

Introduced by

Senators Krebsbach, Flakoll, Mathern

Representatives Sanford, N. Johnson, Streyle

1 A BILL for an Act to create and enact subsection 4 to section 57-35.3-05 of the North Dakota  
2 Century Code, relating to a financial institutions tax credit for charitable gifts to qualified  
3 endowments by financial institutions; to amend and reenact sections 57-35.3-07 and  
4 57-38-01.21 of the North Dakota Century Code, relating to the tax credit for charitable gifts,  
5 planned gifts, or endowments; and to provide an effective date.

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

7 **SECTION 1.** Subsection 4 to section 57-35.3-05 of the North Dakota Century Code is  
8 created and enacted as follows:

9 4. There is allowed a credit against the tax imposed by sections 57-35.3-01 through  
10 57-35.3-12 in an amount equal to forty percent of a charitable gift to a qualified  
11 endowment. The maximum credit that may be claimed by a financial institution under  
12 this subsection for charitable gifts made in a taxable year may not exceed ten  
13 thousand dollars. For the purposes of the credit allowed in this subsection,  
14 subsections 1, 6, and 8 of section 57-38-01.21 apply. A charitable gift used as the  
15 basis for a credit claimed under this subsection may not be used as the basis for the  
16 claim of a credit under any other provision of this chapter.

17 **SECTION 2. AMENDMENT.** Section 57-35.3-07 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **57-35.3-07. Payment of tax.**

20 Two-sevenths of the tax before credits allowed under section 57-35.3-05, less the  
21 ~~credit~~credits allowed under ~~subsections~~subsections 1 and 4 of section 57-35.3-05, must be paid  
22 to the commissioner on or before April fifteenth of the year in which the return is due, regardless  
23 of any extension of the time for filing the return granted under section 57-35.3-06. Five-sevenths  
24 of the tax before credits allowed under section 57-35.3-05, less the credit allowed under

1 subsection 2 of section 57-35.3-05, must be paid to the commissioner on or before January  
2 fifteenth of the year after the return is due. Payment must be made by check, draft, or money  
3 order, payable to the commissioner, or as prescribed by the commissioner under subsection 15  
4 of section 57-01-02.

5 **SECTION 3. AMENDMENT.** Section 57-38-01.21 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **57-38-01.21. ~~Planned~~Charitable gifts, planned gifts, and qualified endowments credit -**  
8 **Definitions.**

9 1. For purposes of this section:

- 10 a. "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual  
11 funds, or other investment assets established for a specific charitable, religious,  
12 educational, or eleemosynary purpose and invested for the production or growth  
13 of income, or both, which may either be added to principal or expended.
- 14 b. "Planned gift" means an irrevocable ~~contribution~~charitable gift to a North Dakota  
15 qualified nonprofit organization or qualified endowment held by or for a North  
16 Dakota qualified nonprofit organization, when the ~~contribution~~charitable gift uses  
17 any of the following techniques that are authorized under the Internal Revenue  
18 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);
  - 25 (7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
  - 26 (8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or
  - 27 (9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

28 "Planned gift" does not include a ~~contribution~~charitable gift using a  
29 charitable remainder unitrust or charitable remainder annuity trust unless the  
30 agreement provides that the trust may not terminate and beneficiaries' interest in  
31 the trust may not be assigned or contributed to the qualified endowment sooner

1 than the earlier of the date of death of the beneficiaries or five years from the  
2 date of the ~~contribution~~planned gift.

3 "Planned gift" does not include a deferred charitable gift annuity unless the  
4 payment of the annuity is required to begin within the life expectancy of the  
5 annuitant or of the joint life expectancies of the annuitants, if more than one  
6 annuitant, as determined using the actuarial tables used by the internal revenue  
7 service in determining federal charitable income tax deductions on the date of the  
8 ~~contribution~~planned gift.

9 "Planned gift" does not include a charitable gift annuity or deferred  
10 charitable gift annuity unless the annuity agreement provides that the interest of  
11 the annuitant or annuitants in the gift annuity may not be assigned to the qualified  
12 nonprofit organization or qualified endowment sooner than the earlier of the date  
13 of death of the annuitant or annuitants or five years after the date of the  
14 ~~contribution~~planned gift.

15 "Planned gift" does not include a charitable gift annuity or deferred  
16 charitable gift annuity unless the annuity is a qualified charitable gift annuity for  
17 federal income tax purposes.

18 c. "Qualified endowment" means a permanent, irrevocable fund held by a North  
19 Dakota incorporated or established organization that is:

- 20 (1) A qualified nonprofit organization; or  
21 (2) A bank or trust company holding the fund on behalf of a qualified nonprofit  
22 organization.

23 d. "Qualified nonprofit organization" means a North Dakota incorporated or  
24 established tax-exempt organization under 26 U.S.C. 501(c) to which  
25 contributions qualify for federal charitable income tax deductions with an  
26 established business presence or situs in North Dakota.

27 2. a. An individual is allowed a tax credit against the tax imposed by section  
28 57-38-30.3 in an amount equal to forty percent of the present value of the  
29 aggregate amount of the charitable gift portion of planned gifts made by the  
30 taxpayer during the taxable year to a qualified nonprofit organization or qualified  
31 endowment. The maximum credit that may be claimed under this subsection for

1            ~~contributions~~planned gifts made in a taxable year is ten thousand dollars for an  
2            individual, or twenty thousand dollars for married individuals filing a joint return.  
3            The credit allowed under this section may not exceed the taxpayer's income tax  
4            liability.

5            b. An individual is allowed a tax credit against the tax imposed by section  
6            57-38-30.3 for making a charitable gift to a qualified endowment. The credit is  
7            equal to forty percent of the charitable gift. If an individual makes a single  
8            charitable gift to a qualified endowment, the charitable gift must be five thousand  
9            dollars or more to qualify for the credit. If an individual makes more than one  
10           charitable gift to the same qualified endowment, the aggregate amount of the  
11           charitable gifts made to that qualified endowment must be five thousand dollars  
12           or more to qualify for the credit. The maximum credit that may be claimed under  
13           this subsection for charitable gifts made in a taxable year is ten thousand dollars  
14           for an individual or twenty thousand dollars for married individuals filing a joint  
15           return. The tax credit allowed under this section may not exceed the taxpayer's  
16           income tax liability.

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

23           4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a  
24           charitable gift to a qualified endowment. The maximum credit ~~allowed~~that may be  
25           claimed under this subsection for ~~contributions~~charitable gifts made in a taxable year  
26           is ten thousand dollars. The allowable credit must be apportioned to the estate or trust  
27           and to its beneficiaries on the basis of the income of the estate or trust allocable to  
28           each, and the beneficiaries may claim their share of the credit against the tax imposed  
29           by section 57-38-30 or 57-38-30.3. A beneficiary may claim the credit only in the  
30           beneficiary's taxable year in which the taxable year of the estate or trust ends.

1 Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to  
2 their respective shares of the apportioned credit.

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

15 6. The amount of the ~~contribution~~charitable gift upon which an allowable credit is  
16 computed must be added to federal taxable income in computing North Dakota  
17 taxable income in the taxable year in which the credit is first claimed, but only to the  
18 extent that the ~~contribution~~charitable gift reduced federal taxable income.

19 7. ~~An~~The unused portion of a credit under this section may be carried forward for up to  
20 three taxable years.

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

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

3        **SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
4        December 31, 2010.