

SENATE BILL NO. 2140

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact section 57-35.3-12, subsection 9 of section 57-38-38,
2 and sections 57-38.1-01 and 57-38.1-02 of the North Dakota Century Code, relating to
3 provisions of the corporate income tax applicable to the financial institutions tax, the time period
4 for the assessment of additional income tax, the definition of financial organization for purposes
5 of the Uniform Division of Income for Tax Purposes Act, and applicability of the Uniform Division
6 of Income for Tax Purposes Act; and to provide an effective date.

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

8 **SECTION 1. AMENDMENT.** Section 57-35.3-12 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **57-35.3-12. Applicable provisions of chapter 57-38 relating to administration,**
11 **interest, and penalties.** The provisions of subsection 9 of section 57-38-14, section 57-38-33,
12 subsection 1 of section 57-38-34, sections 57-38-34.4, 57-38-35.1, 57-38-35.2, 57-38-37,
13 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-48, 57-38-49,
14 57-38-50, 57-38-51, 57-38-53, 57-38-54, 57-38-56, and 57-38-57, insofar as consistent
15 therewith, govern the administration of sections 57-35.3-01 through 57-35.3-12. For this
16 purpose, the term "corporation", as used in the sections listed in this section, includes a
17 financial institution.

18 **SECTION 2. AMENDMENT.** Subsection 9 of section 57-38-38 of the North Dakota
19 Century Code is amended and reenacted as follows:

20 9. Except for an amended return required to be filed under section 57-38-34.4, if a
21 person files an amended state income tax return within the time periods prescribed
22 in subsections 1, 2, and 3 or ~~subsection~~ subsections 1 and 2 of section 57-38-40,
23 the tax commissioner has two years after the amended state income tax return is
24 filed to audit the state income tax return and assess any additional state income

1 tax attributable to the changes or corrections on the amended return, even though
2 other time periods prescribed in this section for the assessment of tax may have
3 expired. The provisions of this subsection do not limit or restrict any other time
4 period prescribed in this section for the assessment of tax that has not expired at
5 the end of the two-year period prescribed in this subsection.

6 **SECTION 3. AMENDMENT.** Section 57-38.1-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-38.1-01. Definitions.** As used in this chapter, unless the context otherwise
9 requires:

- 10 1. "Business income" means income arising from transactions and activity in the
11 regular course of the taxpayer's trade or business and includes income from
12 tangible and intangible property if the acquisition, management, and disposition of
13 the property constitute integral parts of the taxpayer's regular trade or business
14 operations.
- 15 2. "Commercial domicile" means the principal place from which the trade or business
16 of the taxpayer is directed or managed.
- 17 3. "Compensation" means wages, salaries, commissions, and any other form of
18 remuneration paid to employees for personal services.
- 19 4. ~~"Financial organization" means any bank, trust company, savings bank, industrial~~
20 ~~bank, land bank, safe deposit company, private banker, savings and loan~~
21 ~~association, credit union, cooperative bank, investment company, or any type of~~
22 ~~insurance company.~~
- 23 5. "Nonbusiness income" means all income other than business income.
- 24 6. 5. "Public utility" means any business entity which owns or operates for public use
25 any plant, equipment, property, franchise, or license for the transmission of
26 communications, transportation of goods or persons, or the production, storage,
27 transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil
28 products, or gas.
- 29 7. 6. "Sales" means all gross receipts of the taxpayer not allocated under sections
30 57-38.1-04 through 57-38.1-08.

1 ~~8-~~ 7. "State" means any state of the United States, the District of Columbia, the
2 Commonwealth of Puerto Rico, any territory or possession of the United States,
3 and any foreign country or political subdivision thereof.

4 **SECTION 4. AMENDMENT.** Section 57-38.1-02 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-38.1-02. Taxpayers - Applicability.** Any taxpayer having income from business
7 activity which is taxable both within and without this state, including a public utility, ~~but other~~
8 ~~than activity as a financial organization or the rendering of purely personal service by an~~
9 ~~individual,~~ shall allocate and apportion the taxpayer's net income as provided in this chapter.

10 **SECTION 5. EFFECTIVE DATE.** Section 2 of this Act is effective for amended returns
11 filed after December 31, 2004.