

**Sixty-third Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1106  
(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to create and enact two new sections to chapter 57-02, three new sections to chapter 57-06, a new subsection to section 57-13-04, a new section to chapter 57-33.2, sections 57-36-09.6, 57-38-60.3, 57-39.2-15.3, 57-40.2-15.3, 57-43.1-17.5, 57-43.2-16.4, and 57-43.3-21.1 of the North Dakota Century Code, relating to notice of township, city, and county equalization meetings, collection and certification of electric generation, transmission, and distribution taxes, appeals to the state board of equalization, and the liability of a general partner of a limited liability limited partnership for unpaid taxes; to amend and reenact section 23-27-04.7, subsection 5 of section 57-02-08.1, subsection 17 of section 57-06-06, sections 57-06-17.3, 57-33.2-16, 57-35.3-07, and 57-38-01, subsection 5 of section 57-38-01.21, sections 57-38-01.22 and 57-38-01.23, subsection 2 of section 57-38-01.24, subsection 5 of section 57-38-01.25, subsections 2, 3, and 7 of section 57-38-01.26, subsection 9 of section 57-38-01.27, subsection 2 of section 57-38-01.31, subsection 9 of section 57-38-01.32, subsection 7 of section 57-38-01.33, subsections 6 and 12 of section 57-38-30.5, section 57-38.5-01, subsection 4 of section 57-38.5-03, section 57-38.6-01, subsection 4 of section 57-38.6-03, subsection 2 of section 57-39.2-04.8, and sections 57-40.2-15.2, 57-43.3-20, and 57-43.3-21 of the North Dakota Century Code, relating to the emergency medical services levy, the permanent and totally disabled property tax exemption certifications, public utility reports, collection and certification of transmission line property tax, liability of a general partner of a limited liability limited partnership for unpaid taxes, financial institutions tax credit for contributions to the housing incentive fund, income tax credit for blending biodiesel or green diesel fuel in this state, qualifying investments in angel funds, the definition of passthrough entity for income tax purposes, and the sales tax exemption for equipment and machinery used in a new coal mine; to repeal section 57-23-02 of the North Dakota Century Code, relating to notice of township and city equalization meetings; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 23-27-04.7 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-04.7. County reporting - Use of property tax levies.**

The board of county commissioners of every county in this state shall conduct an annual review of the emergency medical services coverage within that county and shall submit an annual report to the state health officer in a format approved by the state department of health. A taxing district that levies a special emergency medical services or ambulance service levy shall ensure that every ambulance service that has portions of its service area in that taxing district receives a portion of the revenue from this tax. ~~The taxing district shall allocate all of the special tax levy revenue to each ambulance service based upon the taxable value of the property within each township of the taxing district, allocating the taxable value of each township collected in a particular township to the ambulance service that serves the largest area within that township.~~

**SECTION 2.** A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

**Notice of township and city equalization meetings to be published - Date of equalization meeting.**

Each year the county auditor shall publish in the official county newspaper for two successive weeks, a notice that proceedings for the equalization of assessments will be held by the several local equalization boards. The first publication of the notice may not be earlier than March first and the second publication may not be later than March twentieth. The notice must contain a statement that the proceedings will be held at the regular meeting place of the governing board or other place designated by that board of the township or city, as the case may be. The notice must also contain a statement that each taxpayer has the right to appear before the appropriate board of review or equalization and petition for correction of the taxpayer's assessment. The equalization proceedings in an organized township must be held on the second Monday in April and in a city on the second Tuesday in April.

**SECTION 3.** A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

**Notice of county equalization meetings to be published - Date of equalization meeting.**

Each year the county auditor shall publish in the official county newspaper for two successive weeks, a notice that proceedings for the equalization of assessments for all real property in the county will be held by the county board of equalization. The first publication of the notice may not be earlier than May first and the second publication may not be later than May twentieth, however, the second notice must be published more than ten days prior to the date of the meeting. The notice must contain the date, time, and location of the meeting. The notice must also contain a statement that each taxpayer has the right to appear before the appropriate board of review or equalization and petition for correction of the taxpayer's assessment. The county equalization proceedings must be held no later than June tenth.

**SECTION 4. AMENDMENT.** Subsection 5 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

5. For the purposes of this section:
  - a. "Dependent" has the same meaning it has for federal income tax purposes.
  - b. "Homestead" has the same meaning as provided in section 47-18-01.
  - c. "Income" means income for the most recent complete taxable year from all sources, including the income of any dependent of the applicant, and including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, any amount excluded from income by federal or state law, and medical expenses paid during the year by the applicant or the applicant's dependent which is not compensated by insurance or other means.
  - d. "Medical expenses" has the same meaning as it has for ~~state~~federal income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.
  - e. "Permanently and totally disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months as established by a certificate from a licensed physician or a written determination of disability from the social security administration, or any federal or state agency that has authority to certify an individual's disability.

**SECTION 5.** A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

**Deposit of revenue - Report to treasurer.**

The commissioner shall transfer revenue collected under section 57-06-17.3 to the state treasurer for deposit in the electric generation, transmission, and distribution tax fund. At the time of the transfer, the commissioner shall provide a report showing the information necessary for the state treasurer to allocate the revenue transferred under this section.

**SECTION 6.** A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

**Allocation - Continuing appropriation.**

1. The electric generation, transmission, and distribution tax fund is appropriated as a continuing appropriation to the state treasurer for allocation and distribution to counties by April first of each year as provided in this section. The state treasurer shall make the necessary allocations to the counties based on the report received from the tax commissioner. The county auditors shall make the necessary allocations to the taxing districts.
2. Revenue from the tax on transmission lines under section 57-06-17.3 must be allocated among counties based on the mileage of transmission lines within each county. Revenue received by a county under this subsection must be allocated one-third to the county and two-thirds among the county and other taxing districts in the county based on the mileage of that transmission line where that line is located within each taxing district. Revenue from that portion of a transmission line located in more than one taxing district must be allocated among those taxing districts in proportion to the taxing district's most recent property tax mill rates that apply where the transmission line is located.

**SECTION 7.** A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

**Delinquent taxes - Penalty.**

Taxes under section 57-06-17.3 are due January first for the preceding taxable year and are delinquent if not received by the commissioner by March first following the due date. If any amount of tax imposed by this chapter is not paid on or before March first, or if upon an additional audit additional tax is found to be due, there must be added to the tax due a penalty at the rate of one percent of the tax due for each month or fraction of a month during the first year during which the tax remains unpaid, computed from March first. Beginning on January first of the year following the year in which the taxes become due and payable, simple interest at the rate of twelve percent per annum upon the principal of the unpaid taxes must be charged until the taxes and penalties are paid, with the interest charges to be prorated to the nearest full month for a fractional year of delinquency.

**SECTION 8. AMENDMENT.** Subsection 17 of section 57-06-06 of the North Dakota Century Code is amended and reenacted as follows:

17. ~~Such other~~Other facts and information as the tax commissioner may require in the form of returns prescribed by the tax commissioner or which the company may deem material upon the question of relating to the taxation of its property in this state.

**SECTION 9. AMENDMENT.** Section 57-06-17.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-17.3. New transmission line property tax exemption.**

A transmission line of two hundred thirty kilovolts or larger, and its associated transmission substations, which is not taxable under chapter 57-33.2 and is initially placed in service on or after

October 1, 2002, is exempt from property taxes for the first taxable year after the line is initially placed in service, and the taxable valuation as otherwise determined by law on the transmission line and its associated transmission substations must be reduced by:

1. Seventy-five percent for the second taxable year of operation of the transmission line.
2. Fifty percent for the third taxable year of operation of the transmission line.
3. Twenty-five percent for the fourth taxable year of operation of the transmission line.

After the fourth taxable year of operation of the transmission line, the transmission line and its associated transmission substations are exempt from property taxes and are subject to a tax at the rate of three hundred dollars per mile [1.61 kilometers] or fraction thereof of the line located in this state. The per mile tax imposed by this section applies to the transmission line and its associated transmission substations and is subject to allocation among counties in the proportion that the miles of that transmission line in the county bears to the miles of that transmission line in the state. Revenues received by each county must be deposited in the county general fund.

For purposes of this section, "initially placed in service" includes both new construction and substantial expansion of the carrying capacity of a preexisting line, and "substantial expansion" means an increase in carrying capacity of fifty percent or more.

**SECTION 10.** A new subsection to section 57-13-04 of the North Dakota Century Code is created and enacted as follows:

A property owner may appeal the assessment, classification, and exempt status of the owner's property to the state board of equalization if the property owner was foreclosed from attending assessment proceedings because of the failure to substantially comply with the notice requirements in chapters 57-02 or 57-12, or because of an irregularity in the township, city, or county assessment proceedings.

**SECTION 11.** A new section to chapter 57-33.2 of the North Dakota Century Code is created and enacted as follows:

**General partner in a limited liability limited partnership liability.**

If a limited liability limited partnership taxable under this chapter fails for any reason to file the required returns or to pay the tax due, the general partners, jointly or severally, charged with the responsibility for the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual tax liability of the limited liability limited partnership.

**SECTION 12. AMENDMENT.** Section 57-33.2-16 of the North Dakota Century Code is amended and reenacted as follows:

**57-33.2-16. Corporate officer and limited liability company governor or manager liability.**

If a corporation or limited liability company taxable under this chapter fails for any reason to file the required returns or pay the tax due, any of its officers, governors, or managers having control or supervision of, or charged with the responsibility for making, the returns and payments, are personally liable for the failure. The dissolution of a corporation or limited liability company does not discharge an officer's, a governor's, or a manager's liability for a prior failure of the corporation or limited liability

company to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under this chapter for the assessment and collection of other liabilities. If the officers, governors, or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation or limited liability company must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual tax liability of the corporation or limited liability company.

**SECTION 13. AMENDMENT.** Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-35.3-07. (Effective for the first two taxable years beginning after December 31, 2010) Payment of tax.**

Three-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credits allowed under subsections 1, 3, 4, and 5 of section 57-35.3-05, must be paid to the tax commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the tax commissioner on or before January fifteenth of the year after the return is due. Payment must be made in the manner prescribed by the tax commissioner.

**(Effective after the first two taxable years beginning after December 31, 2010) Payment of tax.** Three-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credits allowed under subsections 1, 3, and 4 of section 57-35.3-05 and section 4 of House Bill No. 1029 if approved by the sixty-third legislative assembly, must be paid to the tax commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the tax commissioner on or before January fifteenth of the year after the return is due. Payment must be made in the manner prescribed by the tax commissioner.

**SECTION 14.** Section 57-36-09.6 of the North Dakota Century Code is created and enacted as follows:

**57-36-09.6. General partner in a limited liability limited partnership liability.**

1. If a limited liability limited partnership taxable under this chapter fails for any reason to file the required returns or to pay the tax due, the general partners, jointly or severally, charged with the responsibility for the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual tax liability of the limited liability limited partnership.

**SECTION 15. AMENDMENT.** Section 57-38-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chronically mentally ill" means a person who, as a result of a mental disorder, exhibits emotional or behavioral functioning which is so impaired as to interfere substantially with the person's capacity to remain in the community without verified supportive treatment or services of a long-term or indefinite duration. This mental disability must be severe and persistent, resulting in a long-term limitation of the person's functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment, and recreation.
2. "Corporation" includes associations, business trusts, joint stock companies, and insurance companies.
3. "Developmental disability" has the same meaning as defined in section 25-01.2-01.
4. "Domestic" when applied to a corporation means created or organized under the laws of North Dakota.
5. "Federal Internal Revenue Code of 1954, as amended", "United States Internal Revenue Code of 1954, as amended", and "Internal Revenue Code of 1954, as amended", mean the United States Internal Revenue Code of 1986, as amended. Reference to the Internal Revenue Code of 1954, as amended, includes a reference to the United States Internal Revenue Code of 1986, as amended, and reference to the United States Internal Revenue Code of 1986, as amended, includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954, as amended.
  - a. Except that the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, are not adopted in those instances when the minimum investment by the lessor is less than one hundred percent for the purpose of computing North Dakota taxable income for individuals, estates, trusts, and corporations for taxable years beginning on or after January 1, 1983. Therefore, federal taxable income must be increased, or decreased, as the case may be, to reflect the adoption or nonadoption of the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, and such adjustments must be made before computing income subject to apportionment.
  - b. Provided, that one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1982, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1985, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1983, may be deducted from federal taxable income in each of the next two years beginning after December 31, 1987, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1984, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1989. All such adjustments must be made before computing income subject to apportionment.
  - c. Provided, that the depreciation adjustments allowed in subdivision b shall be limited to those eligible assets acquired during taxable years beginning after December 31, 1982. Acquisitions made before taxable years beginning January 1, 1983, must be depreciated pursuant to the methods permissible under Internal Revenue Code provisions in effect prior to January 1, 1981.
  - d. Except that for purposes of applying the Internal Revenue Code of 1954, as amended, with respect to actual distributions made after December 31, 1984, by a domestic international sales corporation, or former domestic international sales corporation, which was a domestic international sales corporation on December 31, 1984, any accumulated domestic international sales corporation income of a domestic international sales

corporation, or former domestic international sales corporation, which is derived before January 1, 1985, may not be treated as previously taxed income.

6. "Foreign" when applied to a corporation means created or organized outside of North Dakota.
7. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:
  - a. Conditions which are primarily those of drug abuse, alcoholism, or intellectual disability, unless in addition to one or more of these conditions, the person has a mental disorder.
  - b. The declining mental abilities that accompany impending death.
  - c. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by statute, unless the behavior results from a mental disorder.
8. "Passthrough entity" means a corporation that for the applicable tax year is treated as an S corporation under the Internal Revenue Code, a limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes, a general partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or a similar entity that passes its income, deductions, and credits through to its owners.
9. "Person" includes individuals, fiduciaries, partnerships, corporations, and limited liability companies, and other entities recognized by the laws of this state.
- 9-10. "Qualified investment fund" means any regulated investment company as defined under the Internal Revenue Code, which for the calendar year in which the distribution is paid:
  - a. Has investments in interest-bearing obligations issued by or on behalf of this state, any political subdivision of this state, or the United States government; and
  - b. Has provided the tax commissioner with a detailed schedule of the assets contained in its investment portfolio and a schedule of the income attributable to each asset in its investment portfolio for the calendar year.
- 10-11. "Resident" applies only to natural persons and includes, for the purpose of determining liability for the tax imposed by this chapter upon or with reference to the income of any income year, any person domiciled in the state of North Dakota and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than seven months of the income year within the state. A full-time active duty member of the armed forces assigned to a military installation in this state, or the member's spouse of such a person, is not a "resident" of this state for purposes of this chapter simply by reason of having voted in an election in this state.
- 11-12. "Tax commissioner" means the state tax commissioner.
- 12-13. "Taxable income" in the case of individuals, estates, trusts, and corporations means the taxable income as computed for an individual, estate, trust, or corporation for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, plus or minus ~~such~~the adjustments as may be provided by this chapter or other provisions of law. Except as otherwise expressly provided, "taxable income" does not include any amount computed for federal alternative minimum tax purposes.
- 13-14. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax imposed by this chapter.
- 14-15. Any term, as used in this code, as it pertains to the filing and reporting of income, deductions, or exemptions or the paying of North Dakota income tax, has the same meaning as when

used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or contemplated.

**SECTION 16. AMENDMENT.** Subsection 5 of section 57-38-01.21 of the North Dakota Century Code is amended and reenacted as follows:

5. A ~~partnership, subchapter S corporation, or limited liability company treated like a partnership~~passthrough entity is entitled to a credit in an amount equal to forty percent of a charitable gift to a qualified endowment by the entity during the taxable year. The maximum credit that may be claimed by the entity under this subsection for charitable gifts made in a taxable year is ten thousand dollars. The credit determined at the entity level must be passed through to the partners, shareholders, or members in the same proportion that the charitable contributions attributable to the charitable gifts under this section are distributed to the partners, shareholders, or members. The partner, shareholder, or member may claim the credit only in the partner's, shareholder's, or member's taxable year in which the taxable year of the ~~partnership, subchapter S corporation, or limited liability company~~passthrough entity ends. Subsections 6 and 7 apply to the partner, shareholder, or member.

**SECTION 17. AMENDMENT.** Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.22. Income tax credit for blending of biodiesel fuel or green diesel fuel.**

A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel or green diesel fuel in this state is entitled to a credit against tax liability determined under section 57-38-30 or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel or green diesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" and "green diesel" mean fuel as defined in section 57-43.2-01. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

~~A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity~~ entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 18. AMENDMENT.** Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.23. Income tax credit for biodiesel or green diesel sales equipment costs.**

A seller of biodiesel fuel or green diesel fuel is entitled to a credit against tax liability determined under section 57-38-30 or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel or green diesel fuel seller's direct costs incurred ~~after December 31, 2004,~~ to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume. For purposes of this section, "biodiesel fuel" and "green diesel fuel" mean fuel as defined in section 57-43.2-01. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel or green diesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel or green diesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel or green diesel fuel containing at least two percent biodiesel or green diesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel or green diesel fuel begin.

~~A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity~~ entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 19. AMENDMENT.** Subsection 2 of section 57-38-01.24 of the North Dakota Century Code is amended and reenacted as follows:

2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend or salary paid to a college intern employed by the taxpayer. A taxpayer may not receive more than three thousand dollars in total credits under this section for all taxable years combined.
  - a. The tax credit under this section applies to a stipend or salary for not more than five interns employed at the same time.
  - b. ~~A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership~~passthrough entity that is entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 20. AMENDMENT.** Subsection 5 of section 57-38-01.25 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership~~passthrough entity that is entitled to the credit under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 21. AMENDMENT.** Subsections 2, 3, and 7 of section 57-38-01.26 of the North Dakota Century Code are amended and reenacted as follows:

2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this section if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the seven succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.
3. An angel fund must:
  - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, limited liability limited partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises

with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate.

- c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
  - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
  - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
  - f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
  - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
  - h. Be in compliance with the securities laws of this state.
  - i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:
    - (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
    - (2) The dollar amount remitted by the taxpayer or passthrough entity; and
    - (3) The date the payment was received by the angel fund for the investment.
  - j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.
7. a. ~~A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity~~ entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.
- b. For the first two taxable years beginning after December 31, 2010, if a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 8, the amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
  - c. For the first two taxable years beginning after December 31, 2010, if a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 8, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a credit shall sell one hundred percent of the credit earned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 8.

**SECTION 22. AMENDMENT.** Subsection 9 of section 57-38-01.27 of the North Dakota Century Code is amended and reenacted as follows:

9. A ~~partnership, subchapter S corporation, limited partnership, limited liability company, or any other~~ passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 23. AMENDMENT.** Subsection 2 of section 57-38-01.31 of the North Dakota Century Code is amended and reenacted as follows:

2. A ~~partnership, subchapter S corporation, limited liability company treated like a passthrough entity, or any other similar~~ passthrough entity that is an employer in this state must be considered to be a taxpayer for purposes of this section. The amount of the credit determined at the passthrough entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 24. AMENDMENT.** Subsection 9 of section 57-38-01.32 of the North Dakota Century Code is amended and reenacted as follows:

9. A ~~partnership, subchapter S corporation, limited partnership, limited liability company, or any other~~ passthrough entity making a contribution to the housing incentive fund under this section is considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 25. AMENDMENT.** Subsection 7 of section 57-38-01.33 of the North Dakota Century Code is amended and reenacted as follows:

7. A ~~partnership, subchapter S corporation, limited partnership, limited liability company, or any other~~ passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.

**SECTION 26. AMENDMENT.** Subsections 6 and 12 of section 57-38-30.5 of the North Dakota Century Code are amended and reenacted as follows:

6. In the case of a taxpayer that is a partner ~~in a partnership, shareholder, or a member in a limited liability company~~ passthrough entity, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
12. A ~~partnership, subchapter S corporation, limited partnership, limited liability company, or any other~~ passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through

under this subsection against the individual's state income tax liability under section 57-38-30.3.

**SECTION 27.** Section 57-38-60.3 of the North Dakota Century Code is created and enacted as follows:

**57-38-60.3. Liability of a general partner in a limited liability limited partnership.**

1. If a limited liability limited partnership is an employer and fails for any reason to file the required returns or to pay the tax due, the general partners, jointly or severally, charged with the responsibility for the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual income tax withholding liability of the limited liability limited partnership.

**SECTION 28. AMENDMENT.** Section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Director" means the director of the department of commerce division of economic development and finance.
2. "New wealth" means revenues to a North Dakota business which are generated by sales of products or services to customers outside of the state. "New wealth" also includes revenues to a qualified business the customers of which previously were unable to acquire, or had limited availability of, the product or service from a North Dakota provider.
3. ~~"Passthrough entity" means a corporation that for the applicable tax year is treated as an S corporation or a general partnership, limited partnership, limited liability partnership, trust, or limited liability company and which for the applicable tax year is not taxed as a corporation under chapter 57-38 has the same meaning as in section 57-38-01.~~
4. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service and which results in the creation of new wealth but does not include an agricultural commodity processing facility as defined under section 57-38.6-01.
5. "Qualified business" means a business other than a real estate investment trust which is a primary sector business that:
  - a. ~~Is incorporated or its satellite operation is incorporated as a for-profit corporation or is a partnership, limited partnership, limited liability company, limited liability partnership, passthrough entity, or joint venture;~~
  - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
  - c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;

- d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has or is projected to have more than ten employees or one hundred fifty thousand dollars of sales annually; and
  - e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability.
6. "Taxpayer" means an individual, estate, or trust or a corporation, passthrough entity, or an angel fund. The term does not include a real estate investment trust.

**SECTION 29. AMENDMENT.** Subsection 4 of section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 30. AMENDMENT.** Section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Agricultural commodity processing facility" means:
  - a. A facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state; or
  - b. A livestock feeding, handling, milking, or holding operation that uses as part of its operation a byproduct produced at a biofuels production facility.
2. "Biofuels production facility" means a corporation, limited liability company, partnership, individual, or association in this state:
  - a. Involved in production of diesel fuel containing at least five percent biodiesel or green diesel as defined in section 57-43.2-01;
  - b. Involved in the production of corn-based ethanol or cellulose-based ethanol; or
  - c. Involved in a soybean or canola crushing facility.
3. "Director" means the director of the department of commerce division of economic development and finance.
4. "Passthrough entity" has the same meaning as in section 57-38-01.
5. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:
  - a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of being an agricultural commodity processing facility;
  - b. Has been certified by the securities commissioner to be in compliance under the securities laws of this state; and

c. Has an agricultural commodity processing facility, or intends to locate one, in this state.

- 5-6. "Qualified investment" means an investment in cash or an investment of a fee simple interest in real property located in this state. For purposes of this chapter, the definition of real property does not include any personal property that may become a fixture to the real property, as defined by chapter 41-09, which is added to the real property following investment of the real property in the qualified business.
- 6-7. "Taxpayer" means an individual, estate, trust, corporation, ~~partnership~~, or limited liability ~~company~~ passthrough entity.

**SECTION 31. AMENDMENT.** Subsection 4 of section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

4. A ~~partnership, subchapter S corporation, limited liability company~~ that for tax purposes is ~~treated like a partnership, or any other~~ passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's ~~owners, partners, shareholders, or members~~ in proportion to their respective ownership interests in the passthrough entity.

**SECTION 32. AMENDMENT.** Subsection 2 of section 57-39.2-04.8 of the North Dakota Century Code is amended and reenacted as follows:

2. Purchase of replacement machinery or equipment is exempt if the capitalized investment in the new mine exceeds twenty million dollars using the United States generally accepted accounting principles. Purchases of repair or replacement parts for existing machinery or equipment are not exempt under this section.

**SECTION 33.** Section 57-39.2-15.3 of the North Dakota Century Code is created and enacted as follows:

**57-39.2-15.3. Liability of a general partner in a limited liability limited partnership.**

1. If a limited liability limited partnership required to hold a permit under this chapter fails for any reason to file the required returns or to pay the tax due under this chapter, the general partners, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual sales tax liability of the limited liability limited partnership.

**SECTION 34. AMENDMENT.** Section 57-40.2-15.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-15.2. Governor and manager liability.**

1. If a limited liability company fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor, manager, or member of a member-controlled limited

liability company, jointly or severally charged with the responsibility of supervising the preparation of the returns and payments, is personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter.

2. If the governors, managers, or members of a limited liability company elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual use tax liability of the limited liability company.

**SECTION 35.** Section 57-40.2-15.3 of the North Dakota Century Code is created and enacted as follows:

**57-40.2-15.3. Liability of a general partner in a limited liability limited partnership.**

1. If a limited liability limited partnership required to hold a permit under this chapter fails for any reason to file the required returns or to pay the tax due under this chapter, the general partners, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual use tax liability of the limited liability limited partnership.

**SECTION 36.** Section 57-43.1-17.5 of the North Dakota Century Code is created and enacted as follows:

**57-43.1-17.5. Liability of a general partner in a limited liability limited partnership.**

1. If a limited liability limited partnership holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due under this chapter, the general partners, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated motor fuel tax liability of the limited liability limited partnership.

**SECTION 37.** Section 57-43.2-16.4 of the North Dakota Century Code is created and enacted as follows:

**57-43.2-16.4. Liability of a general partner in a limited liability limited partnership.**

1. If a limited liability limited partnership holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due under this chapter, the general

partners, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

2. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual special fuels tax liability of the limited liability limited partnership.

**SECTION 38. AMENDMENT.** Section 57-43.3-20 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.3-20. Corporate officer liability.**

1. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual aviation fuel tax liability of the corporation.

**SECTION 39. AMENDMENT.** Section 57-43.3-21 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.3-21. Governor and manager liability.**

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor, manager, or member of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments, is personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the governors, managers, or members of a limited liability company elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual aviation fuel tax liability of the limited liability company.

**SECTION 40.** Section 57-43.3-21.1 of the North Dakota Century Code is created and enacted as follows:

**57-43.3-21.1. Liability of a general partner in a limited liability limited partnership.**

1. If a limited liability limited partnership holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due under this chapter, the general partners, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual aviation fuel tax liability of the limited liability limited partnership.

**SECTION 41. REPEAL.** Section 57-23-02 of the North Dakota Century Code is repealed.

**SECTION 42. EFFECTIVE DATE.** Sections 1, 13, 18, 21, and 27 are effective for tax years beginning after December 31, 2012. Sections 10, 14, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40 are effective for tax periods beginning after June 30, 2013. Sections 2, 3, 4, 5, 6, and 7 are effective for tax years beginning after December 31, 2013.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1106.

House Vote:      Yeas 91              Nays 0              Absent 3

Senate Vote:    Yeas 47              Nays 0              Absent 0

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2013.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2013.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2013,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State