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Sixty-third
Legislative Assembly
of North Dakota

SENATE BILL NO. 2237

Introduced by

Senator Miller

A BILL for an Act to amend and reenact sections 40-63-04, 40-63-06, and 40-63-07, subdivision i of subsection 2 of section 57-35.3-02, and sections 57-38-01, 57-38-01.8, 57-38-01.21, 57-38-01.22, 57-38-01.23, 57-38-01.24. 57-38-01.25, 57-38-01.26, 57-38-01.27, 57-38-01.31, 57-38-01.32, 57-38-01.33, 57-38-30.3, 57-38.5-03, and 57-38.6-03 of the North Dakota Century Code, relating to income taxes of individuals, estates, and trusts; to repeal sections 57-38-01.20, 57-38-01.28, 57-38-01.29, 57-38-01.30, and 57-38-29.3 of the North Dakota Century Code, relating to income taxes of individuals, estates, and trusts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-63-04 of the North Dakota Century Code is amended and reenacted as follows:

40-63-04. Income tax exemptions.

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 57-38-30.3 for five taxable years beginning with the date of occupancy or completion of rehabilitation.~~

~~2.~~ Any <u>corporate</u> taxpayer that purchases, leases, rehabilitates, or makes leasehold improvements to residential, public utility infrastructure, or commercial property for any business or investment purpose as a zone project is exempt from any tax on income derived from the business or investment locations within the zone for five taxable years, beginning with the date of purchase, lease, or completion of rehabilitation.

~~3.~~ ~~If the cost of a new business purchase, leasehold improvement, 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 individual income tax liability as determined under section 57-38-30.3. The election must be made on the taxpayer's return as originally and timely filed. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or this subsection. If an election is not made on the original return, the taxpayer is only eligible for the exemption provided in subsection 2.~~

~~4.~~2. If a property owner not participating in a renaissance zone project is required to make changes in utility services or in a building structure because of changes made to property that is part of a zone project, the owner of the nonparticipating property is entitled to state corporate income tax credits equal to the total amount of the investment necessary to complete the required changes. The credit must be approved by the local renaissance zone authority. The credit must be claimed in the taxable year in which the related project was completed. The credit may not exceed the taxpayer's tax liability, and an unused credit may be carried forward up to five taxable years.

~~5.~~3. The exemptions provided by this section do not eliminate any duty to file a return or to report income as required under chapter 57-35.3 or 57-38.

SECTION 2. 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~~,~~ or 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 3. AMENDMENT. Section 40-63-07 of the North Dakota Century Code is amended and reenacted as follows:

40-63-07. Renaissance fund organization - Exemption from taxation.

1. Each city with a designated renaissance zone may establish a renaissance fund organization, if the detailed plan for such an organization is clearly established in the development plan and approved with the plan, or is submitted at a later date to the department of commerce division of community services for approval after the designation of a renaissance zone.
2. The purpose of a renaissance fund organization is solely to raise funds to be used to finance zone projects and other projects located in designated renaissance zones. A renaissance fund organization may provide financing to projects undertaken by individuals, partnerships, limited partnerships, limited liability companies, trusts, corporations, nonprofit organizations, and public entities. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing. The amount of financing is not limited by this chapter.
3. A renaissance fund organization is exempt from any tax imposed by chapter 57-35.3 or ~~57-38~~section 57-38-30. ~~An exemption under this section may be passed through to any shareholder, partner, and owner if the renaissance fund organization is a passthrough entity for tax purposes.~~ A corporation or financial institution entitled to the exemption provided by this subsection shall file required returns and report income to the tax commissioner as required by the provisions of those chapters as if the exemption did not exist. If an employer, this subsection does not exempt a renaissance fund organization from complying with the income tax withholding laws.
4. A credit against state tax liability as determined under section 57-35.3-03~~,~~ or 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.
5. The total amount of credits allowed under this section may not exceed, in the aggregate, eight million five hundred thousand dollars for investments in renaissance fund organizations. A renaissance fund organization that has received investments

that qualify for the credits under this subsection shall use those investments to finance projects within a renaissance zone.

6. Income to a renaissance fund organization derived from the sale or refinancing of zone properties financed wholly or in part by the organization may be disbursed as annual dividends equal to the income, minus ten percent, derived from all sources and proportional to the investment. In the event of a loss to the fund resulting in a temporary diminishment of the fund below the original principal amount, no annual dividend may be paid until the fund is restored.

7. Income to a renaissance fund organization derived from interest or the temporary investment of its funds in certificates of deposit, bonds, treasury bills, or securities may be used for administration.

8. If an investment in a renaissance fund organization which is the basis for a credit under this section is redeemed by the investor within ten years of the date it is purchased, the credit provided by this section for the investment must be disallowed, and any credit previously claimed and allowed with respect to the investment must be paid to the tax commissioner with the appropriate return of the taxpayer covering the period in which the redemption occurred. When payments are made to the tax commissioner under this section, the amount collected must be handled in the same manner as if no credit had been allowed.

9. A renaissance fund organization shall secure an annual audit of its financial records, prepared by an independent certified public accounting firm in accordance with generally accepted auditing standards. The audit report must include a statement of the percentage of annual investments received by the organization which have been invested by the organization in investments permitted under this chapter, including the use of investments, distinguishing between organization investments made in renaissance zones and outside renaissance zones. A renaissance fund organization shall file a copy of each audit of its financial records under this subsection with the governing body of the city in which it was established, the department of commerce division of community services, and the tax commissioner. The department of commerce division of community services shall provide an annual report to the budget

section of the legislative management showing the conclusions of audit reports filed under this subsection.

10. Renaissance fund organization officers and employees may be actively involved in the enterprises in which the renaissance fund organization invests but the renaissance fund organization may not invest in any enterprise if any one renaissance fund organization officer or employee owns more than forty-nine percent of the ownership interest in the enterprise. A renaissance fund organization may not invest in an enterprise if renaissance fund organization officers and employees collectively own more than forty-nine percent of the ownership interests, either through direct ownership or through ownership of interest in a passthrough entity.

SECTION 4. AMENDMENT. Subdivision i of subsection 2 of section 57-35.3-02 of the North Dakota Century Code is amended and reenacted as follows:

i. The amount of federal income tax liability for the same taxable year for which North Dakota taxable income is being determined, to the extent that the federal taxes are computed upon income that becomes part of North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection ~~5~~6 of section 57-38-01. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax must be reported and included in North Dakota taxable income in the year in which the tax was originally deducted. Income must be further reduced by any federal alternative minimum tax when a federal credit for a prior year minimum tax is taken. This reduction is limited to any federal alternative minimum tax previously disallowed in computing North Dakota taxable income and may not exceed North Dakota taxable income computed before the North Dakota net operating loss deduction. Any excess may be carried forward to the next taxable year a federal credit for a prior year minimum tax is taken.

SECTION 5. AMENDMENT. Section 57-38-01 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chronically mentally ill" means a person who, as a result of a mental disorder, exhibits emotional or behavioral functioning which is so impaired as to interfere substantially with the person's capacity to remain in the community without verified supportive treatment or services of a long-term or indefinite duration. This mental disability must be severe and persistent, resulting in a long-term limitation of the person's functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment, and recreation.
2. "Corporation" includes associations, business trusts, joint stock companies, and insurance companies.
3. "Developmental disability" has the same meaning as defined in section 25-01.2-01.
4. "Domestic" when applied to a corporation means created or organized under the laws of North Dakota.
5. "Federal Internal Revenue Code of 1954, as amended", "United States Internal Revenue Code of 1954, as amended", and "Internal Revenue Code of 1954, as amended", mean the United States Internal Revenue Code of 1986, as amended. Reference to the Internal Revenue Code of 1954, as amended, includes a reference to the United States Internal Revenue Code of 1986, as amended, and reference to the United States Internal Revenue Code of 1986, as amended, includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954, as amended.
    a. Except that the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, are not adopted in those instances when the minimum investment by the lessor is less than one hundred percent for the purpose of computing North Dakota taxable income for individuals, estates, trusts, and corporations for taxable years beginning on or after January 1, 1983. Therefore,

federal taxable income must be increased, or decreased, as the case may be, to reflect the adoption or nonadoption of the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, and such adjustments must be made before computing income subject to apportionment.

b. Provided, that one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1982, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1985, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1983, may be deducted from federal taxable income in each of the next two years beginning after December 31, 1987, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1984, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1989. All such adjustments must be made before computing income subject to apportionment.

c. Provided, that the depreciation adjustments allowed in subdivision b shall be limited to those eligible assets acquired during taxable years beginning after December 31, 1982. Acquisitions made before taxable years beginning January 1, 1983, must be depreciated pursuant to the methods permissible under Internal Revenue Code provisions in effect prior to January 1, 1981.

d. Except that for purposes of applying the Internal Revenue Code of 1954, as amended, with respect to actual distributions made after December 31, 1984, by a domestic international sales corporation, or former domestic international sales corporation, which was a domestic international sales corporation on December 31, 1984, any accumulated domestic international sales corporation income of a domestic international sales corporation, or former domestic international sales corporation, which is derived before January 1, 1985, may not be treated as previously taxed income.

6. "Foreign" when applied to a corporation means created or organized outside of North Dakota.
7. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:
   a. Conditions which are primarily those of drug abuse, alcoholism, or intellectual disability, unless in addition to one or more of these conditions, the person has a mental disorder.
   b. The declining mental abilities that accompany impending death.
   c. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by statute, unless the behavior results from a mental disorder.
8. "Person" includes individuals, fiduciaries, partnerships, corporations, and limited liability companies.
9. "Qualified investment fund" means any regulated investment company as defined under the Internal Revenue Code, which for the calendar year in which the distribution is paid:
   a. Has investments in interest-bearing obligations issued by or on behalf of this state, any political subdivision of this state, or the United States government; and
   b. Has provided the tax commissioner with a detailed schedule of the assets contained in its investment portfolio and a schedule of the income attributable to each asset in its investment portfolio for the calendar year.
10. "Resident" applies only to natural persons and includes, for the purpose of determining liability for the tax imposed by this chapter upon or with reference to the income of any income year, any person domiciled in the state of North Dakota and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than seven months of the income year within the state. A full-time active duty member of the armed forces assigned to a military installation in this state, or the spouse of such a person, is not a "resident" of this state for purposes of this chapter simply by reason of having voted in an election in this state.
11. "Tax commissioner" means the state tax commissioner.

12. a. "Taxable income" in the case of ~~individuals, estates, trusts, and~~ corporations means the taxable income as computed for ~~an individual, estate, trust, or~~a corporation for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, plus or minus such adjustments as may be provided by this chapter or other provisions of law. ~~Except as otherwise expressly provided, "taxable income" does not include any amount computed for federal alternative minimum tax purposes.~~

    b. "Taxable income" in the case of individuals, estates, and trusts means the adjusted gross income as computed for an individual, estate, or trust for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, plus or minus such adjustments as may be provided by this chapter or other provisions of law. Except as otherwise expressly provided, "adjusted gross income" does not include any amount computed for federal alternative minimum tax purposes.

13. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax imposed by this chapter.

14. Any term, as used in this code, as it pertains to the filing and reporting of income, deductions, or exemptions or the paying of North Dakota income tax, has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or contemplated.

SECTION 6. AMENDMENT. Section 57-38-01.8 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.8. Income tax credit for installation of geothermal, solar, wind, or biomass energy devices.

1. 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, 2015, 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.

2. For the purposes of this section:

a. "Biomass energy device" means a system using agricultural crops, wastes, or residues; wood or wood wastes or residues; animal wastes; landfill gas; or other biological sources to produce fuel or electricity.

b. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

c. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.

3. If a geothermal, solar, wind, or biomass energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, wind, or biomass energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, wind, or biomass energy device is installed.

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.

5. 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 of the corporations included in the North Dakota consolidated return.
6. a. The credit allowed under this section 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 used as a credit carryover to each of the five succeeding taxable years.
   b. Any excess tax credits earned for wind energy devices installed after September 30, 2008, and before January 1, 2012, may be used as a credit carryover to each of the twenty succeeding taxable years.
   c. For any tax credits for geothermal, solar, or biomass energy devices installed after September 30, 2008, and wind energy devices installed after December 31, 2011, the excess may be used as a credit carryover to each of the ten succeeding taxable years.
7. For geothermal, solar, wind, or biomass energy devices installed after December 31, 2006, if ownership of a device is transferred at the time installation is complete and the device is fully operational, the purchaser of the device is eligible for the tax credit under this section. Subsequent purchasers of the device are not eligible for the tax credit.
~~8.~~ ~~An individual taxpayer filing a North Dakota return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30.3 for the cost of a geothermal energy device installed after December 31, 2008, and before January 1, 2015, in a building or on property owned or leased by the taxpayer in North Dakota. The credit 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 energy device.~~

SECTION 7. AMENDMENT. Section 57-38-01.21 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.21. Charitable gifts, planned gifts, and qualified endowments credit - Definitions.

1. For purposes of this section:

a. "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual funds, or other investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and invested for the production or growth of income, or both, which may either be added to principal or expended.

b. "Planned gift" means an irrevocable charitable gift to a North Dakota qualified nonprofit organization or qualified endowment held by or for a North Dakota qualified nonprofit organization, when the charitable gift uses any of the following techniques that are authorized under the Internal Revenue Code:

(1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

(5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

(6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or

(9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

"Planned gift" does not include a charitable gift using a charitable remainder unitrust or charitable remainder annuity trust unless the agreement provides that the trust may not terminate and beneficiaries' interest in the trust may not be assigned or contributed to the qualified nonprofit organization or qualified endowment sooner than the earlier of the date of death of the beneficiaries or five years from the date of the planned gift.

"Planned gift" does not include a deferred charitable gift annuity unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the planned gift.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified nonprofit organization or qualified endowment sooner than the earlier of the date of death of the annuitant or annuitants or five years after the date of the planned gift.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity is a qualified charitable gift annuity for federal income tax purposes.

c. "Qualified endowment" means a permanent, irrevocable fund held by a North Dakota incorporated or established organization that is:

(1) A qualified nonprofit organization; or

(2) A bank or trust company holding the fund on behalf of a qualified nonprofit organization.

d. "Qualified nonprofit organization" means a North Dakota incorporated or established tax-exempt organization under 26 U.S.C. 501(c) to which contributions qualify for federal charitable income tax deductions with an established business presence or situs in North Dakota.

2. ~~a.~~ ~~An individual is allowed a tax credit against the tax imposed by section 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 taxable year to a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for planned gifts made in a taxable year is ten thousand dollars for an individual, 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.~~

~~b.~~ ~~An individual is allowed a tax credit against the tax imposed by section 57-38-30.3 for making a charitable gift to a qualified endowment. The credit is equal to forty percent of the charitable gift. If an individual makes a single charitable gift to a qualified endowment, the charitable gift must be five thousand dollars or more to qualify for the credit. If an individual makes more than one charitable gift to the same qualified endowment, the aggregate amount of the charitable gifts made to that qualified endowment must be five thousand dollars~~

~~or more to qualify for the credit. The maximum credit that may be claimed under this subsection for charitable gifts made in a taxable year is ten thousand dollars for an individual or twenty thousand dollars for married individuals filing a joint return. The tax credit allowed under this section may not exceed the taxpayer's income tax liability.~~

~~3.~~ A corporation is allowed a tax credit against the tax imposed by section 57-38-30 in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit that may be claimed by a corporation under this subsection for charitable gifts made in a taxable year is ten thousand dollars. The credit allowed under this section may not exceed the corporate 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 that may be claimed under this subsection for charitable gifts 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 57-38-30 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.~~

~~5.~~ ~~A partnership, subchapter S corporation, or limited liability company treated like a partnership is entitled to a credit in an amount equal to forty percent of a charitable gift to a qualified endowment by the entity during the taxable year. The maximum credit that may be claimed by the entity under this subsection for charitable gifts made in a taxable year is ten thousand dollars. The credit determined at the entity level must be passed through to the partners, shareholders, or members in the same proportion that the charitable contributions attributable to the charitable gifts under this section are distributed to the partners, shareholders, or members. The partner, shareholder, or member may claim the credit only in the partner's, shareholder's, or member's taxable year in which the taxable year of the partnership, subchapter S corporation, or limited~~

~~liability company ends. Subsections 6 and 7 apply to the partner, shareholder, or member.~~

~~6.~~3. The amount of the charitable gift upon which an allowable credit is computed must be added to federal taxable income in computing North Dakota taxable income in any taxable year in which the charitable gift reduces federal taxable income, but only to the extent that the charitable gift reduced federal taxable income.

~~7.~~4. The unused portion of a credit under this section may be carried forward for up to three taxable years.

~~8.~~5. If a charitable gift for which a credit was claimed is recovered by the taxpayer, an amount equal to the credit claimed in all taxable years must be added to the tax due on the income tax return filed for the taxable year in which the recovery occurs. ~~For purposes of subsection 4, this subsection applies if the estate or trust recovers the charitable gift and the estate or trust and its beneficiaries are liable for the additional tax due with respect to their respective shares of the apportioned credit. For purposes of subsection 5, this subsection applies if the partnership, subchapter S corporation, or limited liability company recovers the charitable gift, and the partner, shareholder, or member is liable for the additional tax due.~~

~~9.~~6. A charitable gift used as the basis for a credit claimed under this section may not be used as the basis for the claim of a credit under any other provision of this chapter.

SECTION 8. 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 or green diesel fuel.

A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel or green diesel fuel is entitled to a credit against tax liability determined under section 57-38-30 ~~or 57-38-30.3~~ in the amount of five cents per gallon [3.79 liters] of biodiesel fuel or green diesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" and "green diesel" mean fuel as defined in section 57-43.2-01. 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 9. 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 or green diesel sales equipment costs.

A seller of biodiesel fuel or green diesel fuel is entitled to a credit against tax liability determined under section 57-38-30 ~~or 57-38-30.3~~ in the amount of ten percent per year for five years of the biodiesel or green diesel 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 or green diesel fuel by volume. For purposes of this section, "biodiesel fuel" and "green diesel fuel" mean fuel as defined in section 57-43.2-01. 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 or green diesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel or green diesel 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 or green diesel fuel containing at least two percent biodiesel or green diesel 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 or green diesel 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 10. 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 57-38-30 ~~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 11. 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 57-38-30 ~~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 website, the sole purpose of which is to recruit employees and for which a fee is charged by the website.
      (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 12. 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.

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 ~~or 57-38-30.3~~ for an investment made in an angel fund that is a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to 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. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is one hundred fifty thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.

2. 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 seven 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.

3. An angel fund must:

a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.

b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate.

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

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

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

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

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

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

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

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

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

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

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

4. The tax commissioner may disclose to the legislative management the reported information described under paragraphs 2 and 3 of subdivision i of subsection 3 and the reported information described under subdivision j of subsection 3.

5. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if any one partner, shareholder, or member of a passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the enterprise.

6. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.

7. ~~a. 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.~~

~~b. For the first two taxable years beginning after December 31, 2010, if a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 8, 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.~~

~~c. For the first two taxable years beginning after December 31, 2010, if a passthrough entity elects to sell, transfer, or assign a credit as provided under~~

~~this subsection and subsection 8, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a credit shall sell one hundred percent of the credit earned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 8.~~

~~8.~~ For the first two taxable years beginning after December 31, 2010, a taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit earned under this section for investment in an angel fund established after July 31, 2011, subject to the following:

a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years. The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6.

b. If the taxpayer elects to sell, assign, or transfer a 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. 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. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.

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 establish necessary administrative provisions for the credit under this section, including provisions to permit verification of the validity and timeliness of the transferred tax credit.

SECTION 13. AMENDMENT. Section 57-38-01.27 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.27. Microbusiness income tax credit.

1. For purposes of this section:

a. "Actively engaged" in the operation of a microbusiness means involvement on a continuous basis in the daily management and operation of the business.

b. "Director" means the director of the department of commerce division of economic development and finance.

c. "Economically viable small community" means a community with a population of at least one hundred but fewer than two thousand, which has one or more of the following:

(1) An active community economic development organization;

(2) An ongoing relationship with a regional or urban economic development organization; or

(3) An existing city sales tax, all or part of the revenue from which is dedicated to economic development.

d. "Microbusiness" means a business employing five or fewer employees inside an economically viable small community.

e. "New employment" means the amount by which the total compensation paid during the taxable year to North Dakota resident employees exceeds the total compensation paid to North Dakota resident employees in the taxable year before the application. For the purposes of calculating the increase in new employment, the employer may not include merit-based or equity-based salary increases, cost-of-living adjustments, or any other increase in compensation not directly related to the hiring of new employees during the taxable year.

f. "New investment" means the increase in the applicant's purchases of microbusiness buildings and depreciable personal property located in this state, not including vehicles required to be registered for operation on the roads and highways of this state, during the taxable year as compared with the previous taxable year. If the buildings or depreciable personal property is leased, the amount of new investment is the increase in average net annual rents multiplied by the number of years of the lease for which the taxpayer is bound, not exceeding ten years. For the purposes of calculating the increase in new investment, the employer may not include any increases in rents for property leased before the current taxable year. Only rents for leases completed in the current taxable year may be included.

2. The director shall accept an application for qualification as a microbusiness under this section from a taxpayer that is actively engaged in the operation of a microbusiness or that will establish a microbusiness in which the taxpayer will be actively engaged in or operating within the current or subsequent taxable year. The application must be on a form provided by the director and must contain:
   a. A description of the microbusiness;
   b. The projected income and expenditures of the microbusiness;
   c. The market to be served by the microbusiness and the way the expansion addressed the market;
   d. The amount of projected new investment or employment increases;
   e. The projected improvement in income or creation of new self-employment or jobs in the area in which the microbusiness is located;
   f. The nature of the applicant's engagement in the operation of the microbusiness; and
   g. Any other document, plan, or specification required by the director.
3. A business may be certified by the director as a microbusiness if:
   a. The applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation of the microbusiness upon its establishment;
   b. The applicant will make new investment or employment in the microbusiness;
   c. The new investment or employment will create new income or jobs in the area in which the business is located;
   d. The new business will not directly compete with any established business located within fifteen miles of the proposed new business;
   e. The new business will be located in an area determined by the director to be an economically viable small community located at least fifteen miles from the city limits of a city with a population of two thousand or more; and
   f. The applicant is not closing or reducing its business operation in one area of the state and relocating substantially the same business operation in another area.

4. If the applicant meets the requirements of subsection 3, the director shall issue a certification letter to the microbusiness. The certification letter must include the certification effective date.

5. The director may not certify more than two hundred qualified businesses as a microbusiness.

6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax liability as determined under section 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.

7. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year. Each year's unused credit amount may be carried forward for up to five taxable years.

8. The taxpayer only may claim the tax credit under this section by filing a form provided by the tax commissioner and attaching the microbusiness certification letter.

9. ~~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.~~

~~10.~~ The tax commissioner shall prepare a report for the director identifying the following aggregate amounts for the previous calendar year:

   a. The actual amount of new investment and new employment in the previous calendar year which was reported by taxpayers certified as a microbusiness under this section; and

   b. The tax credit claimed during the previous calendar year.

~~11.~~10. The report required by subsection ~~10~~9 must be issued by January 1, 2009, and each January fifteenth thereafter. Information may not be included in the report which is protected by the state or federal confidentiality laws.

SECTION 14. AMENDMENT. Section 57-38-01.31 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.31. Employer tax credit for salary and related retirement plan contributions for mobilized employees.

~~1.~~ A taxpayer who is an employer in this state is entitled to a credit against tax liability as determined under ~~sections~~section 57-38-30 ~~and 57-38-30.3~~ equal to twenty-five percent of the reduction in compensation that the taxpayer continues to pay during the taxable year to, or on behalf of, each employee of the taxpayer during the period that the employee is mobilized under title 10 of the United States Code as a member of a reserve or national guard component of the armed forces of the United States. The maximum credit allowed for each eligible employee is one thousand dollars. The amount of the tax credit may not exceed the amount of the taxpayer's state tax liability for the tax year and an excess credit may be carried forward for up to five taxable years. For the purposes of this subsection:

~~a.~~1. "Reduction in compensation" means the amount by which the pay received during the taxable year by the employee for service under title 10 of the United States Code is less than the total amount of salary and related retirement plan contributions that would have been paid by the taxpayer to the employee for the same time period had the employee not been mobilized.

~~b.~~2. "Related retirement plan contributions" means the portion of voluntary or matching contributions paid by the taxpayer into a defined contribution plan maintained by the taxpayer for the employee.

~~2. A partnership, subchapter S corporation, limited liability company treated like a passthrough entity, or any other similar passthrough entity that is an employer in this state must be considered to be a taxpayer for purposes of this section. The amount of the credit determined at the passthrough entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.~~

SECTION 15. AMENDMENT. Section 57-38-01.32 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.32. (Effective for the first two taxable years beginning after December 31, 2010) Housing incentive fund tax credit.

1. A taxpayer is entitled to a credit as determined under this section against state income tax liability under section 57-38-30 ~~or 57-38-30.3~~ for contributing to the housing incentive fund under section 54-17-40. The amount of the credit is equal to the amount contributed to the fund during the taxable year.
2. North Dakota taxable income must be increased by the amount of the contribution upon which the credit under this section is computed but only to the extent the contribution reduced federal taxable income.
3. The contribution amount used to calculate the credit under this section may not be used to calculate any other state income tax deduction or credit allowed by law.
4. If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the excess may be carried forward to each of the ten succeeding taxable years.
5. The aggregate amount of tax credits allowed to all eligible contributors is limited to fifteen million dollars per biennium. This limitation applies to all contributions for which tax credits are claimed under section 57-35.3-05 and this section.
6. Within thirty days after the date on which a taxpayer makes a contribution to the housing incentive fund, the housing finance agency shall file with each contributing taxpayer, and a copy with the tax commissioner, completed forms that show as to each contribution to the fund by that taxpayer the following:
   a. The name, address, and social security number or federal employer identification number of the taxpayer that made the contribution.
   b. The dollar amount paid for the contribution by the taxpayer.
   c. The date the payment was received by the fund.
7. To receive the tax credit provided under this section, a taxpayer shall claim the credit on the taxpayer's state income or financial institutions tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the housing finance agency under subsection 6.
8. Notwithstanding the time limitations contained in section 57-38-38, this section does not prohibit the tax commissioner from conducting an examination of the credit claimed and assessing additional tax due under section 57-38-38.

~~9. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity making a contribution to the housing incentive fund under this section is 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 16. AMENDMENT. Section 57-38-01.33 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.33. (Effective for the first three taxable years beginning after December 31, 2012) Income tax credit for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes.

1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against the tax imposed under section 57-38-30 ~~or 57-38-30.3~~ for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes in this state. The amount of the credit under this section is twenty percent of the costs incurred in the taxable year to purchase manufacturing machinery and equipment for the purpose of automating manufacturing processes. Qualified expenditures under this section may not be used in the calculation of any other income tax deduction or credit allowed by law.
2. For purposes of this section:
   a. "Manufacturing machinery and equipment for the purpose of automating manufacturing processes" means new or used automation and robotic equipment.
   b. "Primary sector business" means a business certified by the department of commerce which, through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth.
3. The taxpayer shall claim the total credit amount for the taxable year in which the manufacturing machinery and equipment are purchased. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.

4. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the next five succeeding taxable years.

5. The aggregate amount of credits allowed under this section may not exceed two million dollars in any calendar year. Credits subject to this limitation must be determined based upon the date of the qualified purchase.

6. 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.

7. ~~A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.~~

~~8.~~ The department of commerce shall provide the tax commissioner the name, address, and federal identification number or social security number of the taxpayer approved as qualifying for the credit under this section, and a list of those items that were approved as a qualified expenditure by the department. The taxpayer claiming the credit shall file with the taxpayer's return, on forms prescribed by the tax commissioner, the following information:

a. The name, address, and federal identification number or social security number of the taxpayer who made the purchase; and

b. An itemization of:

(1) Each item of machinery or equipment purchased for automation;

(2) The amount paid for each item of machinery or equipment if the amount paid for the machinery or equipment is being used as a basis for calculating the credit; and

(3) The date on which payment for the purchase was made.

~~9.~~8. Notwithstanding the time limitations contained in section 57-38-38, this section does not prohibit the tax commissioner from conducting an examination of the credit claimed and assessing additional tax due under section 57-38-38.

SECTION 17. AMENDMENT. Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30.3. ~~(Effective for the first two taxable years beginning after December 31, 2010) 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 $34,500~~	~~1.51%~~
~~Over $34,500~~	~~$520.95 plus 2.82%~~
~~but not over $83,600~~	~~of amount over $34,500~~
~~Over $83,600~~	~~$1,905.57 plus 3.13%~~
~~but not over $174,400~~	~~of amount over $83,600~~
~~Over $174,400~~	~~$4,747.61 plus 3.63%~~
~~but not over $379,150~~	~~of amount over $174,400~~
~~Over $379,150~~	~~$12,180.04 plus 3.99%~~
	~~of amount over $379,150~~

~~b.~~ ~~Married filing jointly and surviving spouse.~~

~~If North Dakota taxable income is:~~	~~The tax is equal to:~~
~~Not over $57,700~~	~~1.51%~~
~~Over $57,700~~ ~~but not over $139,350~~	~~$871.27 plus 2.82%~~ ~~of amount over $57,700~~
~~Over $139,350~~ ~~but not over $212,300~~	~~$3,173.80 plus 3.13%~~ ~~of amount over $139,350~~
~~Over $212,300~~ ~~but not over $379,150~~	~~$5,457.14 plus 3.63%~~ ~~of amount over $212,300~~
~~Over $379,150~~	~~$11,513.79 plus 3.99%~~ ~~of amount over $379,150~~

~~c.~~ ~~Married filing separately.~~

~~If North Dakota taxable income is:~~	~~The tax is equal to:~~
~~Not over $28,850~~	~~1.51%~~
~~Over $28,850~~ ~~but not over $69,675~~	~~$435.64 plus 2.82%~~ ~~of amount over $28,850~~
~~Over $69,675~~ ~~but not over $106,150~~	~~$1,586.90 plus 3.13%~~ ~~of amount over $69,675~~
~~Over $106,150~~ ~~but not over $189,575~~	~~$2,728.57 plus 3.63%~~ ~~of amount over $106,150~~
~~Over $189,575~~	~~$5,756.90 plus 3.99%~~ ~~of amount over $189,575~~

~~d.~~ ~~Head of household.~~

~~If North Dakota taxable income is:~~	~~The tax is equal to:~~
~~Not over $46,250~~	~~1.51%~~
~~Over $46,250~~ ~~but not over $119,400~~	~~$698.38 plus 2.82%~~ ~~of amount over $46,250~~
~~Over $119,400~~ ~~but not over $193,350~~	~~$2,761.21 plus 3.13%~~ ~~of amount over $119,400~~
~~Over $193,350~~ ~~but not over $379,150~~	~~$5,075.84 plus 3.63%~~ ~~of amount over $193,350~~

~~Over $379,150~~	~~$11,820.38 plus 3.99% of amount over $379,150~~

~~e.~~ ~~Estates and trusts.~~

~~If North Dakota taxable income is:~~	~~The tax is equal to:~~
~~Not over $2,300~~	~~1.51%~~
~~Over $2,300 but not over $5,450~~	~~$34.73 plus 2.82% of amount over $2,300~~
~~Over $5,450 but not over $8,300~~	~~$123.56 plus 3.13% of amount over $5,450~~
~~Over $8,300 but not over $11,350~~	~~$212.77 plus 3.63% of amount over $8,300~~
~~Over $11,350~~	~~$323.48 plus 3.99% of amount over $11,350~~

~~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.~~ ~~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:~~

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

~~(2)~~ ~~The qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code~~

~~provisions in effect on December 31, 2008. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income 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 anywhere within the exterior boundaries of a reservation situated in this state or situated both in this state and in an adjoining state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources anywhere within the exterior boundaries of a reservation situated in this state or both situated in this state and in an adjoining state.~~

~~p.~~ ~~For married individuals filing jointly, reduced by an amount equal to the excess of the recomputed itemized deductions or standard deduction over the amount of the itemized deductions or standard deduction deducted in computing federal taxable income. For purposes of this subdivision, "itemized deductions or standard deduction" means the amount under section 63 of the Internal Revenue Code that the married individuals deducted in computing their federal taxable income and "recomputed itemized deductions or standard deduction" means an amount determined by computing the itemized deductions or standard deduction in a manner that replaces the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for married individuals filing jointly with an amount equal to double the amount of the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for a single individual other than a head of household and surviving spouse. If the married individuals elected under section 63(e) of the Internal Revenue Code to deduct itemized deductions in computing their federal taxable income even though the amount of the allowable standard deduction is greater, the reduction under this subdivision is not allowed. Married individuals filing jointly shall compute the available reduction under this subdivision in a manner prescribed by the tax commissioner.~~

~~3.~~ ~~The same filing status used when filing federal income tax returns must be used when filing state income tax returns.~~

~~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 or green diesel 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.~~

~~o. Geothermal energy device installation credit under section 57-38-01.8.~~

~~p. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.~~

~~q. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.~~

~~r. Housing incentive fund tax credit under section 57-38-01.32.~~

~~s. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first three taxable years beginning after December 31, 2012).~~

~~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.~~

~~**(Effective after the first two taxable years beginning after December 31, 2010)**~~

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~~adjusted gross income figure, shall compute a federal ~~taxable~~adjusted gross income figure using a pro forma return in order to determine a federal ~~taxable~~adjusted gross 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~~one and one-half percent.

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

~~If North Dakota taxable income is:~~	~~The tax is equal to:~~
~~Not over $34,500~~	~~1.51%~~
~~Over $34,500~~	~~$520.95 plus 2.82%~~
~~but not over $83,600~~	~~of amount over $34,500~~
~~Over $83,600~~	~~$1,905.57 plus 3.13%~~
~~but not over $174,400~~	~~of amount over $83,600~~
~~Over $174,400~~	~~$4,747.61 plus 3.63%~~
~~but not over $379,150~~	~~of amount over $174,400~~
~~Over $379,150~~	~~$12,180.04 plus 3.99%~~
	~~of amount over $379,150~~

~~b.~~ ~~Married filing jointly and surviving spouse.~~

~~If North Dakota taxable income is:~~	~~The tax is equal to:~~
~~Not over $57,700~~	~~1.51%~~
~~Over $57,700~~	~~$871.27 plus 2.82%~~
~~but not over $139,350~~	~~of amount over $57,700~~
~~Over $139,350~~	~~$3,173.80 plus 3.13%~~
~~but not over $212,300~~	~~of amount over $139,350~~
~~Over $212,300~~	~~$5,457.14 plus 3.63%~~
~~but not over $379,150~~	~~of amount over $212,300~~
~~Over $379,150~~	~~$11,513.79 plus 3.99%~~
	~~of amount over $379,150~~

~~c.~~ ~~Married filing separately.~~

~~If North Dakota taxable income is:~~	~~The tax is equal to:~~
~~Not over $28,850~~	~~1.51%~~
~~Over $28,850~~	~~$435.64 plus 2.82%~~

~~but not over $69,675~~	~~of amount over $28,850~~
~~Over $69,675~~	~~$1,586.90 plus 3.13%~~
~~but not over $106,150~~	~~of amount over $69,675~~
~~Over $106,150~~	~~$2,728.57 plus 3.63%~~
~~but not over $189,575~~	~~of amount over $106,150~~
~~Over $189,575~~	~~$5,756.90 plus 3.99%~~
	~~of amount over $189,575~~

~~d.~~ ~~Head of household.~~

~~If North Dakota taxable income is:~~	~~The tax is equal to:~~
~~Not over $46,250~~	~~1.51%~~
~~Over $46,250~~	~~$698.38 plus 2.82%~~
~~but not over $119,400~~	~~of amount over $46,250~~
~~Over $119,400~~	~~$2,761.21 plus 3.13%~~
~~but not over $193,350~~	~~of amount over $119,400~~
~~Over $193,350~~	~~$5,075.84 plus 3.63%~~
~~but not over $379,150~~	~~of amount over $193,350~~
~~Over $379,150~~	~~$11,820.38 plus 3.99%~~
	~~of amount over $379,150~~

~~e.~~ ~~Estates and trusts.~~

~~If North Dakota taxable income is:~~	~~The tax is equal to:~~
~~Not over $2,300~~	~~1.51%~~
~~Over $2,300~~	~~$34.73 plus 2.82%~~
~~but not over $5,450~~	~~of amount over $2,300~~
~~Over $5,450~~	~~$123.56 plus 3.13%~~
~~but not over $8,300~~	~~of amount over $5,450~~
~~Over $8,300~~	~~$212.77 plus 3.63%~~
~~but not over $11,350~~	~~of amount over $8,300~~
~~Over $11,350~~	~~$323.48 plus 3.99%~~

~~of amount over $11,350~~

~~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. 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~~<u>adjusted gross</u> income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:

a. Reduced by <u>capital gains, dividends, and</u> 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~~to the extent they are included in federal adjusted gross income.

b. Reduced by the portion of a distribution of capital gains, dividends, and interest income received 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~~to the extent they are included in federal adjusted gross income.

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 and qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008, 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.~~e. 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.~~f. Reduced by the amount of income of a taxpayer, who resides anywhere within the exterior boundaries of a reservation situated in this state or situated both in this state and in an adjoining state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources anywhere within the exterior boundaries of a reservation situated in this state or both situated in this state and in an adjoining state.

~~p.~~ ~~For married individuals filing jointly, reduced by an amount equal to the excess of the recomputed itemized deductions or standard deduction over the amount of the itemized deductions or standard deduction deducted in computing federal taxable income. For purposes of this subdivision, "itemized deductions or standard deduction" means the amount under section 63 of the Internal Revenue Code that the married individuals deducted in computing their federal taxable income and "recomputed itemized deductions or standard deduction" means an amount determined by computing the itemized deductions or standard deduction in a manner that replaces the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for married individuals filing jointly with an amount equal to double the amount of the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for a single individual other than a head of household and surviving spouse. If the married individuals elected under section 63(e) of the Internal Revenue Code to deduct itemized deductions in computing their federal taxable income even though the amount of the allowable standard deduction is greater, the reduction under this subdivision is not allowed.~~

~~Married individuals filing jointly shall compute the available reduction under this subdivision in a manner prescribed by the tax commissioner~~

g. Reduced by fifteen thousand dollars for each of the following:

(1) The taxpayer;

(2) The taxpayer's spouse, if on a joint return; and

(3) Each dependent the taxpayer is entitled to claim for federal income tax purposes.

3. The same filing status used when filing federal income tax returns must be used when filing state income tax returns.

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~~adjusted gross income figure for a year for which ~~an election to file~~a state income tax ~~returns~~return 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 or green diesel 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.~~

~~o. Geothermal energy device installation credit under section 57-38-01.8.~~

~~p. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.~~

~~q. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.~~

~~r. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first three taxable years beginning after December 31, 2012).~~

~~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 18. 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 57-38-30 ~~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.~~5. 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.~~6. 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.~~7. 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.~~8. 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.~~9. 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 19. 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 57-38-30 ~~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 recorder 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 recorder 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 20. REPEAL. Sections 57-38-01.20, 57-38-01.28, 57-38-01.29, 57-38-01.30, and 57-38-29.3 of the North Dakota Century Code are repealed.

SECTION 21. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2012.