

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2364

Introduced by

Senators Laffen, Cook, Sitte

Representatives Brabandt, Delmore, Ruby

1 A BILL for an Act to create and enact two new sections to chapter 57-38, subsections 7 and 8 to
2 section 57-38-34, subsection 11 to section 57-38-38, and subsection 16 to section 57-38-40 of
3 the North Dakota Century Code, relating to a corporate income tax credit, utilization of net
4 operating losses and credit carryforwards, the time for filing of returns for certain corporations,
5 interest on tax when the time for filing a return is extended, refunds of tax for certain
6 corporations, and audits of certain corporations; to amend and reenact subsection 5 of section
7 11-37-08, subsection 8 of section 40-63-01, subsection 5 of section 40-63-04, section 40-63-06,
8 subsections 3 and 4 of section 40-63-07, subsection 3 of section 57-38-01.3, subsections 5 and
9 7 of section 57-38-01.32, subdivisions c and f of subsection 2 of section 57-38-30.3, and section
10 57-39.2-26.1 of the North Dakota Century Code, relating to subjecting financial institutions to
11 the corporate income tax, adjustments for net operating losses, bonds and other obligations of a
12 commerce authority, creation of renaissance zones, state aid distribution fund allocations to
13 political subdivisions, the housing incentive fund tax credit, computation of farm income, and
14 income associated with losses passed through to a financial institution; to repeal chapter
15 57-35.3 of the North Dakota Century Code, relating to elimination of the financial institutions tax;
16 to provide an effective date; and to declare an emergency.

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

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

20 5. Bonds issued by a commerce authority under this section are declared to be issued for
21 an essential public government purpose, and together with interest and income on the
22 bonds, are exempt from all individual and corporate taxes imposed under sections
23 ~~57-35.3-03~~, 57-38-30, and 57-38-30.3.

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

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

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

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

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

13 **40-63-06. Historic preservation and renovation tax credit.**

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

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

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

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

- 1 4. A credit against state tax liability as determined under section ~~57-35.3-03~~, 57-38-30, or
2 57-38-30.3 is allowed for investments in a renaissance fund organization. The amount
3 of the credit is fifty percent of the amount invested in the renaissance fund
4 organization during the taxable year. Any amount of credit which exceeds a taxpayer's
5 tax liability for the taxable year may be carried forward for up to five taxable years after
6 the taxable year in which the investment was made.

7 **SECTION 7. AMENDMENT.** Subsection 3 of section 57-38-01.3 of the North Dakota
8 Century Code is amended and reenacted as follows:

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

21 **SECTION 8. AMENDMENT.** Subsection 5 of section 57-38-01.32 of the North Dakota
22 Century Code is amended and reenacted as follows:

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

26 **SECTION 9. AMENDMENT.** Subsection 7 of section 57-38-01.32 of the North Dakota
27 Century Code is amended and reenacted as follows:

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

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

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

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

7 a. Must be made in the form and manner prescribed by the tax commissioner on the
8 return filed for the tax year beginning on January 1, 2013, or the return filed for
9 the short period required under section 15 of this Act; and

10 b. Is binding until the earlier of:

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

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

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

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

17 b. Any unused credit carryovers earned by a financial institution under chapter
18 57-35.3 for tax years beginning before January 1, 2013, may be carried forward
19 in the same number of years the financial institution would have been entitled
20 under chapter 57-35.3.

21 c. Any unused net operating losses incurred by a financial institution under chapter
22 57-35.3 for tax years beginning before January 1, 2013, may be carried forward
23 for the same number of years the financial institution would have been entitled
24 under chapter 57-35.3.

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

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

28 There is allowed a credit against the tax imposed by section 57-38-30 in an amount equal to
29 fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable
30 year for tuition scholarships for participation in rural leadership North Dakota conducted through

1 the North Dakota state university extension service. Contributions by a taxpayer may be
2 earmarked for use by a designated recipient.

3 **SECTION 12. AMENDMENT.** Subdivision c of subsection 2 of section 57-38-30.3 of the
4 North Dakota Century Code is amended and reenacted as follows:

5 c. Reduced by the amount equal to the earnings that are passed through to a
6 taxpayer in connection with an allocation and apportionment to North Dakota
7 under ~~chapter 57-35.3~~section 7 of this Act.

8 **SECTION 13. AMENDMENT.** Subdivision f of subsection 2 of section 57-38-30.3 of the
9 North Dakota Century Code is amended and reenacted as follows:

10 f. Increased by an amount equal to the losses that are passed through to a
11 taxpayer in connection with an allocation and apportionment to North Dakota
12 under ~~chapter 57-35.3~~section 7 of this Act.

13 **SECTION 14.** Subsection 7 to section 57-38-34 of the North Dakota Century Code is
14 created and enacted as follows:

15 7. For a person that was subject to the tax under chapter 57-35.3 for the calendar year
16 ending December 31, 2012, payment of the tax under this chapter is due six months
17 after the due date of the return as required under this section. The provisions of
18 subdivision a of subsection 1 of section 57-38-45 do not apply to the tax due under
19 this subsection. This subsection applies to the first tax year beginning after
20 December 31, 2012.

21 **SECTION 15.** Subsection 8 to section 57-38-34 of the North Dakota Century Code is
22 created and enacted as follows:

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

27 **SECTION 16.** Subsection 11 to section 57-38-38 of the North Dakota Century Code is
28 created and enacted as follows:

29 11. This section applies if additional tax would be due under the provisions of chapter
30 57-35.3 in effect for taxable years beginning before January 1, 2013.

1 **SECTION 17.** Subsection 16 to section 57-38-40 of the North Dakota Century Code is
2 created and enacted as follows:

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

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

8 **57-39.2-26.1. Allocation of revenues among political subdivisions.**

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

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

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

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

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

17 A city shall deposit all revenues received under this subsection in the city general
18 fund. Each city shall reserve a portion of its allocation under this subsection for further
19 distribution to, or expenditure on behalf of, park districts and other taxing districts
20 within the city, excluding school districts. The share of the city allocation under this
21 subsection to be distributed to a park district must be equal to the percentage of the
22 city share of state aid distribution fund allocations that park district received during
23 calendar year 1996, up to a maximum of thirty percent. The governing boards of the
24 city and park district may agree to a different distribution.

25 **SECTION 19. REPEAL.** Chapter 57-35.3 of the North Dakota Century Code is repealed.

26 **SECTION 20. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
27 December 31, 2012.

28 **SECTION 21. EMERGENCY.** Section 1 of this Act is declared to be an emergency
29 measure.