

Introduced by

Senators Luick, Dotzenrod

Representatives Amerman, Kelsh, Mitskog, J. Nelson

1 A BILL for an Act to amend and reenact section 57-38-01.21 of the North Dakota Century Code,
2 relating to a charitable gifts and qualified endowments income tax credit for charitable gifts to a
3 border city hospital, nursing home, or medical center foundation; and to provide an effective
4 date.

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

6 **SECTION 1. AMENDMENT.** Section 57-38-01.21 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-38-01.21. Charitable gifts, planned gifts, and qualified endowments credit -**

9 **Definitions.**

10 1. For purposes of this section:

11 a. "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual
12 funds, or other investment assets established for a specific charitable, religious,
13 educational, or eleemosynary purpose and invested for the production or growth
14 of income, or both, which may either be added to principal or expended.

15 b. "Planned gift" means an irrevocable charitable gift to a North Dakota qualified
16 nonprofit organization or qualified endowment held by or for a North Dakota
17 qualified nonprofit organization, when the charitable gift uses any of the following
18 techniques that are authorized under the Internal Revenue Code:

19 (1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;

20 (2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

21 (3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

22 (4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

23 (5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

24 (6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

- 1 (7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
2 (8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or
3 (9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

4 "Planned gift" does not include a charitable gift using a charitable remainder
5 unitrust or charitable remainder annuity trust unless the agreement provides that
6 the trust may not terminate and beneficiaries' interest in the trust may not be
7 assigned or contributed to the qualified nonprofit organization or qualified
8 endowment sooner than the earlier of the date of death of the beneficiaries or five
9 years from the date of the planned gift.

10 "Planned gift" does not include a deferred charitable gift annuity unless the
11 payment of the annuity is required to begin within the life expectancy of the
12 annuitant or of the joint life expectancies of the annuitants, if more than one
13 annuitant, as determined using the actuarial tables used by the internal revenue
14 service in determining federal charitable income tax deductions on the date of the
15 planned gift.

16 "Planned gift" does not include a charitable gift annuity or deferred
17 charitable gift annuity unless the annuity agreement provides that the interest of
18 the annuitant or annuitants in the gift annuity may not be assigned to the qualified
19 nonprofit organization or qualified endowment sooner than the earlier of the date
20 of death of the annuitant or annuitants or five years after the date of the planned
21 gift.

22 "Planned gift" does not include a charitable gift annuity or deferred
23 charitable gift annuity unless the annuity is a qualified charitable gift annuity for
24 federal income tax purposes.

25 c. "Qualified endowment" means a permanent, irrevocable fund held by a:

26 (1) A North Dakota incorporated or established organization that is:

27 ~~(1)(a)~~ (a) A qualified nonprofit organization; or

28 ~~(2)(b)~~ (b) A bank or trust company holding the fund on behalf of a qualified
29 nonprofit organization; or

30 (2) An organization incorporated or established in a state bordering North
31 Dakota that is:

- 1 (a) A tax-exempt organization under 26 U.S.C. 501(c) to which
2 contributions qualify for federal charitable income tax deductions
3 which was incorporated or established for the support and benefit of a
4 hospital, nursing home, or medical center, or a facility providing any
5 combination of those services, which is located outside North Dakota
6 but within five miles of a North Dakota city of five thousand or more
7 population in which there is no hospital; or
8 (b) A bank or trust company holding the fund on behalf of an organization
9 that meets the conditions of subparagraph a.
- 10 d. "Qualified nonprofit organization" means a North Dakota incorporated or
11 established tax-exempt organization under 26 U.S.C. 501(c) to which
12 contributions qualify for federal charitable income tax deductions with an
13 established business presence or situs in North Dakota.
- 14 2. a. An individual is allowed a tax credit against the tax imposed by section
15 57-38-30.3 in an amount equal to forty percent of the present value of the
16 aggregate amount of the charitable gift portion of planned gifts made by the
17 taxpayer during the taxable year to a qualified nonprofit organization or qualified
18 endowment. The maximum credit that may be claimed under this subsection for
19 planned gifts made in a taxable year is ten thousand dollars for an individual, or
20 twenty thousand dollars for married individuals filing a joint return. The credit
21 allowed under this section may not exceed the taxpayer's income tax liability.
- 22 b. An individual is allowed a tax credit against the tax imposed by section
23 57-38-30.3 for making a charitable gift to a qualified endowment. The credit is
24 equal to forty percent of the charitable gift. If an individual makes a single
25 charitable gift to a qualified endowment, the charitable gift must be five thousand
26 dollars or more to qualify for the credit. If an individual makes more than one
27 charitable gift to the same qualified endowment, the aggregate amount of the
28 charitable gifts made to that qualified endowment must be five thousand dollars
29 or more to qualify for the credit. The maximum credit that may be claimed under
30 this subsection for charitable gifts made in a taxable year is ten thousand dollars
31 for an individual or twenty thousand dollars for married individuals filing a joint

1 return. The tax credit allowed under this section may not exceed the taxpayer's
2 income tax liability.

3 3. A corporation is allowed a tax credit against the tax imposed by section 57-38-30 in an
4 amount equal to forty percent of a charitable gift to a qualified endowment. The
5 maximum credit that may be claimed by a corporation under this subsection for
6 charitable gifts made in a taxable year is ten thousand dollars. The credit allowed
7 under this section may not exceed the corporate taxpayer's income tax liability.

8 4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a
9 charitable gift to a qualified endowment. The maximum credit that may be claimed
10 under this subsection for charitable gifts made in a taxable year is ten thousand
11 dollars. The allowable credit must be apportioned to the estate or trust and to its
12 beneficiaries on the basis of the income of the estate or trust allocable to each, and
13 the beneficiaries may claim their share of the credit against the tax imposed by section
14 57-38-30 or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's
15 taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7
16 apply to the estate or trust and its beneficiaries with respect to their respective shares
17 of the apportioned credit.

18 5. A passthrough entity is entitled to a credit in an amount equal to forty percent of a
19 charitable gift to a qualified endowment by the entity during the taxable year. The
20 maximum credit that may be claimed by the entity under this subsection for charitable
21 gifts made in a taxable year is ten thousand dollars. The credit determined at the entity
22 level must be passed through to the partners, shareholders, or members in the same
23 proportion that the charitable contributions attributable to the charitable gifts under this
24 section are distributed to the partners, shareholders, or members. The partner,
25 shareholder, or member may claim the credit only in the partner's, shareholder's, or
26 member's taxable year in which the taxable year of the passthrough entity ends.
27 Subsections 6 and 7 apply to the partner, shareholder, or member.

28 6. The amount of the charitable gift upon which an allowable credit is computed must be
29 added to federal taxable income in computing North Dakota taxable income in any
30 taxable year in which the charitable gift reduces federal taxable income, but only to the
31 extent that the charitable gift reduced federal taxable income.

1 7. The unused portion of a credit under this section may be carried forward for up to
2 three taxable years.

3 8. If a charitable gift for which a credit was claimed is recovered by the taxpayer, an
4 amount equal to the credit claimed in all taxable years must be added to the tax due
5 on the income tax return filed for the taxable year in which the recovery occurs. For
6 purposes of subsection 4, this subsection applies if the estate or trust recovers the
7 charitable gift and the estate or trust and its beneficiaries are liable for the additional
8 tax due with respect to their respective shares of the apportioned credit. For purposes
9 of subsection 5, this subsection applies if the partnership, subchapter S corporation, or
10 limited liability company recovers the charitable gift, and the partner, shareholder, or
11 member is liable for the additional tax due.

12 9. A charitable gift used as the basis for a credit claimed under this section may not be
13 used as the basis for the claim of a credit under any other provision of this chapter.

14 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
15 December 31, 2014.