

HOUSE BILL NO. 1155

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact subsection 1 of section 10-30.1-05, section 10-30.2-12,
2 subsection 4 of section 10-33-124, subsection 5 of section 11-37-08, subsections 1 and 3 of
3 section 40-63-04, section 40-63-06, subsection 4 of section 40-63-07, subsections 1 and 2 of
4 section 57-38-01.7, subsections 1 and 4 of section 57-38-01.8, sections 57-38-01.14,
5 57-38-01.16, and 57-38-01.17, subsection 1 of section 57-38-01.20, and sections 57-38.5-03
6 and 57-38.6-03 of the North Dakota Century Code, relating to elimination of the optional
7 long-form income tax return; to repeal subsection 2 of section 10-30.1-01, sections 57-38-01.2,
8 57-38-01.18, 57-38-02, 57-38-03, 57-38-06.1, 57-38-29, 57-38-29.2, and 57-38-30.4,
9 subsection 2 of section 57-38-31, and sections 57-38-67, 57-38-68, 57-38-69, 57-38-70,
10 57-38-71, 57-38-72, 57-38-73, and 57-38-74 of the North Dakota Century Code, relating to
11 elimination of the optional long-form income tax return; and to provide an effective date.

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

13 **SECTION 1. AMENDMENT.** Subsection 1 of section 10-30.1-05 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 1. Subject to sections 10-30.1-06, 10-30.1-07, and 10-30.1-08, a taxpayer is entitled
16 to a credit against any state income tax liability which may be imposed on the
17 taxpayer under section 57-38-30 for a particular taxable year that begins after
18 December 31, 1984, if the taxpayer makes an investment in a venture capital
19 corporation. However, a taxpayer that makes an investment in a venture capital
20 corporation on or after July 1, 1989, is only entitled to a tax credit if the venture
21 capital corporation uses the funds it receives from the taxpayer to invest or provide
22 financing to qualified entities, which entities do not include a business or an affiliate
23 of a business that owns tax-exempt securities. Investments by Myron G. Nelson
24 Fund, Incorporated, in a venture capital corporation do not qualify for the tax credit

1 provided by this chapter. Tax credits under this chapter are not subject to payment
2 of interest as provided in section 57-38-35.1. For a venture capital corporation that
3 was organized before January 1, 1989, which invested in an entity or affiliate of an
4 entity that owned tax-exempt securities, investments made in that venture capital
5 corporation after February 28, 1991, do not qualify for the tax credit provided by
6 this chapter.

7 **SECTION 2. AMENDMENT.** Section 10-30.2-12 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **10-30.2-12. Income tax credits for investment.** A taxpayer that invests in stock
10 issued by the corporation, or in a separate legal entity such as a limited partnership or limited
11 liability company created by the corporation as an affiliate for the purpose of obtaining
12 investment capital from the public, or in investments in either equity or debt instruments or
13 securities offered by a small business investment company created by the corporation and
14 licensed by the small business administration under the Small Business Investment Company
15 Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity
16 Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.] is
17 entitled, subject to section 10-30.2-13, to a credit in the amount equal to twenty-five percent of
18 the total amount invested against any state income tax liability imposed against the taxpayer
19 under section 57-38-30. The tax credit allowed under this section must be credited against the
20 taxpayer's tax liability for the taxable year in which full consideration for the investment is paid
21 by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's
22 tax liability in that year may be carried forward for seven taxable years. No taxpayer claiming a
23 credit under this section is eligible to claim a credit for the same investment under chapter
24 10-30.1. Except in the case of a tax credit that is carried forward from a prior tax year, no tax
25 credit is allowed under this section to a taxpayer who received a tax credit for investment in the
26 corporation and as a result of the dissolution of the corporation agreed to invest in the small
27 business investment company created by the corporation and licensed by the small business
28 administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699;
29 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992
30 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.].

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

- 3 4. a. ~~An individual or a~~ A corporation that buys membership in, or pays dues or
4 contributes to, a nonprofit development corporation is entitled to an income
5 tax credit against the tax liability under section 57-38-30 equal to twenty-five
6 percent of the amount paid.
- 7 b. This credit may not be claimed by ~~an individual who elects to file an income~~
8 ~~tax return under section 57-38-30.3~~ or by a corporation that is recognized as a
9 subchapter S corporation under section 57-38-01.4.
- 10 c. No taxpayer is entitled to more than two thousand dollars in total income tax
11 credits under this section.
- 12 d. The amount of the credit under this section in excess of the taxpayer's income
13 tax liability may be carried forward for up to seven taxable years.

14 **SECTION 4. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota
15 Century Code is amended and reenacted as follows:

- 16 5. Bonds issued by a commerce authority under this section are declared to be
17 issued for an essential public government purpose, and together with interest and
18 income on the bonds, are exempt from all individual and corporate taxes imposed
19 under sections 57-35.3-03, ~~57-38-29~~, 57-38-30, and 57-38-30.3.

20 **SECTION 5. AMENDMENT.** Subsections 1 and 3 of section 40-63-04 of the North
21 Dakota Century Code are amended and reenacted as follows:

- 22 1. An individual taxpayer who purchases or rehabilitates single-family residential
23 property for the individual's primary place of residence as a zone project is exempt
24 from up to ten thousand dollars of personal income tax liability as determined
25 under section ~~57-38-29~~ or 57-38-30.3 for five taxable years beginning with the date
26 of occupancy or completion of rehabilitation.
- 27 3. If the cost of a new business purchase or expansion of an existing business,
28 approved as a zone project, exceeds seventy-five thousand dollars, and the
29 business is located in a city with a population of not more than two thousand five
30 hundred, an individual taxpayer may, in lieu of the exemption provided in
31 subsection 2, elect to take an income tax exemption of up to two thousand dollars

1 of personal income tax liability as determined under section ~~57-38-29 or~~
2 57-38-30.3. The election must be made on the taxpayer's zone project application.
3 The election is irrevocable and binding for the duration of the exemptions provided
4 in subsection 2 or 3. If no election is made on the zone project application, the
5 taxpayer is only eligible for the exemption provided in subsection 2.

6 **SECTION 6. AMENDMENT.** Section 40-63-06 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **40-63-06. Historic preservation and renovation tax credit.** A credit against state tax
9 liability as determined under sections 57-35.3-03, ~~57-38-29~~, 57-38-30, and 57-38-30.3 is
10 allowed for investments in the historic preservation or renovation of property within the
11 renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to
12 a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in
13 which the preservation or renovation is completed. Any excess credit may be carried forward
14 for a period of up to five taxable years.

15 **SECTION 7. AMENDMENT.** Subsection 4 of section 40-63-07 of the North Dakota
16 Century Code is amended and reenacted as follows:

17 4. A credit against state tax liability as determined under section 57-35.3-03,
18 ~~57-38-29~~, 57-38-30, or 57-38-30.3 is allowed for investments in a renaissance fund
19 organization. The amount of the credit is fifty percent of the amount invested in the
20 renaissance fund organization during the taxable year. Any amount of credit which
21 exceeds a taxpayer's tax liability for the taxable year may be carried forward for up
22 to five taxable years after the taxable year in which the investment was made.

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

25 1. At the election of the taxpayer, there must be allowed, subject to the applicable
26 limitations provided in this subsection, as a credit against the income tax ~~imposed~~
27 ~~by this chapter~~ liability under section 57-38-30 for the taxable year, an amount
28 equal to fifty percent of the aggregate amount of charitable contributions made by
29 the taxpayer during the year to nonprofit private institutions of higher education
30 located within the state or to the North Dakota independent college fund.

- 1 a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a~~
2 credit under this subsection for any taxable year may not exceed forty percent
3 of the taxpayer's total income tax under this chapter for the year, or two
4 hundred fifty dollars, whichever is less.
- 5 b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this
6 subsection for any taxable year may not exceed twenty percent of the
7 corporation's total income tax under this chapter for the year, or two thousand
8 five hundred dollars, whichever is less.
- 9 2. At the election of the taxpayer, there must be allowed, subject to the applicable
10 limitations provided in this subsection, as a credit against the income tax ~~imposed~~
11 by this chapter liability under section 57-38-30 for the taxable year, an amount
12 equal to fifty percent of the aggregate amount of charitable contributions made by
13 the taxpayer during the year directly to nonprofit private institutions of secondary
14 education, located within the state.
- 15 a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a~~
16 credit under this subsection for any taxable year may not exceed forty percent
17 of the taxpayer's total income tax under this chapter for the year, or two
18 hundred fifty dollars, whichever is less.
- 19 b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this
20 subsection for any taxable year may not exceed twenty percent of the
21 corporation's total income tax under this chapter for the year, or two thousand
22 five hundred dollars, whichever is less.

23 **SECTION 9. AMENDMENT.** Subsections 1 and 4 of section 57-38-01.8 of the North
24 Dakota Century Code are amended and reenacted as follows:

- 25 1. ~~Any~~ A taxpayer filing a North Dakota income tax return pursuant to the provisions
26 of this chapter may claim a credit against the tax liability under section 57-38-30 for
27 the cost of a geothermal, solar, or wind energy device installed before January 1,
28 2011, in a building or on property owned or leased by the taxpayer in North
29 Dakota. The credit provided in this section for a device installed before January 1,
30 2001, must be in an amount equal to five percent per year for three years, and for
31 a device installed after December 31, 2000, must be in an amount equal to three

1 percent per year for five years of the actual cost of acquisition and installation of
2 the geothermal, solar, or wind energy device and must be subtracted from any
3 income tax liability of the taxpayer as determined pursuant to the provisions of this
4 chapter.

5 4. A partnership, subchapter S corporation, limited partnership, limited liability
6 company, or any other passthrough entity that installs a geothermal, solar, or wind
7 energy device in a building or on property owned or leased by the passthrough
8 entity must be considered to be the taxpayer for purposes of this section, and the
9 amount of the credit allowed with respect to the entity's investments must be
10 determined at the passthrough entity level. The amount of the total credit
11 determined at the entity level must be passed through to the corporate partners,
12 shareholders, or members in proportion to their respective interests in the
13 passthrough entity.

14 **SECTION 10. AMENDMENT.** Section 57-38-01.14 of the North Dakota Century Code
15 is amended and reenacted as follows:

16 **57-38-01.14. No gain recognized on property subject to eminent domain sale or**
17 **transfer.** If any private property, through the exercise of eminent domain, is involuntarily
18 converted into property of either like or unlike kind, no gain, either ordinary or capital, may be
19 recognized for corporate income tax purposes.

20 **SECTION 11. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code
21 is amended and reenacted as follows:

22 **57-38-01.16. Income tax credit for employment of developmentally disabled or**
23 **chronically mentally ill persons.** ~~Any~~ A taxpayer filing an income tax return under this
24 chapter, ~~except a return on which liability is determined under section 57-38-30.3,~~ may claim a
25 credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to
26 a developmentally disabled or chronically mentally ill employee. The credit allowed under this
27 section equals five percent of up to six thousand dollars in wages paid during the first twelve
28 months of employment by the taxpayer for each developmentally disabled or chronically
29 mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable
30 year may be considered for purposes of this section. An employee of a subcontractor is
31 considered an employee of the contractor to the extent of any wages paid under the contract.

1 The total of credits allowed under this section may not exceed fifty percent of the
2 taxpayer's liability under this chapter.

3 **SECTION 12. AMENDMENT.** Section 57-38-01.17 of the North Dakota Century Code
4 is amended and reenacted as follows:

5 **57-38-01.17. Credit for investments in development corporations.** ~~An individual,~~
6 ~~estate, trust, or~~ A corporation is allowed, as a credit against a tax otherwise due under section
7 ~~57-38-29 or~~ 57-38-30, the credit for buying membership in, or paying dues or contributions to, a
8 certified nonprofit development corporation as provided in section 10-33-124.

9 **SECTION 13. AMENDMENT.** Subsection 1 of section 57-38-01.20 of the North Dakota
10 Century Code is amended and reenacted as follows:

11 1. An individual is entitled to a credit against the tax imposed under section ~~57-38-29~~
12 ~~or~~ 57-38-30.3 in the amount of qualified care expenses under this section paid by
13 the individual for the care of a qualifying family member during the taxable year.

14 **SECTION 14. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified
17 investment in a qualified business, the taxpayer is entitled to a credit against state income tax
18 liability under section ~~57-38-29 or~~ 57-38-30.3. The amount of the credit to which a taxpayer is
19 entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses
20 during the taxable year, subject to the following:

- 21 1. The aggregate annual investment for which a taxpayer may obtain a tax credit
22 under this section is not less than five thousand dollars and not more than two
23 hundred fifty thousand dollars. This subsection may not be interpreted to limit
24 additional investment by a taxpayer for which that taxpayer is not applying for a
25 credit.
- 26 2. In any taxable year, a taxpayer may claim no more than one-third of the credit
27 under this section which is attributable to investments in a single taxable year.
- 28 3. Any amount of credit under this section not allowed because of the limitations in
29 this section may be carried forward for up to four taxable years after the taxable
30 year in which the investment was made.

- 1 4. A partnership that invests in a qualified business must be considered to be the
2 taxpayer for purposes of the investment limitations in this section and the amount
3 of the credit allowed with respect to a partnership's investment in a qualified
4 business must be determined at the partnership level. The amount of the total
5 credit determined at the partnership level must be allowed to the partners, limited
6 to individuals, estates, and trusts, in proportion to their respective interests in the
7 partnership.
- 8 5. The investment must be at risk in the business. An investment for which a credit is
9 received under this section must remain in the business for at least three years.
- 10 6. The entire amount of an investment for which a credit is claimed under this section
11 must be expended by the qualified business for plant, equipment, research and
12 development, marketing and sales activity, or working capital for the qualified
13 business.
- 14 7. A taxpayer who owns a controlling interest in the qualified business or whose
15 full-time professional activity is the operation of the business is not entitled to a
16 credit under this section. A member of the immediate family of a taxpayer
17 disqualified by this subsection is not entitled to the credit under this section. For
18 purposes of this subsection, "immediate family" means the taxpayer's spouse,
19 parent, sibling, or child or the spouse of any such person.
- 20 8. The tax commissioner may disallow any credit otherwise allowed under this section
21 if any representation by a business in the application for certification as a qualified
22 business proves to be false or if the taxpayer or qualified business fails to satisfy
23 any conditions under this section or any conditions consistent with this section
24 otherwise determined by the tax commissioner. The amount of any credit
25 disallowed by the tax commissioner that reduced the taxpayer's income tax liability
26 for any or all applicable tax years, plus penalty and interest as provided under
27 section 57-38-45, must be paid by the taxpayer.

28 **SECTION 15. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a
31 qualified investment in a qualified business, the taxpayer is entitled to a credit against state

- 1 income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3. The amount of the
2 credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in
3 qualified businesses during the taxable year, subject to the following:
- 4 1. The aggregate annual investment for which a taxpayer may obtain a tax credit
5 under this section is not more than twenty thousand dollars. This subsection may
6 not be interpreted to limit additional investment by a taxpayer for which that
7 taxpayer is not applying for a credit.
 - 8 2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit
9 under this section which is attributable to qualified investments in a single taxable
10 year. The amount of the credit allowed under this section for any taxable year may
11 not exceed fifty percent of the taxpayer's tax liability as otherwise determined
12 under chapter 57-38.
 - 13 3. Any amount of credit under this section not allowed because of the limitations in
14 this section may be carried forward for up to fifteen taxable years after the taxable
15 year in which the investment was made.
 - 16 4. A partnership that invests in a qualified business must be considered to be the
17 taxpayer for purposes of the investment limitations in this section and the amount
18 of the credit allowed with respect to a partnership's investment in a qualified
19 business must be determined at the partnership level. The amount of the total
20 credit determined at the partnership level must be allowed to the partners, limited
21 to individuals, estates, and trusts, in proportion to their respective interests in the
22 partnership.
 - 23 5. The investment must be at risk in the business. A qualified investment must be in
24 the form of a purchase of ownership interests or the right to receive payment of
25 dividends from the business. An investment for which a credit is received under
26 this section must remain in the business for at least three years.
 - 27 6. The entire amount of an investment for which a credit is claimed under this section
28 must be expended by the qualified business for plant, equipment, research and
29 development, marketing and sales activity, or working capital for the qualified
30 business.

1 7. The tax commissioner may disallow any credit otherwise allowed under this section
2 if any representation by a business in the application for certification as a qualified
3 business proves to be false or if the taxpayer or qualified business fails to satisfy
4 any conditions under this section or any conditions consistent with this section
5 otherwise determined by the tax commissioner. The amount of any credit
6 disallowed by the tax commissioner that reduced the taxpayer's income tax liability
7 for any or all applicable tax years, plus penalty and interest provided under section
8 57-38-45, must be paid by the taxpayer.

9 **SECTION 16. REPEAL.** Subsection 2 of section 10-30.1-01, sections 57-38-01.2,
10 57-38-01.18, 57-38-02, 57-38-03, 57-38-06.1, 57-38-29, 57-38-29.2, and 57-38-30.4,
11 subsection 2 of section 57-38-31, and sections 57-38-67, 57-38-68, 57-38-69, 57-38-70,
12 57-38-71, 57-38-72, 57-38-73, and 57-38-74 of the North Dakota Century Code are repealed.

13 **SECTION 17. EFFECTIVE DATE.** This Act is effective for taxable years beginning
14 after December 31, 2004.