</del> <u>\$570.36</u> plus <del>3.92%</del> <u>3.50%</u>
24	over <del>\$65,550</del> <u>\$82,250</u>	of amount over <del>\$27,050</del> <u>\$33,950</u>

Sixty-first  
Legislative Assembly

1	Over <del>\$65,550</del> <u>\$82,250</u> but not	<del>\$2,077.25</del> <u>\$2,260.86</u> plus 4.34% <u>3.92%</u>
2	over <del>\$136,750</del> <u>\$171,550</u>	of amount over <del>\$65,550</del> <u>\$82,250</u>
3	Over <del>\$136,750</del> <u>\$171,550</u> but not	<del>\$5,167.33</del> <u>\$5,761.42</u> plus 6.04% <u>4.62%</u>
4	over <del>\$297,350</del> <u>\$372,950</u>	of amount over <del>\$136,750</del> <u>\$171,550</u>
5	Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$13,261.57</del> <u>\$15,066.10</u> plus 5.54% <u>5.12%</u>
6		of amount over <del>\$297,350</del> <u>\$372,950</u>
7	b. Married filing jointly and surviving spouse.	
8	If North Dakota taxable income is:	The tax is equal to:
9	Not over <del>\$45,200</del> <u>\$56,750</u>	<del>2.10%</del> <u>1.68%</u>
10	Over <del>\$45,200</del> <u>\$56,750</u> but not	<del>\$949.29</del> <u>\$953.40</u> plus 3.92% <u>3.50%</u>
11	over <del>\$109,250</del> <u>\$137,050</u>	of amount over <del>\$45,200</del> <u>\$56,750</u>
12	Over <del>\$109,250</del> <u>\$137,050</u> but not	<del>\$3,459.96</del> <u>\$3,763.90</u> plus 4.34% <u>3.92%</u>
13	over <del>\$166,500</del> <u>\$208,850</u>	of amount over <del>\$109,250</del> <u>\$137,050</u>
14	Over <del>\$166,500</del> <u>\$208,850</u> but not	<del>\$6,944.61</del> <u>\$6,578.46</u> plus 6.04% <u>4.62%</u>
15	over <del>\$297,350</del> <u>\$372,950</u>	of amount over <del>\$166,500</del> <u>\$208,850</u>
16	Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$12,539.45</del> <u>\$14,159.88</u> plus 6.54% <u>5.12%</u>
17		of amount over <del>\$297,350</del> <u>\$372,950</u>
18	c. Married filing separately.	
19	If North Dakota taxable income is:	The tax is equal to:
20	Not over <del>\$22,600</del> <u>\$28,375</u>	<del>2.10%</del> <u>1.68%</u>
21	Over <del>\$22,600</del> <u>\$28,375</u> but not	<del>\$474.69</del> <u>\$476.70</u> plus 3.92% <u>3.50%</u>
22	over <del>\$54,625</del> <u>\$68,525</u>	of amount over <del>\$22,600</del> <u>\$28,375</u>
23	Over <del>\$54,625</del> <u>\$68,525</u> but not	<del>\$1,729.98</del> <u>\$1,881.95</u> plus 4.34% <u>3.92%</u>
24	over <del>\$83,250</del> <u>\$104,425</u>	of amount over <del>\$54,625</del> <u>\$68,525</u>
25	Over <del>\$83,250</del> <u>\$104,425</u> but not	<del>\$2,972.31</del> <u>\$3,289.23</u> plus 6.04% <u>4.62%</u>
26	over <del>\$148,675</del> <u>\$186,475</u>	of amount over <del>\$83,250</del> <u>\$104,425</u>
27	Over <del>\$148,675</del> <u>\$186,475</u>	<del>\$6,269.73</del> <u>\$7,079.94</u> plus 6.54% <u>5.12%</u>
28		of amount over <del>\$148,675</del> <u>\$186,475</u>
29	d. Head of household.	
30	If North Dakota taxable income is:	The tax is equal to:
31	Not over <del>\$36,250</del> <u>\$45,500</u>	<del>2.10%</del> <u>1.68%</u>

Sixty-first  
Legislative Assembly

1	Over <del>\$36,250</del> <u>\$45,500</u> but not	<del>\$761.26</del> <u>\$764.40</u> plus <del>3.02%</del> <u>3.50%</u>
2	over <del>\$93,650</del> <u>\$117,450</u>	of amount over <del>\$36,250</del> <u>\$45,500</u>
3	Over <del>\$93,650</del> <u>\$117,450</u> but not	<del>\$3,011.33</del> <u>\$3,282.65</u> plus <del>4.34%</del> <u>3.92%</u>
4	over <del>\$151,650</del> <u>\$190,200</u>	of amount over <del>\$93,650</del> <u>\$117,450</u>
5	Over <del>\$151,650</del> <u>\$190,200</u> but not	<del>\$5,528.53</del> <u>\$6,134.45</u> plus <del>5.04%</del> <u>4.62%</u>
6	over <del>\$297,350</del> <u>\$372,950</u>	of amount over <del>\$151,650</del> <u>\$190,200</u>
7	Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$12,871.81</del> <u>\$14,577.50</u> plus <del>5.54%</del> <u>5.12%</u>
8		of amount over <del>\$297,350</del> <u>\$372,950</u>

e. Estates and trusts.

10	If North Dakota taxable income is:	The tax is equal to:
11	Not over <del>\$1,800</del> <u>\$2,300</u>	<del>2.10%</del> <u>1.68%</u>
12	Over <del>\$1,800</del> <u>\$2,300</u> but not	<del>\$37.80</del> <u>\$38.64</u> plus <del>3.92%</del> <u>3.50%</u>
13	over <del>\$4,250</del> <u>\$5,350</u>	of amount over <del>\$1,800</del> <u>\$2,300</u>
14	Over <del>\$4,250</del> <u>\$5,350</u> but not	<del>\$133.84</del> <u>\$145.39</u> plus <del>4.34%</del> <u>3.92%</u>
15	over <del>\$6,500</del> <u>\$8,200</u>	of amount over <del>\$4,250</del> <u>\$5,350</u>
16	Over <del>\$6,500</del> <u>\$8,200</u> but not	<del>\$231.49</del> <u>\$257.11</u> plus <del>5.04%</del> <u>4.62%</u>
17	over <del>\$8,900</del> <u>\$11,150</u>	of amount over <del>\$6,500</del> <u>\$8,200</u>
18	Over <del>\$8,900</del> <u>\$11,150</u>	<del>\$352.45</del> <u>\$393.40</u> plus <del>5.54%</del> <u>5.12%</u>
19		of amount over <del>\$8,900</del> <u>\$11,150</u>

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

1 g. For taxable years beginning after December 31, ~~2004~~ 2009, the tax  
2 commissioner shall prescribe new rate schedules that apply in lieu of the  
3 schedules set forth in subdivisions a through e. The new schedules must be  
4 determined by increasing the minimum and maximum dollar amounts for each  
5 income bracket for which a tax is imposed by the cost-of-living adjustment for  
6 the taxable year as determined by the secretary of the United States treasury  
7 for purposes of section 1(f) of the United States Internal Revenue Code of  
8 1954, as amended. For this purpose, the rate applicable to each income  
9 bracket may not be changed, and the manner of applying the cost-of-living  
10 adjustment must be the same as that used for adjusting the income brackets  
11 for federal income tax purposes.

12 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
13 December 31, 2008.

Wednesday, March 18, 2009

# The Jamestown Sun

ONLINE EDITION

Subscribe Today

marketplace [add your business](#)

Arts & Entertainment | Food & Dining | Services  
Retail | Automobiles | Travel & Accommodations

Search:

[Log In](#) | [Register](#)

 News 

[jobsHQ](#)

[carsHQ](#)

[apartmentsHQ](#)

[Classifieds](#)

[Northland Outdoors](#) [Agweek](#)

[Home Corrections](#) [Business](#)

[Community](#) [ND State Wire](#)

[Opinion](#) [Sports](#) [Slideshows](#)

[ShopJamestown.net](#) [Local](#)

[Videos](#) [News](#) [Weather](#) [Education](#)

[Obituaries](#) [Weddings &](#)

[Engagements](#) [Click here to make](#)

[The Jamestown Sun your homepage](#)

[Talk Food](#) [Photo Galleries](#)

[Pictures!](#) [Calendar](#) [Farm](#) [Religion](#)

[Outdoors](#) [Births](#)

[Movie Listings](#) [Promotions](#)

[Marketplace](#) [Personals](#)

[Newspaperprints](#) [Archive](#)

[Member Center](#) [Company Site](#)

[Contact Us](#) [Resources](#) [Subscribe](#)

[Yellow Pages](#)

[RSS Feeds](#)

## Readers: We want N.D. stimulus cash

### The Jamestown Sun Published Wednesday, March 18, 2009

Last week, The Jamestown Sun asked readers of its Web site the question "Should the North Dakota Legislature spend \$100 million on income tax benefits to stimulate the state economy?" Here are the results of the unscientific survey:

Yes  
54 percent (252 responses)

No  
32.8 percent (153)

Maybe  
5.3 percent (25)

I do not live in North Dakota  
4.9 percent (23)

I do not care  
3 percent (14)

Total responses: 467

The next question for Sun readers to consider is "Will there be more snow this spring?" Readers can answer by logging on to [www.jamestownsun.com](http://www.jamestownsun.com).

Text Size: [A](#) [A](#) [A](#)

#### Save and share



WEDGCO, INC. Major Steel Building Manufacturing Immediate O...

CAVENDISH, a potato manufacturing plant (French fr...

General Manager FS Hotel Jamestown ND Inquire at: [www.yello...](http://www.yello...)

Expanding our staff. Fulltime salesperson earn \$25,000 - \$4...

Employment Opportunity POSITION: Instructional Specialis...

[view all HotJobs »](#)



[view employer jobs »](#)





Testimony of Jeb Oehlke  
North Dakota Chamber of Commerce  
HB 1324  
March 23, 2009

Mr. Chairman and committee members my name is Jeb Oehlke. I represent the North Dakota Chamber of Commerce, the voice of North Dakota business. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes statewide associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For the purposes of this hearing we also represent sixteen local chambers with total membership over 7,200 members. As a group we stand in support of HB 1324 and urge a favorable committee recommendation.

HB 1324 is one of four bills which make up a comprehensive tax reduction package for the citizens and businesses of North Dakota. The property tax reduction bill passed the Senate prior to crossover and now resides in the House. The other two propose to reduce corporate income tax rates and the rate at which dividend income is taxed. In our opinion the passage of all four of these bills will send the message that North Dakota is confident about the economic future of the state and will greatly encourage business development and expansion within the state.

I have heard several legislators, including some members of this committee, say North Dakota voters rejected this income tax decrease in November. We disagree with that statement. In our opinion the voters rejected an unreasonable, unsustainable and fiscally unsound tax decrease in favor of the legislature moving forward with a proposal from the Governor which is reasonable, sustainable and fiscally sound.

On behalf of the 20,000 plus businesses operating in this state whose taxes are paid through their personal income taxes of the business owners and all of the citizens of North Dakota who pay personal income taxes, I thank you for the opportunity to appear before you today and ask for your support of HB 1324. I am happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*

March 23, 2009

SUPPORT: HB 1324

Senate Appropriations Committee  
ND Senate  
State Capitol  
Bismarck, North Dakota 58505

Senate Holmberg and Members of the Senate Appropriations Committee:

My name is Robert W. Harms of Bismarck, North Dakota. I am urging your support of HB 1324, a bill which will reduce income taxes on men and women and small businesses in North Dakota.

Why you should support lower personal income taxes in North Dakota:

1. Good policy to let working men and women and North Dakota businesses keep more of the money they earn. Let them decide how best to spend the money they earn.
2. Makes North Dakota more competitive (many of businesses are structured to pay personal income tax, rather than corporate income tax).
3. Good for our economy, to allow those dollars be invested by the private sector
4. Help to retain North Dakota citizens by increasing their disposable income. (We all know people who have moved, have changed their residence to another state, or are planning to move because of the tax burden they feel here at home).

What are some of the arguments against lowering the tax on the citizens of North Dakota?

1. "We can't afford it---the state needs the money".
  - a. (We had \$1.2 billion surplus 90 days ago and will increase spending by 26%--- leaving projected ending fund balances/reserves of \$800 million to \$1 billion).
2. "None of my constituents is clamoring for income tax relief...property tax is the issue".
  - a. True, but none of your constituents is clamoring to increase general fund spending by 26% either. Property taxes are paid with income.
3. "Voters rejected the income tax measure in November 2008".
  - a. True. Voters were told..."Measures 1 and 2 pass----you won't get property tax relief", and the Governor rolled out his own \$100 million income tax measure. Voters were told, "let the legislature craft its own income tax relief".

I ask for your SUPPORT for HB 1324 and let the working men and women of our state keep more of the money they earn.

Thank you.

Robert W. Harms

## Comparison of the Individual Income Tax Rate Reductions By Taxable Income Categories Contained in HB 1324 and SB 2199 (As of April 9, 2009)

	HB 1324	SB 2199
<b>Rates</b>	<b>1.70%-3.40%-3.60%-4.25%-5.00%</b>	<b>1.87%-3.49%-3.87%-4.49%-4.94%</b>
<b>Brackets</b>	Same as Current Law	Same as Current Law
<b>Approx. Annual Fiscal Impact</b>	-\$57 million	-\$40 million
<b>Decrease in Tax Liabilities</b>	Average	Average
<b>By Taxable Income Category:</b>	Decrease	Decrease
	Total Decrease	Total Decrease
	Per Return	Per Return
	Per Return	Per Return
\$0 to \$25,000	\$ (5,294,780) \$ (40.76) -19.0%	\$ (3,046,888) \$ (23.44) -11.0%
\$25,000 to \$50,000	(9,348,230) (135.00) -18.6%	(5,515,636) (79.63) -11.0%
\$50,000 to \$100,000	(13,855,743) (258.16) -16.7%	(9,081,659) (169.17) -11.0%
\$100,000 to \$250,000	(9,478,637) (577.82) -15.4%	(6,718,233) (409.37) -10.9%
\$250,000 to \$500,000	(4,993,290) (1,494.10) -15.2%	(3,591,147) (1,073.59) -10.9%
Over \$500,000	(9,219,530) (3,355.00) -11.0%	(9,114,625) (3,315.61) -10.8%
<b>Overall Average Decrease per Return</b>	Approximately -15.4%	Approximately -10.9%

Taxable income statistics are based on actual 2007 returns filed at the time of the model run.

Prepared by: Office of Tax Commissioner  
 Kathryn L. Strombeck  
 April 9, 2009

**Distribution of Fiscal Impact of HB 1324 - Individual Income Tax Rate Reduction**  
**Rates Ranging from 1.7% to 5.0% - with -\$57 million Annual Fiscal Impact**  
**Fiscal Impact shown by Tax Bracket and by Taxable Income Category**  
**(Based on Actual 2007 Liabilities)**

Current Rate	Proposed Rate	Fiscal Impact by Tax Bracket					Total
		Single	Married-joint	Married-separate	Head of Household	Qual widow	
2.10%	1.70%	(7,314,497)	(18,203,891)	(179,331)	(1,043,416)	(13,389)	(26,754,525)
3.92%	3.40%	(2,066,646)	(8,183,844)	(73,491)	(177,213)	(3,237)	(10,504,431)
4.34%	3.60%	(912,875)	(3,051,175)	(28,441)	(59,069)	(891)	(4,052,451)
5.04%	4.25%	(602,081)	(3,353,607)	(31,077)	(57,909)	(23)	(4,044,697)
5.54%	5.00%	(972,366)	(5,401,910)	(287,399)	(172,431)		(6,834,107)
		(11,868,466)	(38,194,427)	(599,739)	(1,510,038)	(17,539)	(52,190,210)

In the above statistics, all filers share in the benefit of \$26.8 million in the bottom bracket, because all income is subject to taxation in the bottom bracket. It is not accurate to conclude that \$26.8 million in benefit accrues to taxpayers in the bottom bracket. In fact, it accrues to all taxpayers who have income taxed in that bracket.

An alternative method of examining the distribution of the tax relief is to view it by taxable income category, instead of by tax bracket. Here, the entire impact of all applicable rate reductions for taxpayers in the category are combined.

Taxable Income Category	Fiscal Impact by Taxable Income Category					Total
	Single	Married-joint	Married-separate	Head of Household	Qual widow	
\$0 to \$25,000	(3,293,414)	(1,446,875)	(84,828)	(465,826)	(3,837)	(5,294,780)
\$25,000 to \$50,000	(3,406,412)	(5,440,907)	(87,687)	(408,811)	(4,413)	(9,348,230)
\$50,000 to \$100,000	(2,124,193)	(11,430,839)	(65,765)	(228,893)	(6,052)	(13,855,743)
\$100,000 to \$250,000	(1,197,384)	(8,092,776)	(49,851)	(135,389)	(3,236)	(9,478,637)
\$250,000 to \$500,000	(576,743)	(4,319,542)	(28,086)	(68,919)		(4,993,290)
Over \$500,000	(1,270,320)	(7,463,487)	(283,524)	(202,200)		(9,219,530)
	(11,868,466)	(38,194,427)	(599,739)	(1,510,038)	(17,539)	(52,190,210)

Taxable Income Category		Count of 2007 Taxpayers in Taxable Income Category					Total
\$0 to \$25,000	86,503	29,896	1,800	11,632	81	129,912	
\$25,000 to \$50,000	25,974	39,391	689	3,155	37	69,246	
\$50,000 to \$100,000	8,214	44,284	243	908	22	53,671	
\$100,000 to \$250,000	1,893	14,203	75	227	6	16,404	
\$250,000 to \$500,000	397	2,860	27	58	-	3,342	
Over \$500,000	349	2,305	61	33	-	2,748	
	123,330	132,939	2,895	16,013	146	275,323	

Taxable Income Category		Average Reduction per Taxpayer in Taxable Income Category					Total
\$0 to \$25,000	(38)	(48)	(47)	(40)	(47)	(41)	
\$25,000 to \$50,000	(131)	(138)	(127)	(130)	(119)	(135)	
\$50,000 to \$100,000	(259)	(258)	(271)	(252)	(275)	(258)	
\$100,000 to \$250,000	(633)	(570)	(665)	(596)	(539)	(578)	
\$250,000 to \$500,000	(1,453)	(1,510)	(1,040)	(1,188)		(1,494)	
Over \$500,000	(3,640)	(3,238)	(4,648)	(6,127)		(3,355)	

Taxable Income Category		Average Percent Reduction per Taxpayer in Taxable Income Category					Total
\$0 to \$25,000	-19.06%	-19.06%	-19.09%	-19.08%	-19.62%	-19.18%	
\$25,000 to \$50,000	-17.88%	-19.06%	-17.08%	-18.91%	-19.03%	-18.39%	
\$50,000 to \$100,000	-15.37%	-17.03%	-15.18%	-16.27%	-16.85%	-16.14%	
\$100,000 to \$250,000	-15.94%	-15.37%	-15.29%	-15.47%	-15.53%	-15.52%	
\$250,000 to \$500,000	-15.49%	-15.18%	-12.09%	-15.19%		-14.49%	
Over \$500,000	-10.83%	-11.07%	-10.10%	-10.41%		-10.60%	

The fiscal impact shown here is computed using the actual 2007 returns filed with the Office of Tax Commissioner. The impact is expected to increase to -\$57 million for the tax years affected by the reductions.

**Distribution of Fiscal Impact of SB 2199 (Majority Report) - Individual Income Tax Rate Reduction**  
**All Rates Reduced by Equal Percentage - with -\$80 million Biennial Fiscal Impact**  
**Fiscal Impact shown by Tax Bracket and by Taxable Income Category**  
**(Based on Actual 2007 Liabilities)**

		Fiscal Impact by Tax Bracket					
Current Rate	Proposed Rate	Single	Married-joint	Married-separate	Head of Household	Qual widow	Total
2.10%	1.87%	(4,217,175)	(10,445,641)	(103,661)	(601,282)	(7,692)	(15,375,451)
3.92%	3.49%	(1,704,738)	(6,795,458)	(60,728)	(145,595)	(2,685)	(8,709,204)
4.34%	3.87%	(579,903)	(1,937,635)	(18,074)	(37,598)	(566)	(2,573,776)
5.04%	4.49%	(419,770)	(2,334,779)	(21,631)	(40,357)	(16)	(2,816,553)
5.54%	4.94%	(1,080,343)	(6,001,941)	(319,348)	(191,573)		(7,593,205)
		(8,001,929)	(27,515,454)	(523,441)	(1,016,405)	(10,959)	(37,068,188)

In the above statistics, all filers share in the benefit of \$15.4 million in the bottom bracket, because all income is subject to taxation in the bottom bracket. It is **not accurate** to conclude that \$15.4 million in benefit accrues to taxpayers in the bottom bracket. In fact, it accrues to all taxpayers who have income taxed in that bracket.

An alternative method of examining the distribution of the tax relief is to view it by taxable income category, instead of by tax bracket. Here, the entire impact of all applicable rate reductions for taxpayers in the category are combined.

		Fiscal Impact by Taxable Income Category					
Taxable Income Category		Single	Married-joint	Married-separate	Head of Household	Qual widow	Total
\$0	to \$25,000	(1,895,003)	(832,795)	(48,852)	(268,030)	(2,207)	(3,046,888)
\$25,000	to \$50,000	(2,090,846)	(3,128,435)	(56,562)	(237,254)	(2,539)	(5,515,636)
\$50,000	to \$100,000	(1,515,228)	(7,360,535)	(47,327)	(154,635)	(3,934)	(9,081,659)
\$100,000	to \$250,000	(820,153)	(5,763,803)	(35,558)	(96,441)	(2,279)	(6,718,233)
\$250,000	to \$500,000	(409,019)	(3,107,447)	(25,232)	(49,450)		(3,591,147)
Over	\$500,000	(1,271,681)	(7,322,439)	(309,910)	(210,595)		(9,114,625)
		(8,001,929)	(27,515,454)	(523,441)	(1,016,405)	(10,959)	(37,068,188)

		Count of 2007 Taxpayers in Taxable Income Category					
Taxable Income Category		Single	Married-joint	Married-separate	Head of Household	Qual widow	Total
\$0	to \$25,000	86,566	29,920	1,802	11,639	81	130,008
\$25,000	to \$50,000	25,990	39,393	691	3,157	37	69,268
\$50,000	to \$100,000	8,218	44,293	244	908	22	53,685
\$100,000	to \$250,000	1,895	14,207	75	228	6	16,411
\$250,000	to \$500,000	397	2,863	27	58	-	3,345
Over	\$500,000	349	2,306	61	33	-	2,749
		123,415	132,982	2,900	16,023	146	275,466

		Average Reduction per Taxpayer in Taxable Income Category					
Taxable Income Category		Single	Married-joint	Married-separate	Head of Household	Qual widow	Total
\$0	to \$25,000	(22)	(28)	(27)	(23)	(27)	(23)
\$25,000	to \$50,000	(80)	(79)	(82)	(75)	(69)	(80)
\$50,000	to \$100,000	(184)	(166)	(194)	(170)	(179)	(169)
\$100,000	to \$250,000	(433)	(406)	(474)	(423)	(380)	(409)
\$250,000	to \$500,000	(1,030)	(1,085)	(935)	(853)		(1,074)
Over	\$500,000	(3,644)	(3,175)	(5,080)	(6,382)		(3,316)

		Average Percent Reduction per Taxpayer in Taxable Income Category					
Taxable Income Category		Single	Married-joint	Married-separate	Head of Household	Qual widow	Total
\$0	to \$25,000	-10.97%	-10.97%	-11.00%	-10.98%	-11.29%	-11.04%
\$25,000	to \$50,000	-10.98%	-10.96%	-11.02%	-10.97%	-10.95%	-10.97%
\$50,000	to \$100,000	-10.96%	-10.97%	-10.93%	-10.99%	-10.95%	-10.98%
\$100,000	to \$250,000	-10.92%	-10.95%	-10.90%	-11.02%	-10.94%	-10.94%
\$250,000	to \$500,000	-10.99%	-10.92%	-10.86%	-10.90%		-10.92%
Over	\$500,000	-10.84%	-10.86%	-11.04%	-10.84%		-10.90%

The fiscal impact shown here is computed using the actual 2007 returns filed with the Office of Tax Commissioner. If enacted, SB 2199 will become effective on 2009 income tax returns. The expected base growth means this fiscal impact is assumed to be -\$80 million for 2009-11.

Individual income tax

Page 1

# Form ND-1 System (Main Method)

2008 tax year

Federal taxable income

plus

Addition  
adjustments

**NOTE** Items in **RED** are unique to Form ND-1 system (2008 tax year)

**Additions**

- 1 Qualified plan lump-sum distribution (federal 10-year averaging used)
- 2 Loss from ND financial institution that is a passthrough entity
- 3 ND planned gift or endowment tax credit contribution

minus

Subtraction  
adjustments

**Subtractions**

- 1 Interest from U.S. obligations
- 2 Exempt income of a Native American
- 3 Benefits from the U.S. Railroad Retirement Board
- 4 Income from ND financial institution that is a passthrough entity
- 5 National Guard or reserve member exclusion for federal active duty
- 6 ND College SAVE deduction (IRC section 529 plan)
- 7 Income exempted under ND Renaissance Zone Act
- 8 Income exempted under new or expanding business income exemption
- 9 Human organ donor expense deduction (\$10,000 limit)
- 10 Workforce recruitment income exclusion (for employee)
- 11 30% North Dakota net long-term capital gain
- 12 Nonresident military compensation

equals

ND taxable income

multiplied by

Tax rates

**2008 tax rates**—see CHART 5 for comparison with Form ND-2 tax rates

- 5 tax rates: 2.1%, 3.92%, 4.34%, 5.04%, 5.54%
- 5 income brackets: Each tax rate corresponds with an income bracket, and the income brackets differ based on filing status, i.e., single, head of household, married filing jointly/qualifying widow(er), and married filing separately (see CHART 5 for all of the brackets by filing status)
- 3-year farm income averaging

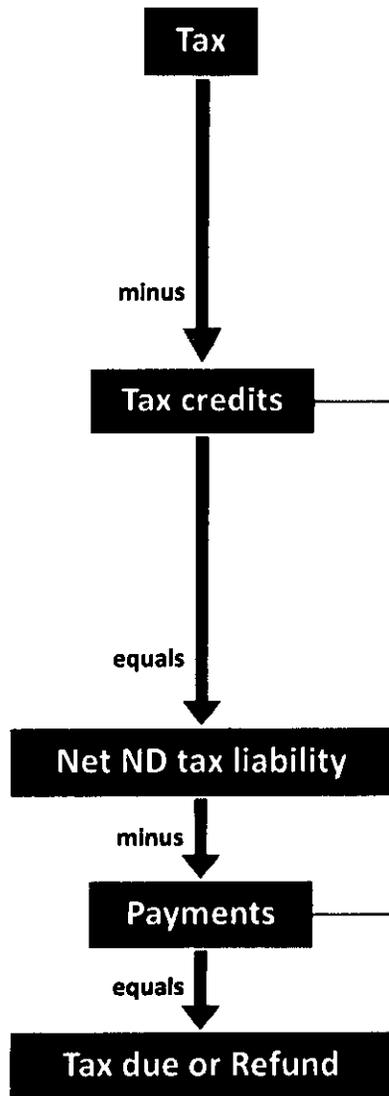
equals

Tax

**Nonresident:** The tax for a nonresident is determined by multiplying the tax by a ratio equal to North Dakota source income divided by total income (from all sources).

Continued on page 2

**Form ND-1 System (Main Method)**  
2008 tax year



**NOTE** Items in **RED** are unique to Form ND-1 system (2008 tax year)

**Tax credits**

- 1 Credit for income tax paid to another state (resident only)
- 2 Family member care credit
- 3 Renaissance fund organization investment credit
- 4 Renaissance zone historic property credit
- 5 Renaissance zone single-family residence credit
- 6 Seed capital investment credit
- 7 Agricultural commodity processing facility investment credit
- 8 Planned gift credit
- 9 Biodiesel fuel blending credit (supplier/wholesale)
- 10 Biodiesel equipment credit (seller/retail)
- 11 Employer internship program credit
- 12 Microbusiness credit
- 13 Research expense credit
- 14 Angel fund investment credit
- 15 Endowment fund credit from passthrough entity
- 16 Workforce recruitment credit
- 17 Residential/agricultural property tax credit
- 18 Commercial property tax credit
- 19 Marriage penalty credit

**Payments**

- ND income tax withheld from wages
- Estimated individual income tax

Individual income tax

**Form ND-2 System (Optional Method)**

2008 tax year

**Federal taxable income**

plus

**Addition adjustments**

minus

**Subtraction adjustments**

equals

**ND taxable income**

**NOTE** Items in **RED** are unique to Form ND-2 system (2008 tax year)

**Additions**

- 1 Qualified plan lump-sum distribution (federal 10-year averaging used)
- 2 Loss from ND financial institution that is a passthrough entity
- 3 ND planned gift or endowment tax credit contribution
- 4 Interest from non-North Dakota state and local obligations
- 5 State and local income taxes deducted on federal income tax return

**Subtractions**

- 1 Interest from U.S. obligations
- 2 Exempt income of a Native American
- 3 Benefits from the U.S. Railroad Retirement Board
- 4 Income from ND financial institution that is a passthrough entity
- 5 National Guard or reserve member exclusion for federal active duty
- 6 ND College SAVE deduction (IRC section 529 plan)
- 7 Income exempted under ND Renaissance Zone Act
- 8 Income exempted under new or expanding business income exemption
- 9 Human organ donor expense deduction (\$10,000 limit)
- 10 Workforce recruitment income exclusion (for employee)
- 11 Interest from bank, savings & loan, or similar institution (\$300/\$600 limit)
- 12 Medical expenses exceeding federal 7.5% of AGI threshold
- 13 Federal Income tax (after credits)
- 14 U.S. armed forces active duty exclusion (\$1,000 limit)
- 15 U.S. armed forces active duty exclusion for overseas duty (\$3,600 limit)
- 16 Federal civil service retirement pay exclusion (\$5,000 limit)
- 17 ND highway patrol retirement exclusion (\$5,000 limit)
- 18 ND firefighter or police retirement exclusion (\$5,000 limit)
- 19 Gain from sale of land to "beginning farmer"
- 20 Interest from sale of land to "beginning farmer" under contract for deed
- 21 Net rental income for lease of land to "beginning farmer" (\$25,000 limit)
- 22 Gain from involuntary conversion of property due to eminent domain
- 23 Gain attributable to increase in value of stock of corporation that relocates to North Dakota
- 24 State and local income tax refund reported on federal return
- 25 \$1,750 deduction for adopting child under age 21 (*year of adoption*)
- 26 Up to \$1,000 of cost to adopt child under age 21 who is blind or physically disabled under Social Security Act (*year of adoption*)
- 27 \$750 for a child under age 21 who is blind or physically disabled under Social Security Act (*allowed each year*)
- 28 \$300 deduction for filing status head of household, married filing jointly, and qualifying widow(er)

**Nonresident:** Only reports the portion of this amount that is attributed to North Dakota sources.

*Continued on page 2*

**Form ND-2 System (Optional Method)**  
2008 tax year

**ND taxable income**

multiplied by

**Tax rates**

equals

**Tax**

minus

**Tax credits**

equals

**Net ND tax liability**

minus

**Payments**

equals

**Tax due or Refund**

**NOTE** Items in **RED** are unique to Form ND-2 system (2008 tax year)

**2008 tax rates**—see **CHART 5** for comparison with Form ND-1 tax rates

ND taxable income:		Tax equals:		
Over	But not over			
\$ 0	\$ 3,000			2.67% of ND taxable income
3,000	5,000	\$ 80.10	+ 4.00%	of the amount over \$ 3,000
5,000	8,000	160.10	+ 5.33%	of the amount over 5,000
8,000	15,000	320.00	+ 6.67%	of the amount over 8,000
15,000	25,000	786.90	+ 8.00%	of the amount over 15,000
25,000	35,000	1,586.90	+ 9.33%	of the amount over 25,000
35,000	50,000	2,519.90	+ 10.67%	of the amount over 35,000
50,000		4,120.40	+ 12.00%	of the amount over 50,000

**Tax credits**

- 1 Credit for income tax paid to another state (resident only)
- 2 Family member care credit
- 3 Renaissance fund organization investment credit
- 4 Renaissance zone historic property credit
- 5 Renaissance zone single-family residence credit
- 6 Seed capital investment credit
- 7 Agricultural commodity processing facility investment credit
- 8 Planned gift credit
- 9 Biodiesel fuel blending credit (supplier/wholesale)
- 10 Biodiesel equipment credit (seller/retail)
- 11 Employer internship program credit
- 12 Microbusiness credit
- 13 Research expense credit
- 14 Angel fund investment credit
- 15 Endowment fund credit from passthrough entity
- 16 Workforce recruitment credit
- 17 Residential/agricultural property tax credit
- 18 Commercial property tax credit
- 19 Nonprofit private high school contribution credit
- 20 Nonprofit private college contribution credit
- 21 Biomass, geothermal, solar, or wind energy device credit
- 22 Credit for employing developmentally disabled or chronically mentally ill person
- 23 Certified nonprofit development corporation investment credit
- 24 Long-term care insurance policy premium credit

**Payments**

- ND income tax withheld from wages
- Estimated individual income tax



**Individual income tax**  
**List of tax credits**  
**2008 tax year**

- ▶ *These items reduce the tax liability on a dollar-for-dollar basis, and therefore are more beneficial than a deduction from income.*
- ▶ *For each item in the list, an "X" in a column on the right side indicates the system under which the item is allowed by law.*

	<b>Form ND-1</b>	<b>Form ND-2</b>
	Main Method	Optional Method
1 Marriage penalty credit (for spouses filing a joint return)	X	
2 Credit for income tax paid to another state (resident only)	X	X
3 Seed capital investment credit	X	X
4 Agricultural commodity processing facility investment credit	X	X
5 Angel fund investment credit	X	X
6 Renaissance zone program: Investment credit	X	X
7 Renaissance zone program: Single-family residence credit	X	X
8 Renaissance zone program: Historic property credit	X	X
9 Renaissance zone program: Business purchase or expansion credit	X	X
10 Planned gift credit	X	X
11 Endowment fund credit (from passthrough entity)	X	X
12 Workforce recruitment credit (for hard-to-fill position)	X	X
13 Employer internship program credit	X	X
14 Biodiesel fuel blending credit (for supplier/wholesaler)	X	X
15 Biodiesel fuel equipment credit (for seller/retailer)	X	X
16 Microbusiness credit (for increasing employment or purchasing property)	X	X
17 Research expense credit	X	X
18 Family member care credit	X	X
19 Residential and agricultural property tax credit (for 2007 and 2008 only)	X	X
20 Commercial property tax credit (for 2007 and 2008 only)	X	X
21 Long-term care insurance policy premium credit		X
22 Biomass, geothermal, solar, or wind energy device credit		X
23 Nonprofit private high school contribution credit		X
24 Nonprofit private college contribution credit		X
25 Developmentally disabled/chronically mentally ill person employment credit		X
26 Certified nonprofit development corporation investment credit		X



Attachment 5

STATE OF NORTH DAKOTA  
**OFFICE OF STATE TAX COMMISSIONER**  
Cory Fong, Commissioner

---

## Memorandum

**To:** Representative Belter  
Chairman, Conference Committee on House Bill 1324

**From:** Joseph Becker

**Date:** April 25, 2009

**Subject:** Request for Statistical Information on Individual Income Tax Returns Filed

---

During the hearing held on Friday, April 24, on House Bill 1324, you requested that I provide certain statistical information in writing for the Committee's review and consideration in its deliberations on the bill.

Attached are the following documents:

**1. Individual Income Tax Statistics—Form ND-2 (2003 through 2007)**

This document provides information on the number of returns and associated dollar amounts for each deduction and credit on Form ND-2 for the 2003 through 2007 tax years. It is important to note that, for the deductions, the amounts shown are the deduction amounts, *not* the amount of tax reduction resulting from the deductions.

**2. Number of Individual Income Tax Returns Filed / Net Tax Liability Reported (2007 Tax Year)**

This document provides information on the number and type of returns filed by individuals for the 2007 tax year. It also provides information on the net tax liability dollars reported on those same returns.

In addition to the attachments, the following are noteworthy based on our sampling work and the questions fielded by our office:

- While there are instances of consistent use of Form ND-2, depending on the time period involved, it cannot be assumed that taxpayers who currently use Form ND-2 will continue to do so in the future. Fact situations do change.
- With respect to each deduction or credit allowed only on Form ND-2, there are many taxpayers who are eligible for it but cannot benefit from it. Allowing the benefit to some but not to the majority of eligible taxpayers not only creates uncertainty for them but also prompts them to contact our office to ask why, and to question the soundness of the tax policy.

If I can be of additional assistance, please let me know.

**Individual Income Tax Statistics—Form ND-2  
2003 through 2007**

**Form ND-2 Deductions (Reduces Taxable Income)**

	Number of Returns With an Entry					Total Dollar Amount Deducted from Income				
	2007	2006	2005	2004	2003	2007	2006	2005	2004	2003
Interest from U.S. Obligations <i>(by federal law)</i> (Note 4)	96	176	210	210	240	\$534,933	\$1,588,051	\$1,286,834	\$1,588,635	\$1,058,580
Military Pay Exclusion	73	70	82	123	169	\$81,562	\$98,795	\$86,539	\$128,000	\$171,801
Additional Military Pay Exclusion for Overseas Duty	24	28	23	45	55	\$48,512	\$112,624	\$56,923	\$99,733	\$145,065
Military Retirement Pay Exclusion	14	24	31	30	26	\$67,974	\$120,300	\$139,067	\$137,536	\$131,297
Income from a Federal Civil Service Pension, a North Dakota City Firefighter or Police Officer Pension, or the North Dakota Highway Patrol Pension Fund	58	81	84	114	120	\$272,572	\$328,792	\$313,125	\$469,388	\$509,048
Interest Income from Sale of Land to a Qualifying Beginning Farmer	*	*	*	5	5	*	*	*	\$33,080	\$23,884
Rental Income from Leasing of Land to a Qualifying Beginning Farmer	*	*	9	9	6	*	*	\$78,298	\$94,986	\$58,728
Gain from Sale of Land to a Qualifying Beginning Farmer	5	*	*	7	8	\$134,946	*	*	\$835,406	\$122,103
Interest Income from North Dakota Financial Institutions	259	561	631	698	775	\$84,907	\$189,692	\$199,891	\$201,803	\$236,240
Rental Income from Leasing a Business to a Qualifying Beginning Entrepreneur	*	0	*	*	*	*	\$0	*	*	*
Medical Expenses not Allowed due to 7.5% of Adjusted Gross Income Limitation	2,874	3,468	2,927	2,889	2,772	\$18,599,973	\$19,055,276	\$13,579,469	\$12,425,856	\$10,125,245
Additional Exemption (\$300.00 for Married Filing Jointly; Head of Household; or Qualifying Widow(er))	4,659	5,379	4,509	4,789	4,870	\$1,397,700	\$1,613,700	\$1,671,000	\$1,800,900	\$1,885,200
Federal income tax deduction (federal income tax liability after federal tax credits)	1,683	2,462	2,650	3,010	3,255	\$8,937,018	\$9,426,428	\$9,633,486	\$9,441,149	\$9,329,588
Other Deductions (Note 5)	203	291	287	383	481	\$7,862,723	\$7,228,528	\$8,088,259	\$5,693,464	\$5,873,133

**Form ND-2 Credits (Reduces Income Tax)**

	Number of Returns With an Entry					Total Dollar Amount Deducted from Income				
	2007	2006	2005	2004	2003	2007	2006	2005	2004	2003
Credit for Income Tax Paid to Another State (Note 6)		9	13	16	19		\$684	\$1,675	\$1,989	\$763
Credit for Contributions to Nonprofit Private Colleges in ND		10	7	9	12		\$497	\$345	\$577	\$557
Credit for Contributions to Nonprofit Private High Schools in ND		10	12	8	14		\$1,025	\$955	\$325	\$1,038
Long-Term Care Insurance Credit	Note 7	417	505	572	691	Note 7	\$58,195	\$71,168	\$81,396	\$96,778
Nonprofit Development Corporation Investment Credit		0	0	0	0		\$0	\$0	\$0	\$0
Qualified Business Seed Capital Investment Credit		*	7	*	0		*	\$4,036	*	\$0
Other Credits (Note 5)	244	7	6	8	6	\$39,195	\$3,386	\$9,598	\$1,058	\$1,624
Commercial Property Income Tax Credit	105					\$22,205				
Residential and Agricultural Property Income Tax Credit	476					\$103,256				

**Notes:**

Grayed box indicates the deduction or credit was not provided for in the law.

An asterisk (\*) indicates there are less than 5 instances of the deduction or credit being used and is non-reportable because of the Tax Department's policy on the release of statistics.

4—Deduction is provided for by federal law; it cannot be repealed or removed.

5—"Other Deductions" and "Other Credits" include deductions and tax credits available on the ND-2 that are not separately identified on the return.

6—This tax credit prevents double taxation of income taxed by both North Dakota and another state.

7—Starting with the 2007 return, all credits except the property income tax credits were combined in "Other Credits."

Created by Office of State Tax Commissioner, April 24, 2009

**Number of Individual Income Tax Returns Filed**  
2007 Tax Year

	All Taxpayers		Residents		Nonresidents		Part-Year Residents	
<b>All returns</b>	349,223	100.0%	300,558	100.0%	35,678	100.0%	12,987	100.0%
Form ND-1	342,424	98.05%	299,446	99.63%	30,154	84.52%	12,824	98.74%
Form ND-2	6,799	1.95%	1,112	0.37%	5,524	15.48%	163	1.26%

**Net Tax Liability Reported**  
2007 Tax Year

	All Taxpayers		Residents		Nonresidents		Part-Year Residents	
<b>All returns</b>	\$289,239,908	100.0%	\$257,795,083	100.0%	\$26,101,914	100.0%	\$5,342,911	100.0%
Form ND-1	288,332,634	99.69%	257,747,496	99.98%	25,286,440	96.88%	5,298,698	99.17%
Form ND-2	907,547	0.31%	47,586	0.02%	815,748	3.13%	44,213	0.83%

Prepared by Joseph J. Becker, Office of State Tax Commissioner, April 25, 2009

**Notes**

- 1 The number of North Dakota residents filing Form ND-2—1,112 individuals—is 0.32% (or less than 1/3 of 1%) of all returns filed for 2007.
- 2 The total net tax liability dollars reported by North Dakota residents filing Form ND-2—\$47,586—is .016% (or less than 1/60 of 1%) of the total net tax liability reported on all returns filed for 2007.
- 3 Based on a random sampling of Form ND-2 filers for 2007, and assuming the results are indicative of the entire population of Form ND-2 filers, it is estimated that 38% (or 423) of the North Dakota residents who filed Form ND-2 for 2007 would change to Form ND-1 if Reengrossed House Bill 1324 (version 90715.0500) is enacted.
- 4 Based on the same random sampling of Form ND-2 filers for 2007, the estimated 62% (or 689) of those North Dakota residents who would continue to file Form ND-2 if Reengrossed House Bill 1324 (version 90715.0500) is enacted would on average have a net tax liability that is \$32 lower than Form ND-1. The total amount of this difference is estimated to be \$22,048.



STATE OF NORTH DAKOTA  
**OFFICE OF STATE TAX COMMISSIONER**  
Cory Fong, Commissioner

---

## Memorandum

**To:** Representative Belter  
Chairman, Conference Committee on House Bill 1324

**From:** Joseph Becker

**Date:** April 27, 2009

**Subject:** Request for Statistical Information on Individual Income Tax Returns Filed

---

During the hearing held on Friday, April 24, on House Bill 1324, you requested that I provide certain statistical information in writing for the Committee's review and consideration in its deliberations on the bill.

Attached are the following documents:

**1. Individual Income Tax Statistics—Form ND-2 (2003 through 2007)**

This document provides information on the number of returns and associated dollar amounts for each deduction and credit on Form ND-2 for the 2003 through 2007 tax years. It is important to note that, for the deductions, the amounts shown are the deduction amounts, *not* the amount of tax reduction resulting from the deductions.

**2. Number of Individual Income Tax Returns Filed / Net Tax Liability Reported (2007 Tax Year)**

This document provides information on the number and type of returns filed by individuals for the 2007 tax year. It also provides information on the net tax liability dollars reported on those same returns.

In addition to the attachments, the following are noteworthy based on our sampling work and the questions fielded by our office:

- While there are instances of consistent use of Form ND-2, depending on the time period involved, it cannot be assumed that taxpayers who currently use Form ND-2 will continue to do so in the future. Fact situations do change.
- With respect to each deduction or credit allowed only on Form ND-2, there are many taxpayers who are eligible for it but cannot benefit from it. Allowing the benefit to some but not to the majority of eligible taxpayers not only creates uncertainty for them but also prompts them to contact our office to ask why, and to question the soundness of the tax policy.

If I can be of additional assistance, please let me know.

**Number of Individual Income Tax Returns Filed  
2007 Tax Year**

	All Taxpayers		Residents		Nonresidents		Part-Year Residents	
<b>All returns</b>	349,223	100.0%	300,558	100.0%	35,678	100.0%	12,987	100.0%
Form ND-1	342,424	98.05%	299,446	99.63%	30,154	84.52%	12,824	98.74%
Form ND-2	6,799	1.95%	1,112	0.37%	5,524	15.48%	163	1.26%

**Net Tax Liability Reported  
2007 Tax Year**

	All Taxpayers		Residents		Nonresidents		Part-Year Residents	
<b>All returns</b>	\$289,239,908	100.0%	\$257,795,083	100.0%	\$26,101,914	100.0%	\$5,342,911	100.0%
Form ND-1	288,332,634	99.69%	257,747,496	99.98%	25,286,440	96.88%	5,298,698	99.17%
Form ND-2	907,547	0.31%	47,586	0.02%	815,748	3.13%	44,213	0.83%

Prepared by Joseph J. Becker, Office of State Tax Commissioner, April 25, 2009

**Notes**

- 1 The number of North Dakota residents filing Form ND-2—1,112 individuals—is 0.32% (or less than 1/3 of 1%) of all returns filed for 2007.
- 2 The total net tax liability dollars reported by North Dakota residents filing Form ND-2—\$47,586—is .016% (or less than 1/60 of 1%) of the total net tax liability reported on all returns filed for 2007.
- 3 Based on a random sampling of Form ND-2 filers for 2007, and assuming the results are indicative of the entire population of Form ND-2 filers, it is estimated that 38% (or 423) of the North Dakota residents who filed Form ND-2 for 2007 would change to Form ND-1 if Reengrossed House Bill 1324 (version 90715.0500) is enacted.
- 4 Based on the same random sampling of Form ND-2 filers for 2007, the estimated 62% (or 689) of those North Dakota residents who would continue to file Form ND-2 if Reengrossed House Bill 1324 (version 90715.0500) is enacted would on average have a net tax liability that is \$32 lower than Form ND-1. The total amount of this difference is estimated to be \$22,048.

**Individual Income Tax Statistics—Form ND-2  
2003 through 2007**

**Form ND-2 Deductions (Reduces Taxable Income)**

	Number of Returns With an Entry					Total Dollar Amount Deducted from Income				
	2007	2006	2005	2004	2003	2007	2006	2005	2004	2003
Interest from U.S. Obligations <i>(by federal law)</i> (Note 4)	96	176	210	210	240	\$534,933	\$1,588,051	\$1,286,834	\$1,588,635	\$1,058,580
Military Pay Exclusion	73	70	82	123	169	\$81,562	\$98,795	\$86,539	\$128,000	\$171,801
Additional Military Pay Exclusion for Overseas Duty	24	28	23	45	55	\$48,512	\$112,624	\$56,923	\$99,733	\$145,065
Military Retirement Pay Exclusion	14	24	31	30	26	\$67,974	\$120,300	\$139,067	\$137,536	\$131,297
Income from a Federal Civil Service Pension, a North Dakota City Firefighter or Police Officer Pension, or the North Dakota Highway Patrol Pension Fund	58	81	84	114	120	\$272,572	\$328,792	\$313,125	\$469,388	\$509,048
Interest Income from Sale of Land to a Qualifying Beginning Farmer	*	*	*	5	5	*	*	*	\$33,080	\$23,884
Rental Income from Leasing of Land to a Qualifying Beginning Farmer	*	*	9	9	6	*	*	\$78,298	\$94,986	\$58,728
Gain from Sale of Land to a Qualifying Beginning Farmer	5	*	*	7	8	\$134,946	*	*	\$835,406	\$122,103
Interest Income from North Dakota Financial Institutions	259	561	631	698	775	\$84,907	\$189,692	\$199,891	\$201,803	\$236,240
Rental Income from Leasing a Business to a Qualifying Beginning Entrepreneur	*	0	*	*	*	*	\$0	*	*	*
Medical Expenses not Allowed due to 7.5% of Adjusted Gross Income Limitation	2,874	3,468	2,927	2,889	2,772	\$18,599,973	\$19,055,276	\$13,579,469	\$12,425,856	\$10,125,245
Additional Exemption (\$300.00 for Married Filing Jointly; Head of Household; or Qualifying Widow(er))	4,659	5,379	4,509	4,789	4,870	\$1,397,700	\$1,613,700	\$1,671,000	\$1,800,900	\$1,885,200
Federal income tax deduction (federal income tax liability after federal tax credits)	1,683	2,462	2,650	3,010	3,255	\$8,937,018	\$9,426,428	\$9,633,486	\$9,441,149	\$9,329,588
Other Deductions (Note 5)	203	291	287	383	481	\$7,862,723	\$7,228,528	\$8,088,259	\$5,693,464	\$5,873,133

**Form ND-2 Credits (Reduces Income Tax)**

	Number of Returns With an Entry					Total Dollar Amount				
	2007	2006	2005	2004	2003	2007	2006	2005	2004	2003
Credit for Income Tax Paid to Another State (Note 6)		9	13	16	19		\$684	\$1,675	\$1,989	\$763
Credit for Contributions to Nonprofit Private Colleges in ND		10	7	9	12		\$497	\$345	\$577	\$557
Credit for Contributions to Nonprofit Private High Schools in ND		10	12	8	14		\$1,025	\$955	\$325	\$1,038
Long-Term Care Insurance Credit		417	505	572	691		\$58,195	\$71,168	\$81,396	\$96,778
Nonprofit Development Corporation Investment Credit		0	0	0	0		\$0	\$0	\$0	\$0
Qualified Business Seed Capital Investment Credit		*	7	*	0		*	\$4,036	*	\$0
Other Credits (Note 5)	244	7	6	8	6	\$39,195	\$3,386	\$9,598	\$1,058	\$1,624
Commercial Property Income Tax Credit	105					\$22,205				
Residential and Agricultural Property Income Tax Credit	476					\$103,256				

**Notes:**

Grayed box indicates the deduction or credit was not provided for in the law.

An asterisk (\*) indicates there are less than 5 instances of the deduction or credit being used and is non-reportable because of the Tax Department's policy on the release of statistics.

Created by Office of State Tax Commissioner, April 24, 2009

4—Deduction is provided for by federal law; it cannot be repealed or removed.

5—"Other Deductions" and "Other Credits" include deductions and tax credits available on the ND-2 that are not separately identified on the return.

6—This tax credit prevents double taxation of income taxed by both North Dakota and another state.

7—Starting with the 2007 return, all credits except the property income tax credits were combined in "Other Credits."