

Introduced by

Representatives Headland, Dockter, Grueneich

Senators Cook, Wanzek

1 A BILL for an Act to amend and reenact section 57-38-30.5 of the North Dakota Century Code,
2 relating to the alternative simplified method for calculating the research and experimental
3 expenditure credit; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-38-30.5. Income tax credit for research and experimental expenditures.**

8 A taxpayer is allowed a credit against the tax imposed under section 57-38-30 or 57-38-30.3
9 for conducting qualified research in this state.

- 10 1. The amount of the credit for taxpayers that earned or claimed a credit under this
11 section in taxable years beginning before January 1, 2007, is calculated as follows:
- 12 a. For the first taxable year beginning after December 31, 2006, the credit is equal
13 to twenty-five percent of the first one hundred thousand dollars of the qualified
14 research expenses for the taxable year in excess of the base amount and equal
15 to seven and one-half percent of all qualified research expenses for the taxable
16 year more than one hundred thousand dollars in excess of the base amount.
 - 17 b. For the second taxable year beginning after December 31, 2006, the credit is
18 equal to twenty-five percent of the first one hundred thousand dollars of the
19 qualified research expenses for the taxable year in excess of the base amount
20 and equal to eleven percent of all qualified research expenses for the taxable
21 year more than one hundred thousand dollars in excess of the base amount.
 - 22 c. For the third taxable year beginning after December 31, 2006, the credit is equal
23 to twenty-five percent of the first one hundred thousand dollars of the qualified
24 research expenses for the taxable year in excess of the base amount and equal

- 1 to fourteen and one-half percent of all qualified research expenses for the taxable
2 year more than one hundred thousand dollars in excess of the base amount.
- 3 d. For the fourth through the tenth taxable years beginning after December 31,
4 2006, the credit is equal to twenty-five percent of the first one hundred thousand
5 dollars of the qualified research expenses for the taxable year in excess of the
6 base amount and equal to eighteen percent of all qualified research expenses for
7 the taxable year more than one hundred thousand dollars in excess of the base
8 amount.
- 9 e. ~~For~~Except as provided in subsection 4, for the eleventh taxable year beginning
10 after December 31, 2006, and for each subsequent taxable year in which the
11 taxpayer conducts qualified research in this state, the credit is equal to
12 twenty-five percent of the first one hundred thousand dollars of the qualified
13 research expenses for the taxable year in excess of the base amount and equal
14 to eight percent of all qualified research expenses for the taxable year more than
15 one hundred thousand dollars in excess of the base amount.
- 16 f. The maximum annual credit a taxpayer may obtain under this subsection is two
17 million dollars. Any credit amount earned in the taxable year in excess of two
18 million dollars may not be carried back or forward as provided in subsection 78.
- 19 2. ~~For~~Except as provided in subsection 4, for taxpayers that have not earned or claimed
20 a credit under this section in taxable years beginning before January 1, 2007, and
21 which begin conducting qualified research in North Dakota in any of the first four
22 taxable years beginning after December 31, 2006, the amount of the credit is equal to
23 twenty-five percent of the first one hundred thousand dollars of the qualified research
24 expenses for the taxable year in excess of the base amount and equal to twenty
25 percent of all qualified research expenses for the taxable year more than one hundred
26 thousand dollars in excess of the base amount.
- 27 a. This rate applies through the tenth taxable year beginning after December 31,
28 2006.
- 29 b. For the eleventh taxable year beginning after December 31, 2006, and for each
30 subsequent taxable year in which the taxpayer conducts qualified research in this
31 state, the credit is equal to twenty-five percent of the first one hundred thousand

1 dollars of the qualified research expenses for the taxable year in excess of the
2 base amount and equal to eight percent of all qualified research expenses for the
3 taxable year more than one hundred thousand dollars in excess of the base
4 amount.

5 3. ~~For~~Except as provided in subsection 4, for taxpayers that have not earned or claimed
6 a credit under this section in taxable years beginning before January 1, 2007, and
7 which begin conducting qualified research in North Dakota in any taxable year
8 following the fourth taxable year beginning after December 31, 2006, the amount of
9 the credit is equal to twenty-five percent of the first one hundred thousand dollars of
10 the qualified research expenses for the taxable year in excess of the base amount and
11 equal to eight percent of all qualified research expenses for the taxable year more
12 than one hundred thousand dollars in excess of the base amount.

13 4. ~~For a taxable year in which a~~A taxpayer makes an election on the taxpayer's federal
14 ~~return may elect~~ to use the alternative simplified credit under section 41(c)(5) of the
15 Internal Revenue Code [26 U.S.C. 41(c)] the amount of the credit under this
16 subsection is:

17 a. Seventeen and one-half percent of the first one hundred thousand dollars of the
18 alternative excess research and development for the taxable year plus five and
19 six-tenths percent of the alternative excess research and development for the
20 taxable year in excess of one hundred thousand dollars.

21 b. If a taxpayer has zero qualified research expenses in any one of the three
22 taxable years preceding the taxable year for which the credit is determined, the
23 amount of qualified research expenses for the taxable year multiplied by seven
24 and one-half percent of the first one hundred thousand dollars plus two and four-
25 tenths percent of qualified research expenses for the taxable year more than one
26 hundred thousand dollars.

27 5. For purposes of this section:

28 a. "Alternative excess research and development" means the amount of qualified
29 research expenses which exceeds fifty percent of the average qualified research
30 expenses for the three taxable years preceding the taxable year for which the
31 credit is being determined.

- 1 b. "Alternative simplified credit" means the computation set forth in section 41(c)(5)
2 of the Internal Revenue Code [26 U.S.C. 41(c)(5)], except the term does not
3 include qualified research expenses incurred outside the state of North Dakota.
- 4 c. "Base amount" means base amount as defined in section 41(c) of the Internal
5 Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted
6 outside the state of North Dakota.
- 7 b.d. "Director" means the director of the department of commerce division of
8 economic development and finance.
- 9 e.e. "Primary sector business" has the meaning provided in section 1-01-49.
- 10 d.f. "Qualified research" means qualified research as defined in section 41(d) of the
11 Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research
12 conducted outside the state of North Dakota.
- 13 e.g. "Qualified research and development company" means a taxpayer that is a
14 primary sector business with annual gross revenues of less than seven hundred
15 fifty thousand dollars and which has not conducted new research and
16 development in North Dakota.
- 17 f.h. "Qualified research expenses" means qualified research expenses as defined in
18 section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not
19 include expenses incurred for basic research conducted outside the state of
20 North Dakota.
- 21 5.6. The credit allowed under this section for the taxable year may not exceed the liability
22 for tax under this chapter.
- 23 6.7. In the case of a taxpayer that is a partner, shareholder, or a member in a passthrough
24 entity, the credit allowed for the taxable year may not exceed an amount separately
25 computed with respect to the taxpayer's interest in the trade, business, or entity equal
26 to the amount of tax attributable to that portion of the taxpayer's taxable income which
27 is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
- 28 7.8. Except as provided in subsection 1, if the amount of the credit determined under this
29 section for any taxable year exceeds the limitation under subsection 56, the excess
30 may be used as a research credit carryback to each of the three preceding taxable
31 years and a research credit carryover to each of the fifteen succeeding taxable years.

1 The entire amount of the excess unused credit for the taxable year must be carried
2 first to the earliest of the taxable years to which the credit may be carried and then to
3 each successive year to which the credit may be carried and the amount of the
4 unused credit which may be added under this subsection may not exceed the
5 taxpayer's liability for tax less the research credit for the taxable year. A claim to carry
6 back the credit under this section must be filed within three years of the due date or
7 extended due date of the return for the taxable year in which the credit was earned.

8 8-9. A taxpayer that is certified as a qualified research and development company by the
9 director may elect to sell, transfer, or assign all or part of the unused tax credit earned
10 under this section. The director shall certify whether a taxpayer that has requested to
11 become a qualified research and development company meets the requirements of
12 subsection 45. The director shall establish the necessary forms and procedures for
13 certifying qualifying research and development companies. The director shall issue a
14 certification letter to the taxpayer and the tax commissioner. A tax credit can be sold,
15 transferred, or assigned subject to the following:

- 16 a. A taxpayer's total credit assignment under this section may not exceed one
17 hundred thousand dollars over any combination of taxable years.
- 18 b. If the taxpayer elects to assign or transfer an excess credit under this subsection,
19 the tax credit transferor and the tax credit purchaser jointly shall file with the tax
20 commissioner a copy of the purchase agreement and a statement containing the
21 names, addresses, and taxpayer identification numbers of the parties to the
22 transfer, the amount of the credit being transferred, the gross proceeds received
23 by the transferor, and the taxable year or years for which the credit may be
24 claimed. The taxpayer and the purchaser also shall file a document allowing the
25 tax commissioner to disclose tax information to either party for the purpose of
26 verifying the correctness of the transferred tax credit. The purchase agreement,
27 supporting statement, and waiver must be filed within thirty days after the date
28 the purchase agreement is fully executed.
- 29 c. The purchaser of the tax credit shall claim the credit beginning with the taxable
30 year in which the credit purchase agreement was fully executed by the parties. A
31 purchaser of a tax credit under this section has only such rights to claim and use

1 the credit under the terms that would have applied to the tax credit transferor,
2 except the credit purchaser may not carry back the credit as otherwise provided
3 in this section. This subsection does not limit the ability of the tax credit purchaser
4 to reduce the tax liability of the purchaser, regardless of the actual tax liability of
5 the tax credit transferor.

6 d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer
7 the credit purchased under this section.

8 e. If the amount of the credit available under this section is changed as a result of
9 an amended return filed by the transferor, or as the result of an audit conducted
10 by the internal revenue service or the tax commissioner, the transferor shall
11 report to the purchaser the adjusted credit amount within thirty days of the
12 amended return or within thirty days of the final determination made by the
13 internal revenue service or the tax commissioner. The tax credit purchaser shall
14 file amended returns reporting the additional tax due or claiming a refund as
15 provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit
16 these returns and assess or issue refunds, even though other time periods
17 prescribed in these sections may have expired for the purchaser.

18 f. Gross proceeds received by the tax credit transferor must be assigned to North
19 Dakota. The amount assigned under this subsection cannot be reduced by the
20 taxpayer's income apportioned to North Dakota or any North Dakota net
21 operating loss of the taxpayer.

22 g. The tax commissioner has four years after the date of the credit assignment to
23 audit the returns of the credit transferor and the purchaser to verify the
24 correctness of the amount of the transferred credit and if necessary assess the
25 credit purchaser if additional tax is found due. This subdivision does not limit or
26 restrict any other time period prescribed in this chapter for the assessment of tax.

27 h. The tax commissioner may adopt rules to permit verification of the validity and
28 timeliness of the transferred tax credit.

29 ~~9-10.~~ If a taxpayer acquires or disposes of the major portion of a trade or business or the
30 major portion of a separate unit of a trade or business in a transaction with another
31 taxpayer, the taxpayer's qualified research expenses and base period must be

1 adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code
2 [26 U.S.C. 41(f)(3)].

3 ~~10-11.~~ If a taxpayer entitled to the credit provided by this section is a member of a group of
4 corporations filing a North Dakota consolidated tax return using the combined
5 reporting method, the credit may be claimed against the aggregate North Dakota tax
6 liability of all the corporations included in the North Dakota consolidated return. This
7 section does not apply to tax credits received or purchased under subsection ~~89~~.

8 ~~11-12.~~ An individual, estate, or trust that purchases a credit under this section is entitled to
9 claim the credit against state income tax liability under section 57-38-30.3.

10 ~~12-13.~~ A passthrough entity entitled to the credit under this section must be considered to be
11 the taxpayer for purposes of calculating the credit. The amount of the allowable credit
12 must be determined at the passthrough entity level. The total credit determined at the
13 entity level must be passed through to the partners, shareholders, or members in
14 proportion to their respective interests in the passthrough entity. An individual taxpayer
15 may take the credit passed through under this subsection against the individual's state
16 income tax liability under section 57-38-30.3.

17 ~~13-14.~~ For any taxable year in which the federal research tax credit provisions of section 41
18 of the Internal Revenue Code are ineffective, the provisions of section 41 of the
19 Internal Revenue Code [26 U.S.C. 41] referenced in this section have the same
20 meaning and application as provided in section 41 of the Internal Revenue Code, as
21 amended through the most recent taxable year in which the provisions were in effect.

22 15. If a taxpayer claims a credit under this section on the taxpayer's original return, the
23 taxpayer's election to calculate the credit under subsections 1, 2, 3, or 4 is binding for
24 the taxable year in which the election is made. A taxpayer claiming a credit for tax
25 years beginning before January 1, 2019, may not file an amended return for the
26 purpose of calculating the credit under subsection 4.

27 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
28 December 31, 2018.