

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2330

Introduced by

Senators Christmann, Bercier, Nething

Representatives Brandenburg, Drovdal, Kroeber

1 A BILL for an Act to create and enact a new subsection to section 57-35.3-05 of the North
2 Dakota Century Code, relating to financial institutions tax credits for tax overpayments; to
3 provide an effective date; and to provide an expiration date.

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

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

7 An amended return and credit of an overpayment of tax under chapters 57-35,
8 57-35.1, or 57-35.2 is allowed if an internal revenue service adjustment resulting in
9 discovery of the overpayment is completed more than one year after the tax was
10 due, provided that the amended return and claim for credit of the overpayment of
11 tax would have otherwise been timely under subdivision a or b of subsection 7 of
12 section 57-38-40 or section 57-38-34.4. The credit must be credited against
13 liability under this chapter as provided in this section. For purposes of this
14 subsection:

15 a. The taxpayer is entitled to a credit of:

16 (1) The amount of the overpayment that was made under chapter 57-35
17 plus the amount of any interest paid by the taxpayer on this portion of
18 the overpayment; and

19 (2) Interest at the rate of two and one-half percent per year on the
20 uncredited amount under paragraph 1 from the date tax and interest
21 under paragraph 1 was paid by the taxpayer to December 31, 2006.

22 b. The taxpayer is entitled to a credit of:

- 1 (1) The amount of the overpayment that was made under chapter 57-35.2
2 plus the amount of any interest paid by the taxpayer on this portion of
3 the overpayment; and
- 4 (2) Interest at the rate of two and one-half percent per year on the
5 unrefunded amount under paragraph 1 from the date tax and interest
6 under paragraph 1 was paid by the taxpayer to April 15, 2006.
- 7 c. For purposes of determining distributions to and by counties under section
8 57-35.3-09 in any year a credit under subdivision a is claimed:
- 9 (1) The balance in the financial institution tax distribution fund and the
10 amount of the payment received by each county from the state shall be
11 determined as if any credit allowed under subdivision a had not been
12 claimed and the full amount of the tax otherwise due had been timely
13 paid;
- 14 (2) The credited amount under subdivision a must be deducted from the
15 distributions that would otherwise be made to and by the county that
16 received the tax overpayment until the sum of the deductions under this
17 paragraph equals the amount of the credit under subdivision a; and
- 18 (3) The deductions from distributions made by a county to each distributee
19 must be proportionate to the overpayment of tax received by each
20 distributee.
- 21 d. The entire amount of the credit under subdivision a must be deducted from
22 the portion of the tax payable by the taxpayer that would be deposited in the
23 financial institution tax distribution fund. The entire amount of the credit under
24 subdivision b must be deducted from the amount payable by the taxpayer that
25 would be deposited in the state general fund.
- 26 e. The amount of the credit under subdivision a is limited to not more than fifty
27 percent of the taxpayer's liability under this chapter that would be payable to
28 the county that received the overpayment unless the board of county
29 commissioners of that county approves allowing a greater amount of the
30 credit. The board of county commissioners must notify the tax commissioner,
31 by December thirty-first of the taxable year for which the credit will be

1 claimed, if the board of county commissioners approves allowing a greater
2 amount of the credit under this subdivision.

3 f. Any amount not allowed as a credit because of the limitations under this
4 section may be carried forward to the next taxable year.

5 **SECTION 2. EFFECTIVE DATE - RETROACTIVE APPLICATION - EXPIRATION**

6 **DATE.** This Act applies retroactively and prospectively to all claims filed after December 31,
7 2001, and is ineffective for any refund claim filed after February 15, 2005.