

**SENATE BILL NO. 2385**

Introduced by

Senators Schobinger, Mutch, Naaden

Representative Tollefson

1 A BILL for an Act to amend and reenact section 10-06.1-22, subsection 2 of section 10-30.1-01,  
2 subsection 4 of section 10-33-124, sections 57-35.3-06, 57-38-01, 57-38-01.1, subdivision i of  
3 subsection 1 of section 57-38-01.2, subsections 1 and 2 of section 57-38-01.7, section  
4 57-38-01.17, subsection 5 of section 57-38-04, sections 57-38-07.1, 57-38-34, subsection 12 of  
5 section 57-38-40, sections 57-38-44, 57-38-45, 57-38-62, and 57-38.1-17.2 of the North Dakota  
6 Century Code relating to elimination of the corporate income tax; and to repeal sections  
7 57-38-01.3, 57-38-01.4, 57-38-07.2, 57-38-11, 57-38-12, 57-38-13, 57-38-14, 57-38-30,  
8 57-38-30.1, 57-38-30.5, 57-38-32, 57-38-64, 57-38.1-17.3, and chapter 57-38.4 of the North  
9 Dakota Century Code, relating to the corporate income tax; to provide for application; and to  
10 provide an effective date.

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

12 **SECTION 1. AMENDMENT.** Section 10-06.1-22 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **10-06.1-22. Tax commissioner to compare returns and reports.** Each year the tax  
15 commissioner shall select at random at least five percent of the income tax returns filed by  
16 ~~corporations~~ or limited liability companies which report on income from farming or ranching  
17 operations and shall compare such returns with the annual report required to be filed with the  
18 secretary of state by section 10-06.1-17 and shall forward any apparent violations to the  
19 attorney general and the governor.

20 **SECTION 2. AMENDMENT.** Subsection 2 of section 10-30.1-01 of the North Dakota  
21 Century Code is amended and reenacted as follows:

22 2. "Taxpayer" includes any individual, ~~corporation~~, or fiduciary subject to a tax or a  
23 duty to file a tax return imposed by chapter 57-38.

1           **SECTION 3. AMENDMENT.** Subsection 4 of section 10-33-124 of the 1997  
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

13           **SECTION 4. AMENDMENT.** Section 57-35.3-06 of the 1997 Supplement to the North  
14 Dakota Century Code is amended and reenacted as follows:

15           **57-35.3-06. Tax return.** On or before April fifteenth of each year, the taxpayer shall file  
16 with the commissioner, on forms or in a manner prescribed by the commissioner, a report in  
17 writing under oath showing the amount of taxable income of the financial institution for the  
18 preceding calendar year. If required by the commissioner, the return must be accompanied by  
19 a true copy of the federal income tax return of the taxpayer or by equivalent information in the  
20 form and manner prescribed by the commissioner. A true copy of the federal income tax return  
21 must be furnished to the commissioner by the taxpayer at any time after the taxpayer has filed  
22 the return required by this section if required by the commissioner before the expiration of the  
23 applicable period for assessment of additional tax liability under section 57-38-38. The  
24 commissioner may prescribe alternative methods for signing, subscribing, or verifying a return  
25 filed by electronic means, including telecommunications, that has the same validity and  
26 consequence as the actual signature and written declaration for a paper return. The  
27 commissioner may grant a reasonable extension of time for filing a return ~~under the standards~~  
28 ~~and terms applicable to other corporations under section 57-38-34.~~

29           **SECTION 5. AMENDMENT.** Section 57-38-01 of the 1997 Supplement to the North  
30 Dakota Century Code is amended and reenacted as follows:

1           **57-38-01. Definitions.** As used in this chapter, unless the context or subject matter  
2 otherwise requires:

3     ~~0-4.~~ 1. "Chronically mentally ill" means a person who, as a result of a mental disorder,  
4 exhibits emotional or behavioral functioning which is so impaired as to interfere  
5 substantially with the person's capacity to remain in the community without verified  
6 supportive treatment or services of a long-term or indefinite duration. This mental  
7 disability must be severe and persistent, resulting in a long-term limitation of the  
8 person's functional capacities for primary activities of daily living such as  
9 interpersonal relationships, homemaking, self-care, employment, and recreation.

10     ~~4.~~ "~~Corporation~~" ~~includes associations, business trusts, joint stock companies, and~~  
11 ~~insurance companies.~~

12     ~~4-4.~~ 2. "Developmental disability" has the same meaning as defined in section 25-01.2-01.

13     ~~2.~~ "~~Domestic~~" ~~when applied to a corporation means created or organized under the~~  
14 ~~laws of North Dakota.~~

15     3. "Federal Internal Revenue Code of 1954, as amended", "United States Internal  
16 Revenue Code of 1954, as amended", and "Internal Revenue Code of 1954, as  
17 amended", mean the United States Internal Revenue Code of 1986, as amended.  
18 Reference to the Internal Revenue Code of 1954, as amended, includes a  
19 reference to the United States Internal Revenue Code of 1986, as amended, and  
20 reference to the United States Internal Revenue Code of 1986, as amended,  
21 includes a reference to the provisions of law formerly known as the Internal  
22 Revenue Code of 1954, as amended.

23     a. Except that the provisions of section 168(f)(8) of the Internal Revenue Code of  
24 1954, as amended, are not adopted in those instances where the minimum  
25 investment by the lessor is less than one hundred percent for the purpose of  
26 computing North Dakota taxable income for individuals, estates, and trusts,  
27 ~~and corporations~~ for taxable years beginning on or after January 1, 1983.  
28 Therefore, federal taxable income must be increased, or decreased, as the  
29 case may be, to reflect the adoption or nonadoption of the provisions of  
30 section 168(f)(8) of the Internal Revenue Code of 1954, as amended, and

- 1                   such adjustments must be made before computing income subject to  
2                   apportionment.
- 3                   b.    Provided, that one-half of the amount not allowed as an accelerated cost  
4                   recovery system depreciation deduction for the taxable year beginning after  
5                   December 31, 1982, may be deducted from federal taxable income in each of  
6                   the next two taxable years beginning after December 31, 1985, and one-half  
7                   of the amount not allowed as an accelerated cost recovery system  
8                   depreciation deduction for the taxable year beginning after December 31,  
9                   1983, may be deducted from federal taxable income in each of the next two  
10                  years beginning after December 31, 1987, and one-half of the amount not  
11                  allowed as an accelerated cost recovery system depreciation deduction for  
12                  the taxable year beginning after December 31, 1984, may be deducted from  
13                  federal taxable income in each of the next two taxable years beginning after  
14                  December 31, 1989. All such adjustments must be made before computing  
15                  income subject to apportionment.
- 16                  c.    Provided, that the depreciation adjustments allowed in subdivision b shall be  
17                  limited to those eligible assets acquired during taxable years beginning after  
18                  December 31, 1982. Acquisitions made before taxable years beginning  
19                  January 1, 1983, must be depreciated pursuant to the methods permissible  
20                  under Internal Revenue Code provisions in effect prior to January 1, 1981.
- 21                  ~~d.    Except that for purposes of applying the Internal Revenue Code of 1954, as  
22                  amended, with respect to actual distributions made after December 31, 1984,  
23                  by a domestic international sales corporation, or former domestic international  
24                  sales corporation, which was a domestic international sales corporation on  
25                  December 31, 1984, any accumulated domestic international sales  
26                  corporation income of a domestic international sales corporation, or former  
27                  domestic international sales corporation, which is derived before January 1,  
28                  1985, may not be treated as previously taxed income.~~
- 29                  4.    ~~"Foreign" when applied to a corporation means created or organized outside of  
30                  North Dakota.~~

- 1       ~~4.1.~~ "Mental disorder" means a substantial disorder of the person's emotional  
2                   processes, thought, cognition, or memory. Mental disorder is distinguished from:  
3           a.    Conditions which are primarily those of drug abuse, alcoholism, or mental  
4                   retardation, unless in addition to one or more of these conditions, the person  
5                   has a mental disorder.  
6           b.    The declining mental abilities that accompany impending death.  
7           c.    Character and personality disorders characterized by lifelong and deeply  
8                   ingrained antisocial behavior patterns, including sexual behaviors which are  
9                   abnormal and prohibited by statute, unless the behavior results from a mental  
10                  disorder.
- 11       ~~4.2.~~ 5. "Qualified investment fund" means any regulated investment company as defined  
12                   under the Internal Revenue Code, which for the calendar year in which the  
13                   distribution is paid:  
14           a.    Has investments in interest-bearing obligations issued by or on behalf of this  
15                   state, any political subdivision of this state, or the United States government;  
16                   and  
17           b.    Has provided the tax commissioner with a detailed schedule of the assets  
18                   contained in its investment portfolio and a schedule of the income attributable  
19                   to each asset in its investment portfolio for the calendar year.
- 20       ~~5.~~ 6. "Person" includes individuals, fiduciaries, partnerships, ~~corporations~~ trusts, and  
21                   limited liability companies.
- 22       ~~6.~~ 7. "Resident" applies only to natural persons and includes, for the purpose of  
23                   determining liability for the tax imposed by this chapter upon or with reference to  
24                   the income of any income year, any person domiciled in the state of North Dakota  
25                   and any other person who maintains a permanent place of abode within the state  
26                   and spends in the aggregate more than seven months of the income year within  
27                   the state. A full-time active duty member of the armed forces assigned to a military  
28                   installation in this state, or the spouse of such a person, is not a "resident" of this  
29                   state for purposes of this chapter simply by reason of having voted in an election in  
30                   this state.
- 31       ~~7.~~ 8. "Tax commissioner" means the state tax commissioner.

1       ~~8.~~ 9. "Taxable income" in the case of individuals, estates, and trusts, ~~and corporations~~  
2           means the taxable income as computed for an individual, estate, or trust, ~~or~~  
3           ~~corporation~~ for federal income tax purposes under the United States Internal  
4           Revenue Code of 1954, as amended, plus or minus such adjustments as may be  
5           provided by this ~~act and~~ chapter or other provisions of law. Except as otherwise  
6           expressly provided, "taxable income" does not include any amount computed for  
7           federal alternative minimum tax purposes.

8       ~~9.~~ 10. "Taxpayer" includes any individual, ~~corporation,~~ or fiduciary subject to a tax  
9           imposed by this chapter.

10      ~~10.~~ 11. Any term, as used in this code, as it pertains to the filing and reporting of income,  
11           deductions, or exemptions or the paying of North Dakota income tax, has the same  
12           meaning as when used in a comparable context in the laws of the United States  
13           relating to federal income taxes, unless a different meaning is clearly required or  
14           contemplated.

15           **SECTION 6. AMENDMENT.** Section 57-38-01.1 of the North Dakota Century Code is  
16      amended and reenacted as follows:

17           **57-38-01.1. Declaration of legislative intent.** It is the intent of the legislative  
18      assembly to simplify the state income tax laws and to demonstrate that federal legislation is not  
19      necessary to deal with certain interstate tax problems, by adopting the federal definition of  
20      taxable income as the starting point for the computation of state income tax by all taxpayers  
21      and providing the necessary adjustments thereto to substantially preserve and maintain existing  
22      exemptions and deductions. ~~It is the further intent of the legislative assembly to eliminate~~  
23      ~~double taxation of the earnings of small corporations by recognizing a subchapter S election~~  
24      ~~when made for federal income tax purposes.~~

25           **SECTION 7. AMENDMENT.** Subdivision i of subsection 1 of section 57-38-01.2 of the  
26      1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27           i.     Reduced by any dividends or income, up to a maximum of fifteen thousand  
28           dollars, received from stock or interest in any corporation and included in the  
29           adjusted gross income as computed for federal income tax purposes ~~where if~~  
30           ~~the income of such corporation has been assessed and tax paid by the~~  
31           ~~corporation under this chapter or~~ any liability it may have under sections

1                   57-35.3-01 through 57-35.3-12 and such dividends or income was received by  
2                   the taxpayer as income during the income year if such corporation has  
3                   reported the name and address of each North Dakota resident owning stock  
4                   and the amount of dividends or income paid each such person during the  
5                   year; ~~provided, that when.~~ If only part of the income of ~~any~~ the corporation  
6                   ~~shall have~~ has been assessed ~~and corporation income tax paid thereon~~ under  
7                   ~~this chapter or~~ sections 57-35.3-01 through 57-35.3-12, only a corresponding  
8                   part of the dividends or income received therefrom and included in federal  
9                   adjusted gross income shall be subtracted. The commissioner is hereby  
10                  authorized to prescribe rules and regulations to implement this subdivision to  
11                  avoid injustice to taxpayers, to prevent duplication of deductions, and to  
12                  eliminate taxation of income not fairly and properly taxable under this chapter.

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

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

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

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

29                  2. At the election of the taxpayer, there must be allowed, subject to the applicable  
30                  limitations provided in this subsection, as a credit against the income tax imposed  
31                  by this chapter for the taxable year, an amount equal to fifty percent of the

1 aggregate amount of charitable contributions made by the taxpayer during the year  
2 directly to nonprofit private institutions of secondary education, located within the  
3 state.

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

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

12 **SECTION 9. AMENDMENT.** Section 57-38-01.17 of the 1997 Supplement to the North  
13 Dakota Century Code is amended and reenacted as follows:

14 **57-38-01.17. Credit for investments in development corporations.** An individual,  
15 estate, or trust, ~~or corporation~~ is allowed, as a credit against a tax otherwise due under section  
16 57-38-29 ~~or 57-38-30~~ the credit for buying membership in, or paying dues or contributions to, a  
17 certified nonprofit development corporation as provided in section 10-33-124.

18 **SECTION 10. AMENDMENT.** Subsection 5 of section 57-38-04 of the 1997  
19 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20 5. Whenever a trade or business is carried on partly within and partly without this  
21 state by a nonresident of this state, the entire income therefrom must be allocated  
22 to this state and to other states, according to the provisions of chapter 57-38.1,  
23 providing for allocation and apportionment of income of ~~corporations~~ taxpayers  
24 doing business within and without this state.

25 **SECTION 11. AMENDMENT.** Section 57-38-07.1 of the 1997 Supplement to the North  
26 Dakota Century Code is amended and reenacted as follows:

27 **57-38-07.1. Taxation of ~~two or more member~~ limited liability companies.** For  
28 purposes of this chapter, a limited liability company ~~having two or more members that is formed~~  
29 ~~under either the laws of this state or under similar laws of another state, and that is considered~~  
30 ~~to be a partnership for federal income tax purposes,~~ is considered to be a partnership and the  
31 members must be considered to be partners. ~~A limited liability company having two or more~~



1 ~~members that is not treated as a partnership for federal income tax purposes must be treated~~  
2 ~~as a corporation for state tax purposes.~~

3 **SECTION 12. AMENDMENT.** Section 57-38-34 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **57-38-34. Time and place of filing returns - Interest on tax when time for filing is**  
6 **extended.**

- 7 1. Returns must be in such form as the tax commissioner from time to time may  
8 prescribe and may include the requirement that a copy of the taxpayer's federal  
9 income tax return or a portion thereof or information reflected thereon be attached  
10 to, furnished with, or included in the taxpayer's state income tax return, but the  
11 taxpayer's state income tax return must contain a method for the taxpayer to  
12 identify the school district in which ~~he~~ the taxpayer" resides, and must be filed with  
13 the tax commissioner at ~~his~~ the commissioner's office in Bismarck, North Dakota.  
14 The tax commissioner shall prepare blank forms for use in making returns and  
15 shall cause them to be distributed throughout this state, but failure to receive or  
16 secure a form does not relieve a taxpayer from making a return.
- 17 2. Returns made on the basis of the calendar year must be filed on or before the  
18 fifteenth day of April following the close of the calendar year and returns made on  
19 the basis of a fiscal year must be filed on or before the fifteenth day of the fourth  
20 month following the close of the fiscal year.
- 21 3. ~~Returns for cooperatives, domestic international sales corporations, and foreign~~  
22 ~~sales corporations, however, made on the basis of the calendar year must be filed~~  
23 ~~on or before the fifteenth day of September following the close of the calendar year~~  
24 ~~and returns made on the basis of a fiscal year must be filed on or before the~~  
25 ~~fifteenth day of the ninth month following the close of the fiscal year.~~
- 26 4. A taxpayer actively serving in the armed forces or merchant marine, outside the  
27 boundaries of the United States, may defer the filing of an income tax return and  
28 the payment of the income tax until such time as the federal income tax return is  
29 required to be filed at which time the state income tax return, with payment of tax,  
30 will also be due. No interest or penalty accrues to the date of such filing.

1       ~~5-~~ 4. The tax commissioner may grant a reasonable extension of time for filing a return  
2                   when, in the judgment of the tax commissioner, good cause exists.

3               **SECTION 13. AMENDMENT.** Subsection 12 of section 57-38-40 of the 1997

4 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5           12. The tax commissioner shall reconsider the denial of the claim for credit or refund  
6                   after the filing of a protest. The reconsideration may include the further  
7                   examination by the tax commissioner or the authorized representative of the tax  
8                   commissioner of a taxpayer's books, papers, records, or memoranda, ~~including~~  
9                   ~~corporate minutes and committee notes.~~

10           **SECTION 14. AMENDMENT.** Section 57-38-44 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12           **57-38-44. Tax a personal debt.** Every tax imposed by this chapter, and all increases,  
13 interest, and penalties thereon, becomes, from the time it is due and payable, a personal debt  
14 from the person ~~or corporation~~ liable to pay the same to this state.

15           **SECTION 15. AMENDMENT.** Section 57-38-45 of the 1997 Supplement to the North  
16 Dakota Century Code is amended and reenacted as follows:

17           **57-38-45. Interest and penalties.**

- 18           1. In addition to other increases to tax and penalty prescribed in this chapter, a  
19 taxpayer is subject to interest as follows:
- 20           a. Any taxpayer who requests and is granted an extension of time for filing a  
21               return shall pay, with the tax, interest on the tax at the rate of twelve percent  
22               per annum from the date the tax would have been due if the extension had  
23               not been granted to the date the tax is paid.
  - 24           b. If any amount of tax imposed by this chapter, including tax withheld by an  
25               employer, is not paid on or before the due date or extended due date for the  
26               payment, there must be added to the tax interest at the rate of one percent  
27               per month or fraction of a month during which the tax remains unpaid,  
28               computed from the due date of the return to the date paid excepting the  
29               month in which the return was required to be filed or the tax became due.
  - 30           c. If upon audit an additional tax is found to be due, there must be added to the  
31               additional tax due interest at the rate of one percent of the additional tax for

- 1 each month or fraction of a month during which the tax remains unpaid,  
2 computed from the due date of the return to the date paid, excepting the  
3 month in which the return was required to be filed or the tax became due.
- 4 d. If the mathematical verification of a taxpayer's return results in additional tax  
5 due, there must be added to the additional tax interest at the rate of one  
6 percent of the additional tax due for each month or fraction of a month during  
7 which the tax remains unpaid, computed from the due date of the return to the  
8 date paid, excepting the month in which the return was required to be filed or  
9 the tax became due.
- 10 e. If, for any portion of the time period over which interest is otherwise computed  
11 under this subsection on additional tax due, interest was previously computed  
12 under subsection 2 of section 57-38-35.2 on a refund for any tax period, the  
13 interest computed on the additional tax due for that portion of the time period  
14 must be computed at the same rate and in the same manner that was used in  
15 computing the interest on the refund, but only to the extent that the amount of  
16 the additional tax due does not exceed the amount of the refund.
- 17 f. If a deficiency is determined for a tax period for which there was an  
18 overpayment that was applied to the following tax period's estimated tax  
19 under subsection 6 of section 57-38-62, interest accrues with respect to the  
20 amount of the deficiency that is equal to or less than the amount of the  
21 overpayment applied from the estimated tax payment date to which the  
22 overpayment was applied.
- 23 2. In addition to the interest prescribed in this chapter, a taxpayer is subject to  
24 additions to tax and penalty as follows:
- 25 a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall  
26 fail to pay the amount shown as tax due on any return, including tax withheld  
27 by an employer, filed on or before the due date or extended due date  
28 prescribed therefor, there shall be added to the tax a penalty of five percent  
29 thereof, or five dollars, whichever is greater.
- 30 b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall  
31 fail to file a return, including the employer's withheld tax return, on or before

- 1                   the due date or extended due date prescribed therefor, there shall be added a  
2                   penalty equal to five percent of the tax required to be reported, or five dollars,  
3                   whichever is greater, if the failure is for not more than one month, counting  
4                   each fraction of a month as an entire month, with an additional five percent for  
5                   each additional month or fraction thereof during which the failure continues,  
6                   not exceeding twenty-five percent in the aggregate.
- 7                   c.   If upon audit of a taxpayer's return, including tax withheld by an employer, an  
8                   additional tax is found to be due, there shall be added to the tax penalty as  
9                   prescribed in subdivision a or b.
- 10                  d.   If the mathematical verification of a taxpayer's return, including tax withheld by  
11                  an employer, results in additional tax due, there shall be added to the tax  
12                  penalty as prescribed in subdivision a or b.
- 13                  e.   The provisions of subdivision a, b, c, or d do not apply to the extent it has  
14                  been determined that the taxpayer has offsetting overpayments of income  
15                  taxes which have not been refunded.
- 16                  f.   An employer, required to file returns under subsection 1 of section 57-38-60,  
17                  with four to eight delinquent original tax returns or payments is subject to a  
18                  penalty of ten percent of the tax due or twenty-five dollars, whichever is  
19                  greater. An employer with nine or more delinquent original returns or  
20                  payments is subject to a penalty of fifteen percent of the tax due or one  
21                  hundred dollars, whichever is greater.
- 22                  3.   Any person including any ~~officer or employee of any corporation or any~~ member or  
23                  employee of any partnership or any member, employee, governor, or manager of a  
24                  limited liability company who, with intent to evade any requirement of this chapter,  
25                  shall fail to pay any tax, or to make, sign, or verify any return, or to supply any  
26                  information required by law, or under the provisions of this chapter, or who with like  
27                  intent shall make, render, sign, or verify any false or fraudulent information, shall  
28                  be liable to a penalty of not more than one thousand dollars to be recovered by the  
29                  attorney general, in the name of the state, by action in any court of competent  
30                  jurisdiction. Such person shall also be guilty of a class A misdemeanor.

- 1           4. In case any person ~~or any corporation~~ fails to pay any tax, addition to tax, interest,  
2           or penalty imposed by this chapter, the attorney general shall bring action for the  
3           recovery of the amount of the tax, addition to tax, interest, or penalty which may be  
4           due, in the name of the state, in any court of competent jurisdiction.
- 5           5. The tax commissioner may for good cause shown waive all or any part of any civil  
6           penalty or interest that attached pursuant to the provisions of this chapter.
- 7           6. If any taxpayer who has failed to file a return and has been notified by the tax  
8           commissioner of the delinquency, refuses or neglects within thirty days after such  
9           notice to file a proper return, the tax commissioner shall determine the income of  
10          such taxpayer according to the best information available, and shall assess the tax  
11          at not more than double the amount so determined. The appropriate interest and  
12          penalty prescribed in subsections 1 and 2 shall also be added.
- 13          ~~7. If any corporation fails to file an income tax return as required by section 57-38-32~~  
14          ~~on the date prescribed in section 57-38-34, and after thirty days' notice to file is~~  
15          ~~given by the tax commissioner, the tax commissioner may assess a penalty of up~~  
16          ~~to five hundred dollars for each failure to file.~~

17           **SECTION 16. AMENDMENT.** Section 57-38-62 of the 1997 Supplement to the North  
18   Dakota Century Code is amended and reenacted as follows:

19           **57-38-62. Payment of estimated income tax.**

- 20          1. An individual, estate, or trust that is subject to section 6654 of the Internal Revenue  
21          Code relating to a failure to pay federal estimated income tax shall, at the time  
22          prescribed in this chapter, pay estimated tax for the current taxable year.  
23          Notwithstanding any other provision of this section, an individual, estate, or trust  
24          whose net tax liability for the preceding taxable year was less than two hundred  
25          dollars is not required to pay estimated tax for the current taxable year. Married  
26          individuals who file a joint federal income tax return and are subject to section 6654  
27          of the Internal Revenue Code must each be deemed to be subject to the federal  
28          provision. If payment of estimated tax is required, the individual, estate, or trust  
29          shall, at the time prescribed in this chapter, pay the lesser of the following:
- 30          a. An amount which, when added to the taxpayer's withholding, equals ninety  
31          percent of the taxpayer's current taxable year's net tax liability.

- 1           b. An amount which, when added to the taxpayer's withholding, equals one  
2           hundred percent of the taxpayer's net tax liability for the immediately  
3           preceding taxable year.
- 4           (1) This subdivision does not apply to any taxpayer who was not required  
5           by this chapter to file a return for the immediately preceding taxable  
6           year, to an individual who moved into this state during the immediately  
7           preceding taxable year, or to an estate or trust that was not in existence  
8           for the entire immediately preceding taxable year. The amount under  
9           this subdivision must be deemed to be equal to the amount in  
10          subdivision a if this part applies.
- 11          (2) In order to satisfy the requirements of this subdivision, married  
12          individuals who are required to file separate state returns for the current  
13          taxable year but who were required to file a joint state return for the  
14          immediately preceding taxable year must each be required to pay  
15          estimated tax in an amount which, when added to the individual's  
16          withholding, equals the net tax liability which would have been  
17          computed for the immediately preceding taxable year if separate state  
18          returns had been required to be filed.
- 19          (3) In order to satisfy the requirements of this subdivision, married  
20          individuals who are required to file a joint state return for the current  
21          taxable year but were required to file separate state returns for the  
22          immediately preceding taxable year must be required to pay estimated  
23          tax in an amount which, when added to their withholding, equals the  
24          sum of their separate net tax liabilities for the immediately preceding  
25          taxable year.
- 26          2. ~~A corporation shall, at the time prescribed in this chapter, pay estimated tax for the~~  
27          ~~current taxable year if the corporation's estimated tax can reasonably be expected~~  
28          ~~to exceed five thousand dollars and if the corporation's net tax liability for the~~  
29          ~~immediately preceding taxable year exceeded five thousand dollars. If payment of~~  
30          ~~estimated tax is required, the corporation shall, at the time prescribed in this~~  
31          ~~chapter, pay the lesser of the following:~~

- 1           a. ~~Ninety percent of the corporation's current taxable year's net tax liability.~~
- 2           b. ~~One hundred percent of the corporation's net tax liability for the immediately~~
- 3                 ~~preceding taxable year.~~
- 4       ~~3.~~ The provisions of section 57-38-45, except those provisions relating to the
- 5         imposition of a penalty, apply in case of nonpayment, late payment, or
- 6         underpayment of estimated tax. For purposes of applying the interest provisions of
- 7         section 57-38-45, interest accrues on a per annum basis from the due date of an
- 8         installment to the fifteenth day of the fourth month following the end of the current
- 9         taxable year or, with respect to any portion of the estimated tax required to be paid,
- 10         the date on which the portion thereof is paid, whichever date is earlier.
- 11         ~~Notwithstanding the other provisions of this section, no interest is due if the~~
- 12         ~~estimated tax paid on or before each due date under section 57-38-63 by a~~
- 13         ~~corporation is based on the annualized or adjusted seasonal method under section~~
- 14         ~~6655 of the Internal Revenue Code.~~ Notwithstanding the other provisions of this
- 15         section, no interest is due if the estimated tax of an individual, estate, or trust is
- 16         less than two hundred dollars per income tax return filed.
- 17       4. 3. For purposes of this section, "estimated tax" means the amount that a taxpayer
- 18         estimates to be income tax under this chapter for the current taxable year less the
- 19         amount of any credits allowable, including tax withheld.
- 20       ~~5.~~ 4. For purposes of this section, "net tax liability" means the amount of income tax
- 21         computed for the taxable year as shown on the return less the amount of any
- 22         credits allowable except tax withheld and estimated tax paid.
- 23       ~~6.~~ 5. An individual ~~or corporation~~ may apply a tax overpayment from a preceding taxable
- 24         year as an estimated tax payment on the individual's ~~or corporation's~~ behalf for the
- 25         taxable year succeeding the overpayment. The individual ~~or corporation~~ may elect
- 26         to apply the overpayment to specific estimated tax installments. If the individual ~~or~~
- 27         ~~corporation~~ does not specify the installment period toward which the overpayment
- 28         is to be applied, the individual ~~or corporation~~ must be considered to have elected to
- 29         apply the overpayment toward the first required estimated tax installment for the
- 30         succeeding taxable year.

1           **SECTION 17. AMENDMENT.** Section 57-38.1-17.2 of the 1997 Supplement to the  
2 North Dakota Century Code is amended and reenacted as follows:

3           **57-38.1-17.2. Taxation of ~~two or more member~~ limited liability companies.** For  
4 purposes of this chapter, a limited liability company ~~having two or more members that is formed~~  
5 ~~under either the laws of this state or under similar laws of another state, and that is considered~~  
6 ~~to be a partnership for federal income tax purposes;~~ is considered to be a partnership and the  
7 members must be considered to be partners. ~~A limited liability company having two or more~~  
8 ~~members that is not treated as a partnership for federal income tax purposes must be treated~~  
9 ~~as a corporation for state tax purposes.~~

10           **SECTION 18. REPEAL.** Sections 57-38-01.4, 57-38-11, 57-38-12, 57-38-13, 57-38-30,  
11 57-38-30.5, 57-38-64, and chapter 57-38.4 of the North Dakota Century Code and sections  
12 57-38-01.3, 57-38-07.2, 57-38-14, 57-38-30.1, 57-38-32, and 57-38.1-17.3 of the 1997  
13 Supplement to the North Dakota Century Code are repealed.

14           **SECTION 19. EFFECTIVE DATE - APPLICATION.** This Act is effective for taxable  
15 years beginning after December 31, 1999, and for taxable years beginning before January 1,  
16 2000, the provisions of law amended or repealed by this Act remain effective as they existed  
17 before the effective date of this Act.