

IMPACT OF INCOME TAX RATE REDUCTION OR ELIMINATION ON UNUSED TAX CREDITS

This memorandum was requested to provide information regarding the potential impact income tax rate reduction or elimination would have on a taxpayer's earned, unused income tax credits.

North Dakota offers a variety of income tax credits. Many credits possess carryforward provisions that allow any credit amount exceeding a taxpayer's liability to be carried forward and applied to offset a taxpayer's liability in future taxable years. The amount of time an earned credit may be carried forward varies from credit to credit with the lengthiest carryforward period provided for credits earned as a result of installing wind energy devices pursuant to North Dakota Century Code Section 57-38-01.8. Section 57-38-01.8 allows credits associated with the installation of a wind energy device after September 30, 2008, and before January 1, 2012, to be carried forward to each of the 30 succeeding taxable years. As the gift prohibitions found in Article X, Section 18, of the Constitution of North Dakota prevent credits from being refundable, taxpayers that acquire a large amount of credits may end up carrying forward unused credit amounts for several years before the full amount of earned credits are extinguished.

The potential to lose the value associated with unused credits exists under scenarios in which state income tax rates may be reduced or eliminated entirely. A business is required to disclose the amount of any credit carryforwards, as well as the expiration dates for each, on its financial statements. If state income taxes were eliminated, a business would lose any unrecognized tax benefits in the form of a credit carryforward. The degree to which value may be lost due to the occurrence of an income tax rate reduction or elimination is difficult to determine and would depend on the individual situation of each business.