CHAPTER 57-38
INCOME TAX

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.
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.
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, is not a "resident" of this state for purposes of this chapter simply by reason of having voted in an election in this state.
12. "Tax commissioner" means the state tax commissioner.
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 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.
14. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax imposed by this chapter.
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.

57-38-01.1. Declaration of legislative intent.

It is the intent of the legislative assembly to simplify the state income tax laws and to demonstrate that federal legislation is not necessary to deal with certain interstate tax problems, by adopting the federal definition of taxable income as the starting point for the computation of state income tax by all taxpayers and providing the necessary adjustments thereto to substantially preserve and maintain existing exemptions and deductions. It is the further intent of the legislative assembly to eliminate double taxation of the earnings of small corporations by recognizing a subchapter S election when made for federal income tax purposes.

57-38-01.2. Adjustments to taxable income for individuals and fiduciaries.

Repealed by S.L. 2009, ch. 545, § 32.

57-38-01.3. Adjustments to taxable income for corporations.

1. The taxable income of a corporation as computed pursuant to the provisions of the Internal Revenue Code of 1954, as amended, must be:
   a. Reduced by any interest received from obligations of the United States that is included in taxable income or in the computation thereof on the federal return.
   b. Reduced by any other income included in the taxable income, or in the computation thereof, on the federal return which is exempt from taxation by this state because of the provisions of the Constitution of North Dakota or the Constitution of the United States.
   c. Increased by the amount of any income taxes, including income taxes of foreign countries, or franchise or privilege taxes measured by income, to the extent that such taxes were deducted to determine federal taxable income.
   d. Increased by the amount of any interest and dividends from foreign securities and from securities of state and their political subdivisions exempt from federal income tax, provided that interest upon obligations of the state of North Dakota or any of its political subdivisions may not be included.
   e. Reduced by the amount of net income not allocated and apportioned to this state under the provisions of chapter 57-38.1, but only to the extent that the amount of net income not allocated and apportioned to this state under the provisions of that chapter is not included in any adjustment made pursuant to the preceding subdivisions.
   f. Repealed by S.L. 2003, ch. 529, § 3.
   g. Increased by the amount of any special deductions and net operating loss deductions to the extent that these items were deducted in determining federal taxable income.
   h. Reduced by dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, as amended, by a regulated investment company or a fund of a regulated investment company as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, as amended, except that the deduction for dividends paid is not allowed with respect to dividends attributable to any income that is not subject to taxation under this chapter when earned by the regulated investment company. Sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as amended, apply for computing the deduction for dividends paid. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as amended.
   i. Except for a cooperative described in this subsection, increased by the amount of the deduction allowable under section 199 of the Internal Revenue Code [26 U.S.C. 199], but only to the extent of the deduction taken to determine federal taxable income. For a cooperative that has elected to pass the deduction through to its patrons under section 199(d)(3), of the Internal Revenue Code [26 U.S.C. 199(d)(3)], the increase under this subsection does not include the amount passed through to its patrons.

j. For taxable years 2005 and 2006, increased by the amount of extraterritorial income as defined in section 114 of the Internal Revenue Code [26 U.S.C. 114], that is excluded under sections 101(d), 101(e), and 101(f) of Pub. L. 108-357 [118 Stat. 1418], but only to the extent the income was excluded in determining federal taxable income.

k. Reduced, for an interest charge domestic international sales corporation without economic substance owned by individuals or passthrough entities, by the amount of actual or deemed distributions of the interest charge domestic international sales corporation to its owners. For purposes of this subsection, "without economic substance" means, in the case of an interest charge domestic international sales corporation subject to Internal Revenue Code section 992, that the interest charge domestic international sales corporation has elected to use intercompany pricing rules of Internal Revenue Code section 994, rather than the Internal Revenue Code section 482 method. For purposes of this subsection, a passthrough entity means an entity that for the applicable tax year is treated as an S corporation under this chapter or a cooperative, general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation under this chapter.

l. Increased by the amount of the dividends paid deduction otherwise allowed under section 857 of the Internal Revenue Code of 1986, as amended, if the real estate investment trust is a captive real estate investment trust.

(1) For purposes of this subdivision:

(a) "Captive real estate trust" means a real estate investment trust the shares or beneficial interests of which are not regularly traded on an established securities market, and more than fifty percent of the voting power or value of the beneficial interests or shares of the real estate investment trust are owned or controlled, directly, indirectly, or constructively, by a single entity that is:

[1] Treated as an association taxable as a corporation under the Internal Revenue Code of 1986, as amended; and

[2] Not exempt from federal income taxation under section 501(a) of the Internal Revenue Code of 1986, as amended.

(b) "Listed Australian property trust" means an Australian unit trust registered as a managed investment scheme under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia, and is regularly traded on an established securities market, or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, seventy-five percent or more of the voting power or value of the beneficial interests or shares of such trust.

(c) "Qualified foreign entity" means a corporation, trust, association, or partnership organized outside the laws of the United States, and which satisfies all of the following criteria:

[1] At least seventy-five percent of the entity's total asset value at the close of its taxable year is represented by real estate assets as defined in section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and United States government securities;

[2] The entity is not subject to tax on amounts distributed to its beneficial owners or is exempt from entity level taxation;

[3] The entity distributes at least eighty-five percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis;

[4] Not more than ten percent of the voting power or value in the entity is held directly or indirectly or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and

[5] The entity is organized in a country that has a tax treaty with the United States.

(d) "Real estate investment trust" has the meaning ascribed in section 856 of the Internal Revenue Code of 1986, as amended.

(2) For the purposes of applying subparagraph a of paragraph 1, the following entities are not considered an association taxable as a corporation:

(a) A real estate investment trust other than a captive real estate investment trust;

(b) A qualified real estate investment trust subsidiary under subsection i of section 856 of the Internal Revenue Code of 1986, as amended, other than a qualified real estate investment trust subsidiary of a captive real estate investment trust;

(c) A listed Australian property trust; and

(d) A qualified foreign entity.

(3) A real estate investment trust that is intended to be regularly traded on an established securities market and that satisfies the requirements of sections 856(a)(5), 856(a)(6), and 856(h)(2) of the Internal Revenue Code of 1986, as amended, shall not be deemed a captive real estate investment trust within the meaning of this subdivision.

(4) A real estate investment trust that does not become regularly traded on an established securities market within one year of the date on which it first became a real estate investment trust shall be deemed not to have been regularly traded on an established securities market, retroactive to the date it first became a real estate investment trust, and shall file an amended return reflecting the retroactive designation for any tax year or part-year occurring during its initial year of status as a real estate investment trust. For purposes of this subdivision, a real estate investment trust becomes a real estate investment trust on the first day that it has both met the requirements of section 856 of the Internal Revenue Code of 1986, as amended, and has elected to be treated as a real estate investment trust under section 856(c)(1) of the Internal Revenue Code of 1986, as amended.

(5) For purposes of this subdivision, the constructive ownership rules of section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by section 856(d)(5) of the Internal Revenue Code of 1986, as amended, apply in determining the ownership of stock, assets, or net profits of any person.

Provided, however, that each adjustment in the above subdivisions authorized under law is allowed only to the extent that the adjustment is allocated and apportioned to North Dakota income.

2. The tax commissioner is hereby authorized to prescribe rules and regulations to prevent requiring income that had been previously taxed under this chapter from being taxed again because of the provisions of this chapter and to prescribe rules and regulations to prevent any income from becoming exempt from taxation because of the provisions of this chapter if it would otherwise have been subject to taxation under the provisions of this chapter.

3. The sum calculated pursuant to subsection 1 must be reduced by the amount of any net operating loss that is attributable to North Dakota sources, including a net operating loss calculated under chapter 57-35.3 for tax years beginning before January 1, 2013. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to subsection 1, the excess may be carried forward for the same time period that an identical federal net operating loss may be

carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In addition, no deduction may be taken for a carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

57-38-01.4. Recognition of subchapter S election.

1. For the purposes of this chapter, any person as defined in section 57-38-01 and required to file a North Dakota income tax return who makes an election under subchapter S of the Internal Revenue Code of 1954, as amended, for federal income tax purposes shall have such status recognized and such person's taxable income must be computed as provided in subchapter S of the Internal Revenue Code of 1954, as amended, with the adjustments allowed by this chapter or other provisions of law. Income of a subchapter S corporation subject to tax for federal income tax purposes is also subject to state income tax at the corporate income tax rates imposed by section 57-38-30.
2. The distributed and undistributed taxable income of an electing small business corporation for federal and state income tax purposes derived from or connected with sources in this state does constitute income derived from sources within this state for a nonresident person who is a shareholder of such a corporation, and a net operating loss of such corporation derived from or connected with sources in this state does constitute a loss or deduction connected with sources in this state for such a nonresident individual.

57-38-01.5. Crop insurance proceeds - Option to postpone for income tax purposes.

Repealed by S.L. 1983, ch. 630, § 2.

57-38-01.6. Deduction for contributions to retirement plans.

Repealed by S.L. 1983, ch. 630, § 2.

57-38-01.7. Income tax credit for charitable contributions - Limitation.

1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund. The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state. The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
3. For purposes of this section, the term "nonprofit private institution of higher education" means only a nonprofit private educational institution located in the state of North Dakota which normally maintains a regular faculty and curriculum, which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education at a level above the twelfth grade. The term "nonprofit private institution of secondary education" means only a nonprofit private educational institution located in North Dakota which normally

maintains a regular faculty and curriculum approved by the state department of public instruction, which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education to students in the ninth through the twelfth grades.

4. For purposes of this section, a taxpayer may elect to treat a contribution as made in the preceding taxable year if the contribution and election are made not later than the time prescribed in section 57-38-34 for filing the return for that taxable year, including extensions granted by the commissioner.

57-38-01.8. Income tax credit for installation of geothermal, solar, wind, or biomass energy devices.

1. A taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30 for the cost of a geothermal, solar, wind, or biomass energy device installed before January 1, 2015, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
2. For the purposes of this section:
   a. "Biomass energy device" means a system using agricultural crops, wastes, or residues; wood or wood wastes or residues; animal wastes; landfill gas; or other biological sources to produce fuel or electricity.
   b. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.
   c. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.
3. If a geothermal, solar, wind, or biomass energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, wind, or biomass energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, wind, or biomass energy device is installed.
4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, wind, or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments 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 corporate partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
5. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.
6. a. The credit allowed under this section 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 used as a credit carryover to each of the five succeeding taxable years.

b. Any excess tax credits earned for wind energy devices installed after September 30, 2008, and before January 1, 2012, may be used as a credit carryover to each of the twenty succeeding taxable years.
c. For any tax credits for geothermal, solar, or biomass energy devices installed after September 30, 2008, and wind energy devices installed after December 31, 2011, the excess may be used as a credit carryover to each of the ten succeeding taxable years.

7. For geothermal, solar, wind, or biomass energy devices installed after December 31, 2006, if ownership of a device is transferred at the time installation is complete and the device is fully operational, the purchaser of the device is eligible for the tax credit under this section. Subsequent purchasers of the device are not eligible for the tax credit.
8. An individual taxpayer filing a North Dakota return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30.3 for the cost of a geothermal energy device installed after December 31, 2008, and before January 1, 2015, in a building or on property owned or leased by the taxpayer in North Dakota. The credit must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal energy device.

57-38-01.9. Deduction of contributions to individual retirement account.

Repealed by S.L. 1983, ch. 630, § 2.

57-38-01.10. Deferral of crop disaster payments and proceeds of livestock sold on account of drought.

Repealed by S.L. 1983, ch. 630, § 2.

57-38-01.11. Reporting net operating loss.

Repealed by S.L. 1983, ch. 630, § 2.

57-38-01.12. Reporting of investment credit carryback for prior taxable years.

Repealed by S.L. 1983, ch. 628, § 2.

57-38-01.13. Taxation of the gain or loss resulting from the sale of a principal residence.

Any gain or loss resulting from the sale or exchange of a principal residence in this state by a taxpayer who reinvests in another principal residence outside of this state must be treated in the same way for state income tax purposes as it is treated for federal income tax purposes.

57-38-01.14. No gain recognized on property subject to eminent domain sale or transfer.

If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for corporate income tax purposes.

57-38-01.15. Proration and itemization of deductions and exemptions.

Repealed by S.L. 1989, ch. 710, § 4.

57-38-01.16. Income tax credit for employment of developmentally disabled or chronically mentally ill persons.

A taxpayer filing an income tax return under this chapter may claim a credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be

considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

57-38-01.17. Credit for investments in development corporations.

A corporation is allowed, as a credit against a tax otherwise due under section 57-38-30, the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 10-33-124.

57-38-01.18. Gain on stock sale or transfer when corporation has relocated to this state.

Repealed by S.L. 2009, ch. 545, § 32.

57-38-01.19. Income tax credit for alternative fuel motor vehicle conversion equipment.

Expired under S.L. 1993, ch. 555, § 3.

57-38-01.20. Credit for expenses of caring for certain family members.

1. An individual is entitled to a credit against the tax imposed under section 57-38-30.3 in the amount of qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year.
2. A qualifying family member is an individual who has taxable income of twenty thousand dollars or less or a married individual with taxable income of thirty-five thousand dollars or less, including that of the individual's spouse, for the taxable year. A qualifying family member must be related to the taxpayer by blood or marriage and either sixty-five years of age or older or is disabled as defined under title XVI of the federal Social Security Act.
3. a. Qualified care expenses include payments by the taxpayer for home health agency services, companionship services, personal care attendant services, homemaker services, adult day care, respite care, and other expenses that are deductible medical expenses under the Internal Revenue Code. A qualified care expense must be:
      (1) Provided to or for the benefit of the qualifying family member or to assist the taxpayer in caring for the qualifying family member;
      (2) Provided by an organization or individual not related to the taxpayer or the qualifying family member; and
      (3) Not compensated for by insurance or federal or state assistance programs.

   b. For purposes of this subsection, "companionship services" means services that provide fellowship, care, and protection for individuals who, because of advanced age or physical or mental disabilities, cannot care for their own needs. Those services may include household work related to the care of the aged or disabled person, including meal preparation, bed making, washing of clothes, and other similar services, and may include the performance of general household work if that work does not exceed twenty percent of the total weekly hours worked. "Companionship services" does not include services relating to the care and protection of the aged or disabled which require and are performed by trained personnel, including a registered or practical nurse, and does not include services of individuals who provide care and protection for infants and young children who are not physically or mentally disabled.
4. The percentage amount of credit allowable under this section is:
   a. For a taxpayer whose taxable income does not exceed twenty-five thousand dollars, or thirty-five thousand dollars for a joint return, thirty percent of qualified elderly care expenses; or

b. For a taxpayer whose taxable income exceeds twenty-five thousand dollars, or thirty-five thousand dollars for a joint return, the greater of:
   (1) Twenty percent of qualified elderly care expenses; or
   (2) Thirty percent of qualified elderly care expenses, minus one percent of those expenses for each two thousand dollars or fraction of two thousand dollars by which the taxable income of the taxpayer for the taxable year exceeds twenty-five thousand dollars, or thirty-five thousand dollars for a joint return.

5. The dollar amount of credit allowable under this section is:
   a. Reduced by one dollar for each dollar of the taxable income over fifty thousand dollars for a taxpayer whose taxable income exceeds fifty thousand dollars, or for a joint return, reduced by one dollar for each dollar of the taxable income over seventy thousand dollars for taxpayers whose taxable income exceeds seventy thousand dollars; and
   b. Limited to two thousand dollars per qualifying family member in a taxable year and to four thousand dollars total for two or more qualifying family members in a taxable year.
6. A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.
7. In the case of a married individual filing a separate return, the percentage amount of credit under subsection 4 and the dollar amount of credit under subsection 5 are limited to one-half of the amounts indicated in those subsections.

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

1. For purposes of this section:
   a. "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual funds, or other investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and invested for the production or growth of income, or both, which may either be added to principal or expended.
   b. "Planned gift" means an irrevocable charitable gift to a North Dakota qualified nonprofit organization or qualified endowment held by or for a North Dakota qualified nonprofit organization, when the charitable gift uses any of the following techniques that are authorized under the Internal Revenue Code:
      (1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;
      (2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
      (3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
      (4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
      (5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
      (6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
      (7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
      (8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or
      (9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

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

      "Planned gift" does not include a deferred charitable gift annuity unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue

service in determining federal charitable income tax deductions on the date of the planned gift.

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

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

c. "Qualified endowment" means a permanent, irrevocable fund held by a North Dakota incorporated or established organization that is:
   (1) A qualified nonprofit organization; or
   (2) A bank or trust company holding the fund on behalf of a qualified nonprofit organization.

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

2. a. An individual is allowed a tax credit against the tax imposed by section 57-38-30.3 in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the taxable year to a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for planned gifts made in a taxable year is ten thousand dollars for an individual, or twenty thousand dollars for married individuals filing a joint return. The credit allowed under this section may not exceed the taxpayer's income tax liability.

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

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

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

5. A 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 passthrough entity ends. Subsections 6 and 7 apply to the partner, shareholder, or member.
6. The amount of the charitable gift upon which an allowable credit is computed must be added to federal taxable income in computing North Dakota taxable income in any taxable year in which the charitable gift reduces federal taxable income, but only to the extent that the charitable gift reduced federal taxable income.
7. The unused portion of a credit under this section may be carried forward for up to three taxable years.
8. If a charitable gift for which a credit was claimed is recovered by the taxpayer, an amount equal to the credit claimed in all taxable years must be added to the tax due on the income tax return filed for the taxable year in which the recovery occurs. For purposes of subsection 4, this subsection applies if the estate or trust recovers the charitable gift and the estate or trust and its beneficiaries are liable for the additional tax due with respect to their respective shares of the apportioned credit. For purposes of subsection 5, this subsection applies if the partnership, subchapter S corporation, or limited liability company recovers the charitable gift, and the partner, shareholder, or member is liable for the additional tax due.
9. A charitable gift used as the basis for a credit claimed under this section may not be used as the basis for the claim of a credit under any other provision of this chapter.

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 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.

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 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 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.

57-38-01.24. Internship employment tax credit.

1. A taxpayer that is an employer within this state is entitled to a credit as determined under this section against state income tax liability under section 57-38-30 or 57-38-30.3 for qualified compensation paid to an intern employed in this state by the taxpayer. To qualify for the credit under this section, the internship program must meet the following qualifications:
   a. The intern must be an enrolled student in an institution of higher education or vocational technical education program who is seeking a degree or a certification of completion in a major field of study closely related to the work experience performed for the taxpayer;
   b. The internship must be taken for academic credit or count toward the completion of a vocational technical education program;
   c. The intern must be supervised and evaluated by the taxpayer; and
   d. The internship position must be located in this state.
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 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.

57-38-01.25. Workforce recruitment credit for hard-to-fill employment positions.

A taxpayer that is an employer in this state is entitled to a credit as determined under this section against state income tax liability under section 57-38-30 or 57-38-30.3 for costs the taxpayer incurred during the tax year to recruit and hire employees for hard-to-fill employment positions within this state for which the annual salary for the position meets or exceeds the state average wage.

1. The amount of the credit to which a taxpayer is entitled is five percent of the salary paid for the first twelve consecutive months to the employee hired for the hard-to-fill employment position. To qualify for the credit under this section, the employee must be employed by the taxpayer in the hard-to-fill employment position for twelve consecutive months.
2. For purposes of this section:
   a. "Extraordinary recruitment methods" means using all of the following:
      (1) A person with the exclusive business purpose of recruiting employees and for which a fee is charged by that recruiter.
      (2) An advertisement in a professional trade journal, magazine, or other publication, the main emphasis of which is providing information to a particular trade or profession.
      (3) A website, the sole purpose of which is to recruit employees and for which a fee is charged by the website.

(4) Payment of a signing bonus, moving expenses, or nontypical fringe benefits.

b. "Hard-to-fill employment position" means a job that requires the employer to use extraordinary recruitment methods and for which the employer's recruitment efforts for the specific position have been unsuccessful for six consecutive calendar months.

c. "State average wage" means one hundred twenty-five percent of the state average wage published annually by job service North Dakota and which is in effect at the time the employee is hired.

3. The taxpayer may claim the credit in the first tax year beginning after the employee hired for the hard-to-fill position has completed the employee's first twelve consecutive months of employment in the hard-to-fill position with the taxpayer.

4. The credit under this section may not exceed a taxpayer's liability for the taxable year as determined under this chapter. Any amount of unused credit may be carried forward for up to four taxable years after the taxable year in which the credit could initially be claimed.

5. A 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.

57-38-01.26. Angel fund investment tax credit.

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is five hundred thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.

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. Investments in real estate or real

estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.

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.

4. The tax commissioner may disclose to the legislative management the reported information described under paragraphs 2 and 3 of subdivision i of subsection 3 and the reported information described under subdivision j of subsection 3.

5. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if any one partner, shareholder, or member of a passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the enterprise.

6. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.

7. a. A 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.

8. For the first two taxable years beginning after December 31, 2010, a taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit earned under this section for investment in an angel fund established after July 31, 2011, subject to the following:
   a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years. The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6.
   b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
   c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
   d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.
   e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
   f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
   g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
   h. The tax commissioner may adopt rules to establish necessary administrative provisions for the credit under this section, including provisions to permit verification of the validity and timeliness of the transferred tax credit.

57-38-01.27. Microbusiness income tax credit.

1. For purposes of this section:

a. "Actively engaged" in the operation of a microbusiness means involvement on a continuous basis in the daily management and operation of the business.
b. "Director" means the director of the department of commerce division of economic development and finance.
c. "Economically viable small community" means a community with a population of at least one hundred but fewer than two thousand, which has one or more of the following:
   (1) An active community economic development organization;
   (2) An ongoing relationship with a regional or urban economic development organization; or
   (3) An existing city sales tax, all or part of the revenue from which is dedicated to economic development.
d. "Microbusiness" means a business employing five or fewer employees inside an economically viable small community.
e. "New employment" means the amount by which the total compensation paid during the taxable year to North Dakota resident employees exceeds the total compensation paid to North Dakota resident employees in the taxable year before the application. For the purposes of calculating the increase in new employment, the employer may not include merit-based or equity-based salary increases, cost-of-living adjustments, or any other increase in compensation not directly related to the hiring of new employees during the taxable year.
f. "New investment" means the increase in the applicant's purchases of microbusiness buildings and depreciable personal property located in this state, not including vehicles required to be registered for operation on the roads and highways of this state, during the taxable year as compared with the previous taxable year. If the buildings or depreciable personal property is leased, the amount of new investment is the increase in average net annual rents multiplied by the number of years of the lease for which the taxpayer is bound, not exceeding ten years. For the purposes of calculating the increase in new investment, the employer may not include any increases in rents for property leased before the current taxable year. Only rents for leases completed in the current taxable year may be included.

2. The director shall accept an application for qualification as a microbusiness under this section from a taxpayer that is actively engaged in the operation of a microbusiness or that will establish a microbusiness in which the taxpayer will be actively engaged in or operating within the current or subsequent taxable year. The application must be on a form provided by the director and must contain:
   a. A description of the microbusiness;
   b. The projected income and expenditures of the microbusiness;
   c. The market to be served by the microbusiness and the way the expansion addressed the market;
   d. The amount of projected new investment or employment increases;
   e. The projected improvement in income or creation of new self-employment or jobs in the area in which the microbusiness is located;
   f. The nature of the applicant's engagement in the operation of the microbusiness; and
   g. Any other document, plan, or specification required by the director.
3. A business may be certified by the director as a microbusiness if:
   a. The applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation of the microbusiness upon its establishment;
   b. The applicant will make new investment or employment in the microbusiness;
   c. The new investment or employment will create new income or jobs in the area in which the business is located;
   d. The new business will not directly compete with any established business located within fifteen miles of the proposed new business;

e. The new business will be located in an area determined by the director to be an economically viable small community located at least fifteen miles from the city limits of a city with a population of two thousand or more; and
f. The applicant is not closing or reducing its business operation in one area of the state and relocating substantially the same business operation in another area.

4. If the applicant meets the requirements of subsection 3, the director shall issue a certification letter to the microbusiness. The certification letter must include the certification effective date.
5. The director may not certify more than two hundred qualified businesses as a microbusiness.
6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax liability as determined under section 57-38-30 or 57-38-30.3 equal to twenty percent of the taxpayer's new investment and new employment in the microbusiness during the taxable year. A taxpayer may not obtain more than ten thousand dollars in credits under this section over any combination of taxable years.
7. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year. Each year's unused credit amount may be carried forward for up to five taxable years.
8. The taxpayer only may claim the tax credit under this section by filing a form provided by the tax commissioner and attaching the microbusiness certification letter.
9. A 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.
10. The tax commissioner shall prepare a report for the director identifying the following aggregate amounts for the previous calendar year:
    a. The actual amount of new investment and new employment in the previous calendar year which was reported by taxpayers certified as a microbusiness under this section; and
    b. The tax credit claimed during the previous calendar year.
11. The report required by subsection 10 must be issued by January 1, 2009, and each January fifteenth thereafter. Information may not be included in the report which is protected by the state or federal confidentiality laws.

57-38-01.28. Marriage penalty credit.

1. A married couple filing a joint return under section 57-38-30.3 is allowed a credit of not to exceed three hundred dollars per couple as determined under this section. The tax commissioner shall adjust the maximum amount of the credit under this subsection each taxable year at the time and rate adjustments are made to rate schedules under subdivision g of subsection 1 of section 57-38-30.3.
2. The credit under this section is the difference between the tax on the couple's joint North Dakota taxable income under the rates and income levels in subdivision b of subsection 1 of section 57-38-30.3 and the sum of the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the qualified income of the lesser-earning spouse, and the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the couple's joint North Dakota taxable income, minus the qualified income of the lesser-earning spouse.
3. For a nonresident or part-year resident, the credit under this section must be adjusted based on the percentage calculated under subdivision f of subsection 1 of section 57-38-30.3.
4. For purposes of this section:
    a. "Qualifying income" means the sum of the following, to the extent included in North Dakota taxable income:
        (1) Earned income as defined in section 32(c)(2) of the Internal Revenue Code;

(2) Income received from a retirement pension, profit-sharing, stock bonus, or annuity plan; and
(3) Social security benefits as defined in section 86(d)(1) of the Internal Revenue Code.

b. "Qualifying income of the lesser-earning spouse" means the qualifying income of the spouse with the lesser amount of qualifying income for the taxable year minus the sum of:
(1) The amount for one exemption under section 151(d) of the Internal Revenue Code; and
(2) One-half of the amount of the standard deduction under section 63(c)(2)(A)(4) of the Internal Revenue Code.

57-38-01.29. Homestead income tax credit - Rules.

1. In addition to any other credit or deduction allowed by law for a homeowner, an individual is entitled to a credit against the tax imposed under section 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against the individual's homestead in this state. For purposes of this section, "property taxes" does not include any special assessments.
2. For purposes of this section, "homestead" means the dwelling occupied by the individual as the individual's primary residence and, if that residence is in this state, any residential or agricultural property owned by that individual in this state.
3. a. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individuals filing separate returns.
   b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
4. The amount of the credit under subsection 3 in excess of the taxpayer's tax liability may be carried forward for up to five years or the taxpayer may request that the tax commissioner issue the taxpayer a certificate in the amount of the excess which may be used by the taxpayer against property or mobile home tax liability of the taxpayer during the ensuing taxable year by delivering the certificate to the county treasurer in which the taxable property or mobile home is subject to taxes. The county treasurer shall forward certificates redeemed in payment of a tax obligation under this section to the tax commissioner, who shall issue payment to the county in the amount of the certificates.
5. Persons owning property together are entitled to only one credit for a parcel of property between or among them under this section. Persons owning property together are each entitled to a percentage of the credit for a single individual under this section equal to their ownership interests in the property.
6. This section is not subject to subsection 1 or 2 of section 57-38-45.
7. The tax commissioner shall adopt rules to provide for filing and verification of claims of credits under this section and for issuance and redemption of tax certificates under subsection 4.
8. a. If, on November 15, 2008, the total amount of tax credits claimed under this section exceeds forty-seven million dollars, the tax commissioner shall reduce the rate of the credit under subsection 1. The adjusted credit rate must be calculated by the tax commissioner as follows:
      (1) The tax commissioner shall determine the percentage by which the credits claimed under this section exceeds forty-seven million dollars.
      (2) The difference between the number one and the amount calculated under paragraph 1 multiplied by ten percent is the adjusted credit rate for the 2008 taxable year.
   b. The tax commissioner shall report any adjustment under this subsection to the budget section of the legislative management for review.

57-38-01.30. Commercial property income tax credit - Rules.

1. In addition to any other credit or deduction allowed by law for a property owner, an individual or corporation is entitled to a credit against the tax imposed under section 57-38-30 or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against commercial property in this state. For purposes of this section, "property taxes" does not include any special assessments.
   a. The amount of the credit under this section may not exceed one thousand dollars for any taxpayer.
   b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
   c. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individual filing separate returns.
2. The amount of the credit under subdivisions a and c of subsection 1 in excess of the taxpayer's tax liability may be carried forward for up to five years.
3. Persons owning property together are entitled to only one credit for property between or among them under this section. Persons owning property together are each entitled to a percentage of the credit equal to their ownership interests in the property. Married individuals owning property together are each entitled to a percentage of the credit for a single individual under this section equal to their ownership interests in the property.
4. This section is not subject to subsection 1 or 2 of section 57-38-45.
5. A passthrough entity entitled to the credit under this section shall allocate the amount of the credit allowed with respect to the entity's property 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.
6. The tax commissioner shall adopt rules to provide for filing and verification of claims under this section.
7. a. If, on November 15, 2008, the total amount of credits claimed under this section exceeds seven million dollars, the tax commissioner shall reduce the cap that applies to the credit under subsection 1. The adjusted credit cap must be calculated by the tax commissioner as follows:
      (1) The tax commissioner shall determine the percentage by which the credits claimed under this section exceeds seven million dollars.
      (2) The difference between the number one and the amount calculated under paragraph 1 multiplied by the amount of the cap is the adjusted credit cap for the 2008 taxable year.
   b. The tax commissioner shall report any proposed adjustment under this subsection to the budget section of the legislative management for approval.

57-38-01.31. Employer tax credit for salary and related retirement plan contributions for mobilized employees.

1. A taxpayer who is an employer in this state is entitled to a credit against tax liability as determined under sections 57-38-30 and 57-38-30.3 equal to twenty-five percent of the reduction in compensation that the taxpayer continues to pay during the taxable year to, or on behalf of, each employee of the taxpayer during the period that the employee is mobilized under title 10 of the United States Code as a member of a reserve or national guard component of the armed forces of the United States. The maximum credit allowed for each eligible employee is one thousand dollars. The amount of the tax credit may not exceed the amount of the taxpayer's state tax liability for the tax year and an excess credit may be carried forward for up to five taxable years. For the purposes of this subsection:
   a. "Reduction in compensation" means the amount by which the pay received during the taxable year by the employee for service under title 10 of the United States Code is less than the total amount of salary and related retirement plan

contributions that would have been paid by the taxpayer to the employee for the same time period had the employee not been mobilized.

b. "Related retirement plan contributions" means the portion of voluntary or matching contributions paid by the taxpayer into a defined contribution plan maintained by the taxpayer for the employee.

2. A 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.

57-38-01.32. (Effective for the first two taxable years beginning after December 31, 2012) Housing incentive fund tax credit.

1. A taxpayer is entitled to a credit as determined under this section against state income tax liability under section 57-38-30 or 57-38-30.3 for contributing to the housing incentive fund under section 54-17-40. The amount of the credit is equal to the amount contributed to the fund during the taxable year.
2. North Dakota taxable income must be increased by the amount of the contribution upon which the credit under this section is computed but only to the extent the contribution reduced federal taxable income.
3. The contribution amount used to calculate the credit under this section may not be used to calculate any other state income tax deduction or credit allowed by law.
4. If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the excess may be carried forward to each of the ten succeeding taxable years.
5. The aggregate amount of tax credits allowed to all eligible contributors is limited to twenty million dollars.
6. Within thirty days after the date on which a taxpayer makes a contribution to the housing incentive fund, the housing finance agency shall file with each contributing taxpayer, and a copy with the tax commissioner, completed forms that show as to each contribution to the fund by that taxpayer the following:
   a. The name, address, and social security number or federal employer identification number of the taxpayer that made the contribution.
   b. The dollar amount paid for the contribution by the taxpayer.
   c. The date the payment was received by the fund.
7. To receive the tax credit provided under this section, a taxpayer shall claim the credit on the taxpayer's state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the housing finance agency under subsection 6.
8. Notwithstanding the time limitations contained in section 57-38-38, this section does not prohibit the tax commissioner from conducting an examination of the credit claimed and assessing additional tax due under section 57-38-38.
9. A 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.

57-38-01.33. (Effective for the first three taxable years beginning after December 31, 2012) Income tax credit for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes.

1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes in this state. The amount of the credit under this section is twenty percent of the costs incurred in the taxable year to purchase manufacturing machinery and equipment for the purpose of automating manufacturing processes. Qualified expenditures under this

section may not be used in the calculation of any other income tax deduction or credit allowed by law.

2. For purposes of this section:
   a. "Manufacturing machinery and equipment for the purpose of automating manufacturing processes" means new or used automation and robotic equipment.
   b. "Primary sector business" means a business certified by the department of commerce which, through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth.
3. The taxpayer shall claim the total credit amount for the taxable year in which the manufacturing machinery and equipment are purchased. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.
4. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the next five succeeding taxable years.
5. The aggregate amount of credits allowed under this section may not exceed two million dollars in any calendar year. Credits subject to this limitation must be determined based upon the date of the qualified purchase.
6. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return.
7. A 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.
8. The department of commerce shall provide the tax commissioner the name, address, and federal identification number or social security number of the taxpayer approved as qualifying for the credit under this section, and a list of those items that were approved as a qualified expenditure by the department. The taxpayer claiming the credit shall file with the taxpayer's return, on forms prescribed by the tax commissioner, the following information:
   a. The name, address, and federal identification number or social security number of the taxpayer who made the purchase; and
   b. An itemization of:
      (1) Each item of machinery or equipment purchased for automation;
      (2) The amount paid for each item of machinery or equipment if the amount paid for the machinery or equipment is being used as a basis for calculating the credit; and
      (3) The date on which payment for the purchase was made.
9. Notwithstanding the time limitations contained in section 57-38-38, this section does not prohibit the tax commissioner from conducting an examination of the credit claimed and assessing additional tax due under section 57-38-38.

57-38-01.34. Corporate credit for contributions to rural leadership North Dakota.

There is allowed a credit against the tax imposed by section 57-38-30 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient.

57-38-01.35. Financial institutions - Net operating losses - Credit carryovers.

1. A subchapter S corporation that was a financial institution under chapter 57-35.3 may elect to be treated as a taxable corporation under chapter 57-38. If an election is made under this section, the election:
   a. Must be made in the form and manner prescribed by the tax commissioner on the return filed for the tax year beginning on January 1, 2013, or the return filed for the short period required under subsection 8 of section 57-38-34; and
   b. Is binding until the earlier of:
      (1) The end of the tax year for which the taxpayer reports a tax liability after tax credits; or
      (2) The beginning of the tax year for which the taxpayer elects to be recognized as a subchapter S corporation under section 57-38-01.4.
2. If an election is made under this section, the following apply:
   a. A subchapter S corporation may not file a consolidated return.
   b. Any unused credit carryovers earned by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward for the same number of years the financial institution would have been entitled under chapter 57-35.3.
   c. Any unused net operating losses incurred by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward for the same number of years the financial institution would have been entitled under chapter 57-35.3.

57-38-02. Annual tax on individuals.

Repealed by S.L. 2009, ch. 545, § 32.

57-38-03. Imposition of tax against nonresidents.

The tax imposed by this chapter must be levied, collected, and paid annually upon and with respect to income derived from all property owned, from all gaming activity carried on in this state, and from every business, trade, profession, or occupation carried on in this state by natural persons not residents of the state at the rates specified with respect to net income of a resident of North Dakota.

57-38-04. Allocation and apportionment of gross income of individuals.

The gross income of individuals must be allocated and apportioned as follows:

1. a. Income from personal or professional services performed in this state by individuals must be assigned to this state regardless of the residence of the recipients of such income, except that income from such services performed within this state by an individual who resides and has the individual's place of abode in another state to which place of abode the individual customarily returns at least once a month must be excluded from the individual's income for the purposes of this chapter if such income is subject to an income tax imposed by the state in which the individual resides, provided that the state in which the individual resides allows a similar exclusion for income received from similar services performed in that state by residents of North Dakota.
   b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, must be excluded from income to the extent that the income is subject to an income tax imposed by the state of the individual's residence; provided, that the state allows a similar exclusion of the compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For purposes of this subdivision,

the term an individual who performs services for a common carrier engaged in interstate transportation is limited to an individual who performs the services for a common carrier only during the course of making regular runs into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier.

2. Income received from personal or professional services performed by residents of this state, regardless of where such services are performed, and income received by residents of this state from intangible personal property must be assigned to this state.
3. Income and gains received from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if such business consists principally of the holding of such property and collection of income and gains therefrom, must be assigned to this state without regard to the residence of the recipient if such property has a situs within this state.
4. Income derived from business activity carried on by an individual as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to the residence of the individual if the business activity is conducted wholly within this state. Income derived from gaming activity carried on in this state by an individual must be assigned to this state without regard to the residence of the individual.
5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.
6. a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists principally of the holding of the property and the collection of income and gains from the business, must be assigned to this state without regard to the situs of the property.
   b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to where the business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.
7. All other items of gross income must be assigned to the taxpayer's domicile.
8. The privileges granted nonresidents apply only when other states grant to the residents of North Dakota the same privilege.

57-38-05. Certain income of nonresidents not taxed.

Unless the income, gains, or both, arise from transactions in the regular course of the taxpayer's trade or business carried on in this state, or unless the acquisition, management, and disposition of intangible personal property constitutes a trade or business carried on in this state, or unless the income, gains, or both, arise from gaming activity carried on in this state, income of nonresidents derived from land contracts, mortgages, stocks, bonds, or other intangible personal property, or from the sale of intangible personal property, may not be taxed.

57-38-06. General provisions applicable to nonresidents.

The provisions of law applicable to the assessment, levy, and collection of income taxes from resident individuals, as to income, taxable income, adjustments to taxable income, and the allocation or proration of any such items, and all other provisions not inconsistent with the provisions of this chapter especially made applicable to nonresidents, govern the levy and collection of income taxes from nonresident individuals.

57-38-06.1. Exemptions for nonresident individual.

Repealed by S.L. 2009, ch. 545, § 32.

57-38-07. Tax imposed on fiduciaries - Charge against estate or trust.

The tax imposed by this chapter applies to and becomes a charge against estates and trusts with respect to their taxable income as defined in this chapter and the rates must be the same as those applicable to individuals. The fiduciary is responsible for making the return of income for the estate or trust for which the fiduciary acts, whether such income is taxable to the estate or trust or to the beneficiaries thereof. Fiduciaries required to make returns are subject to all of the provisions of this chapter which apply to individuals.

57-38-07.1. Taxation of two or more member limited liability companies.

For purposes of this chapter, a limited liability company having two or more members that is formed under either the laws of this state or under similar laws of another state, and that is considered to be a partnership for federal income tax purposes, is considered to be a partnership and the members must be considered to be partners. A limited liability company having two or more members that is not treated as a partnership for federal income tax purposes must be treated as a corporation for state tax purposes.

57-38-07.2. Taxation of single-member limited liability companies.

For purposes of this chapter, a limited liability company having a single member which is formed under either the laws of this state or under similar laws of another state and that is considered to be a corporation for federal income tax purposes is considered to be a corporation for state tax purposes. A limited liability company having a single member which is not treated as a corporation for federal income tax purposes is disregarded as an entity separate from its owner for state tax purposes.

57-38-08. Partnerships not subject to tax.

Partnerships are not subject to tax under this chapter. Persons carrying on a business as partners are taxable on their respective shares of the partnership's income, gain, loss, and deduction included in the partner's federal taxable income, as provided under section 57-38-08.1.

57-38-08.1. Allocation and apportionment of partnership income - Taxation of partners.

1. A partnership that carries on its business activity entirely within this state shall report all of its income or loss to this state. A partnership that carries on its business activity within and without this state shall allocate and apportion its income or loss to this state in the same manner as the income or loss of a corporation is allocated and apportioned to the state under chapter 57-38.1.
2. Resident partners, limited to individuals, estates, and trusts, must report their entire distributive share to this state as provided in subdivision b of subsection 6 of section 57-38-04, and may claim a credit for taxes paid to another state on that portion of their distributive share attributable to and taxed by another state, as provided in subdivision j of subsection 1 of section 57-38-30.3.
3. a. In determining the gross income of a nonresident partner, limited to individuals, estates, and trusts, there must be included only that part derived from or connected with sources in this state of the partner's distributive share of items of partnership income, gain, loss and deduction, or item thereof, entering into the federal taxable income of the partner, as determined under section 57-38-04. Except as otherwise provided in this subdivision, guaranteed payments paid to nonresident partners of a partnership that has business activity in this state are treated as a distributive share of partnership income for state tax purposes. In the case of a professional service partnership, the portion of a guaranteed payment paid to a nonresident partner attributable to a reasonable salary may not be

treated as a distributive share. The portion of the guaranteed payment not treated as a distributive share that is for services performed in this state must be assigned as provided under subsection 1 of section 57-38-04. For purposes of this subdivision, "professional service partnership" means a partnership that engages in the practice of law, accounting, medicine, and any other profession in which neither capital nor the services of employees are a material income-producing factor.

b. In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:
   (1) Characterizes payments to the partners as being for services or for the use of capital or allocates to the partner, as income or gain from sources outside this state, a greater proportion of the partner's distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside this state to partnership income or gain from all sources, except as authorized in subdivision d; or
   (2) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources in this state than the proportionate share of the partner, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subdivision d.

c. Any modification to federal taxable income described in this chapter that relates to an item of partnership income, gain, loss, or deduction, or item thereof, must be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates, but limited to the partner's portion of the item derived from or connected with sources in this state.

d. On application, the commissioner may authorize the use of other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources in this state, and the related modifications, as may be appropriate and equitable, on the terms and conditions as it may require.

57-38-09. Exempt organizations.

1. A person or organization exempt from federal income taxation under the provisions of the Internal Revenue Code of 1954, as amended, is also exempt from the tax imposed by this chapter in each year such person or organization satisfies the requirements of the Internal Revenue Code of 1954, as amended, for exemption from federal income taxation. If the exemption applicable to any person or organization under the provisions of the Internal Revenue Code of 1954, as amended, is limited or qualified in any manner, the exemption from taxes imposed by this section must be limited or qualified in a similar manner.
2. Notwithstanding the provisions of subsection 1, the unrelated business taxable income, as computed under the provisions of the Internal Revenue Code of 1954, as amended, of any person or organization otherwise exempt from the tax imposed by this chapter and subject to the tax imposed on unrelated business income by the Internal Revenue Code of 1954, as amended, is subject to the tax which would have been imposed by this chapter but for the provisions of subsection 1.
3. In addition to the persons or organizations exempt from federal income taxation under the provisions of the Internal Revenue Code of 1954, as amended, there shall also be exempt from the tax imposed by this chapter insurance companies doing business in the state and paying a tax upon the gross amount of premiums received in the state.

57-38-09.1. Organizations exempt from income tax - File return.

Any organization exempt from taxation pursuant to section 57-38-09 must provide the tax commissioner, in such form and manner as may be prescribed by the tax commissioner, information as is necessary to enable the tax commissioner to determine the exempt status of the organization.

57-38-10. Allocation and apportionment of partnership income.
Repealed by S.L. 2001, ch. 525, § 4.

57-38-11. Annual tax on corporations.
The tax imposed by this chapter must be levied, collected, and paid annually with respect to its North Dakota income, as hereinafter defined, received by every corporation doing business in this state.

57-38-12. Allocation of corporation income.
Repealed by S.L. 2003, ch. 528, § 4.

57-38-13. General provisions related to allocation of corporation income.
Repealed by S.L. 2003, ch. 528, § 4.

57-38-14. General provisions relating to corporate income.
The following principles may be applied in determining North Dakota income:

1. Any corporation organized under the laws of North Dakota and subject to a tax under the provisions of this chapter, which maintains no regular place of business outside this state, except a statutory office, must be taxed upon its entire income.
2. Corporations engaged in business within and without this state may be taxed only on such income as is derived from business transacted and property located within this state. The amount of such income apportionable to North Dakota must be determined as provided in chapter 57-38.1.
3. Any corporation liable to report under this chapter and owning or controlling, either directly or indirectly, substantially all of the voting capital stock of another corporation, or of other corporations, may be required to make a consolidated report showing the combined income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the tax commissioner may require, but excluding intercorporate stock holdings and intercorporate accounts.
4. Any corporation liable to report under this chapter and owned or controlled either directly or indirectly by another corporation may be required to make a report consolidated with the owning company, showing the combined income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the tax commissioner may require, but excluding intercorporate stock holdings and intercorporate accounts.
5. In case it appears to the tax commissioner that any arrangement exists in such a manner as to reflect improperly the business done, the segregable assets, or the entire income earned from business done in this state, the tax commissioner is authorized and empowered, in such manner as the tax commissioner may determine, to adjust the tax equitably.
6. The tax commissioner may permit or require the filing of a combined report if substantially all the voting capital stock of two or more corporations liable to report under this chapter is owned or controlled by the same interests. The tax commissioner may impose the tax provided by this chapter as though the combined entire income and segregated assets were those of one corporation, but in the computation, dividends received from any corporation whose assets, as distinguished from shares of stock, are included in the segregations may not be included in the income.
7. When any corporation required to make a return under this chapter conducts the business, whether under agreement or otherwise, in such manner as directly or indirectly to benefit the members or stockholders of the corporation, or any of them, or any person or persons, directly or indirectly interested in such business, by selling its products, or the goods or commodities in which it deals, at less than a fair price which might be obtained therefor, or if such a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation owning the substantial portion of its capital

stock, in such manner as to create a loss or improper income, the tax commissioner may require such facts as the tax commissioner deems necessary for the proper computation provided by this chapter, and for the purposes of this chapter may determine the amount which must be deemed to be the entire income, of the business of such corporation for the calendar or fiscal year. In determining such entire income, the tax commissioner shall have regard to the fair profits which, but for any agreement, arrangement, or understanding, might be or could have been obtained from dealing in such products, goods, or commodities.

8. If it appears to the tax commissioner that the segregation of assets shown by any report made under this chapter does not reflect properly the corporate activity or business done, or the income earned from corporate activity, or from business done in this state because of the character of the corporation's business and the character and location of its assets, the tax commissioner is authorized and empowered to adjust the tax equitably.
9. Notwithstanding any other provision of law, two or more North Dakota domestic corporations, affiliated as parent and subsidiary, and filing a federal consolidated tax return, shall file a combined report and consolidated return for income tax under this chapter.

57-38-15. Basis for determining gain or loss.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-15.1. Capital gains and losses.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-15.2. No capital gain recognized on property involuntarily converted.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-15.3. Gain or loss not recognized on certain exchanges.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-16. Inventory - Use under direction of tax commissioner.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-17. Gross income defined.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-17.1. Income from back pay - Limitation of tax - Definition.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-18. Items not included in gross income.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-19. Gross income of life insurance companies.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-20. Basis of return of net income.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-21. Net income defined - Computation.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-22. Deductions allowed.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-22.1. Deductions - Individuals.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-23. Items not deductible.
Repealed by S.L. 1961, ch. 359, § 8.

57-38-24. Net losses - Meaning - Exceptions.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-25. Net loss as a deduction.
Repealed by S.L. 1945, ch. 300, § 1.

57-38-26. Exemption for individuals.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-27. Exemption for fiduciaries.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-28. Time for fixing exemption status.
Repealed by S.L. 1967, ch. 446, § 8.

57-38-29. Optional method of computing tax.
Repealed by S.L. 2009, ch. 545, § 32.

57-38-29.1. Energy cost relief credit.
Repealed by S.L. 1983, ch. 632, § 5; S.L. 1985, ch. 634, § 1.

57-38-29.2. Credit for premiums for long-term care insurance coverage.
Repealed by S.L. 2009, ch. 545, § 32.

57-38-29.3. Credit for premiums for long-term care partnership plan insurance coverage.

A credit against an individual's tax liability under this chapter is provided to each taxpayer in the amount of the premiums paid during the taxable year by the taxpayer for qualified long-term care partnership plan insurance coverage for the taxpayer or the taxpayer's spouse, or both. The credit under this section for each insured individual may not exceed two hundred fifty dollars in any taxable year. For purposes of this section, "qualified long-term care partnership plan" is one that:

1. Is a qualified long-term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986, with an issue date on or after the date specified in an approved medicaid state plan amendment that provides for the disregard of assets;
2. Meets the requirements of the long-term care insurance model regulations and the long-term care insurance model act promulgated by the national association of insurance commissioners as adopted as of October 2000, or the insurance commissioner certifies that the policy meets those requirements; and
3. Is purchased by an individual who:
   a. Has not attained age sixty-one as of the date of purchase, if the policy provides compound annual inflation protection;
   b. Has attained age sixty-one but has not attained age seventy-six as of the date of purchase, if the policy provides some level of inflation protection; or
   c. Has attained age seventy-six as of the date of purchase.

57-38-30. Imposition and rate of tax on corporations.

A tax is hereby imposed upon the taxable income of every domestic and foreign corporation which must be levied, collected, and paid annually as in this chapter provided:

1. For the first twenty-five thousand dollars of taxable income, at the rate of one and forty-eight hundredths percent.
2. On all taxable income exceeding twenty-five thousand dollars and not exceeding fifty thousand dollars, at the rate of three and seventy-three hundredths percent.
3. On all taxable income exceeding fifty thousand dollars, at the rate of four and fifty-three hundredths percent.

57-38-30.1. Corporate tax credit for new industry.

For the purpose of providing a tax incentive to new industry in this state, any domestic corporation that has been incorporated for the first time in this state after January 1, 1969, and which is not the result of a business reorganization or acquisition, or any foreign corporation that has received a certificate of authority to transact business in this state for the first time after January 1, 1969, is entitled to receive the corporate tax credit allowed by this section by complying with the provisions herein; provided, that corporations receiving any property tax or income tax exemption allowed by chapter 40-57.1, or reorganized corporations that were in existence prior to January 1, 1969, are not allowed the credit. The credit consists of a deduction from the net tax as computed under section 57-38-30 of one percent of the annual gross amount expended by the corporation for salaries and wages within the state of North Dakota for each of the first three taxable years, and a deduction from the net tax as computed under section 57-38-30 of one-half of one percent of the annual gross amount expended by the corporation for salaries and wages within the state of North Dakota for each of the fourth and fifth taxable years. After the fifth taxable year, no further deduction is allowed, and the corporation must be taxed in accordance with the schedule provided in section 57-38-30 without credit. For the purpose of this section, new industry is defined as a corporate enterprise engaged in assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products or any combination thereof.

57-38-30.2. Surtax on income.

Repealed by S.L. 1975, ch. 476, § 2.

57-38-30.3. Individual, estate, and trust income tax.

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.
   a. Single, other than head of household or surviving spouse.

      If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
$0	$36,250	1.22%	$0
$36,250	$87,850	$442.25 + 2.27%	$36,250
$87,850	$183,250	$1,613.57 + 2.52%	$87,850
$183,250	$398,350	$4,017.65 + 2.93%	$183,250
$398,350		$10,320.08 + 3.22%	$398,350

   b. Married filing jointly and surviving spouse.

      If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
$0	$60,650	1.22%	$0

$60,650	$146,400	$739.93 + 2.27%	$60,650
$146,400	$223,050	$2,686.46 + 2.52%	$146,400
$223,050	$398,350	$4,618.04 + 2.93%	$223,050
$398,350		$9,754.33 + 3.22%	$398,350

c. Married filing separately.

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
$0	$30,325	1.22%	$0
$30,325	$73,200	$369.97 + 2.27%	$30,325
$73,200	$111,525	$1,343.23 + 2.52%	$73,200
$111,525	$199,175	$2,309.02 + 2.93%	$111,525
$199,175		$4,877.17 + 3.22%	$199,175

d. Head of household.

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
$0	$48,600	1.22%	$0
$48,600	$125,450	$592.92 + 2.27%	$48,600
$125,450	$203,150	$2,337.42 + 2.52%	$125,450
$203,150	$398,350	$4,295.46 + 2.93%	$203,150
$398,350		$10,014.82 + 3.22%	$398,350

e. Estates and trusts.

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
$0	$2,450	1.22%	$0
$2,450	$5,700	$29.89 plus 2.27%	$2,450
$5,700	$8,750	$103.67 plus 2.52%	$5,700
$8,750	$11,950	$180.53 plus 2.93%	$8,750
$11,950		$274.29 plus 3.22%	$11,950

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:
   (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
   (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

   In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

g. The tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.

h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.

2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:

a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under section 57-38-01.35.
d. Reduced by forty percent of:
   (1) The excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.
   (2) Qualified dividends as defined under Internal Revenue Code section 1(h)(11), added by section 302(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963 et seq.], but only if taxed at a federal income tax rate that is lower than the regular federal income tax rates applicable to ordinary income. If, for any taxable year, qualified dividends are taxed at the regular federal income tax rates applicable to ordinary income, the reduction allowed under this subdivision is equal to thirty percent of all dividends included in federal taxable income. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.
e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under section 57-38-01.35.
g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
i. Reduced by interest and income from bonds issued under chapter 11-37.
j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
   (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.

(2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
(3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.

k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.

l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.

m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.

n. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.

o. Reduced by the amount of income of a taxpayer, who resides anywhere within the exterior boundaries of a reservation situated in this state or situated both in this state and in an adjoining state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources anywhere within the exterior boundaries of a reservation situated in this state or both situated in this state and in an adjoining state.

p. For married individuals filing jointly, reduced by an amount equal to the excess of the recomputed itemized deductions or standard deduction over the amount of the itemized deductions or standard deduction deducted in computing federal taxable income. For purposes of this subdivision, "itemized deductions or standard deduction" means the amount under section 63 of the Internal Revenue Code that the married individuals deducted in computing their federal taxable income and "recomputed itemized deductions or standard deduction" means an amount determined by computing the itemized deductions or standard deduction in a manner that replaces the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for married individuals filing jointly with an amount equal to double the amount of the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for a single individual other than a head of household and surviving spouse. If the married individuals elected under section 63(e) of the Internal Revenue Code to deduct itemized deductions in computing their federal taxable income even though the amount of the allowable standard deduction is greater, the reduction under this subdivision is not allowed. Married individuals filing jointly shall compute the available reduction under this subdivision in a manner prescribed by the tax commissioner.

3. The same filing status used when filing federal income tax returns must be used when filing state income tax returns.

4. a. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this section for the amount of income tax paid by the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section.

b. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subsection may not exceed an amount equal to the tax imposed under this section multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by federal adjusted gross income less the amounts under subdivisions a and b of subsection 2.

c. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subsection may not exceed the lesser of the following:

(1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.

(2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.

d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.

5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.

6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.

7. A taxpayer filing a return under this section is entitled to the following tax credits:
   a. Family care tax credit under section 57-38-01.20.
   b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
   c. Agricultural business investment tax credit under section 57-38.6-03.
   d. Seed capital investment tax credit under section 57-38.5-03.
   e. Planned gift tax credit under section 57-38-01.21.
   f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
   g. Internship employment tax credit under section 57-38-01.24.
   h. Workforce recruitment credit under section 57-38-01.25.
   i. Angel fund investment tax credit under section 57-38-01.26.
   j. Microbusiness tax credit under section 57-38-01.27.
   k. Marriage penalty credit under section 57-38-01.28.
   l. Homestead income tax credit under section 57-38-01.29.
   m. Commercial property income tax credit under section 57-38-01.30.
   n. Research and experimental expenditures under section 57-38-30.5.
   o. Geothermal energy device installation credit under section 57-38-01.8.
   p. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
   q. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
   r. Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first three taxable years beginning after December 31, 2012).

8. A taxpayer filing a return under this section is entitled to the exemption provided under section 40-63-04.

9. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
   (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
   (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

   b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.

   c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.

   d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.

10. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.

57-38-30.4. Income tax credit for comprehensive health association assessments.

Repealed by S.L. 2009, ch. 545, § 32.

57-38-30.5. (Effective through December 31, 2014) Income tax credit for research and experimental expenditures.

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

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

to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.

d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.

e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.

f. The maximum annual credit a taxpayer may obtain under this subsection is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.

2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.

   a. This rate applies through the tenth taxable year beginning after December 31, 2006.

   b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.

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

4. For purposes of this section:

   a. "Base amount" means base amount as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.

   b. "Director" means the director of the department of commerce division of economic development and finance.

   c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.

   d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.

   e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred

fifty thousand dollars and which has not conducted new research and development in North Dakota.

f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.

5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
6. In the case of a taxpayer that is a partner, shareholder, or a member in a 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.
7. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year. A claim to carry back the credit under this section must be filed within three years of the due date or extended due date of the return for the taxable year in which the credit was earned.
8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:
   a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
   b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
   c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
   d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.

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

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

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

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

9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].

10. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.

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

12. A 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.

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

(Effective after December 31, 2014) Income tax credit for research and experimental expenditures.

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

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
   a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.

b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
f. The maximum annual credit a taxpayer may obtain under this subsection is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.

2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
   a. This rate applies through the tenth taxable year beginning after December 31, 2006.
   b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
4. For purposes of this section:
   a. "Base amount" means base amount as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.

b. "Director" means the director of the department of commerce division of economic development and finance.
c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.
d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.

5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
6. In the case of a taxpayer that is a partner, shareholder, or a member in a 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.
7. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year. A claim to carry back the credit under this section must be filed within three years of the due date or extended due date of the return for the taxable year in which the credit was earned.
8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:
   a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
   b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
   c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A

purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

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

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

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

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

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

9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].

10. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.

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

12. A 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.

57-38-30.6. Corporate income tax credit for biodiesel or green diesel production or soybean and canola crushing facility equipment costs.

A taxpayer is entitled to a credit against tax liability determined under section 57-38-30 in the amount of ten percent per year for five years of the taxpayer's direct costs incurred after December 31, 2002, to adapt or add equipment to retrofit an existing facility or construction of a new facility in this state for the purpose of producing or blending diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume or of the taxpayer's direct costs

incurred after December 31, 2008, to adapt or add equipment to retrofit an existing facility or construction of a new facility in this state for the purpose of producing crushed soybeans or canola. 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 credit amount may be carried forward for up to five taxable years. A taxpayer is limited to two hundred fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A taxpayer may not claim a credit under this section for any taxable year before the taxable year in which the facility begins production or blending of diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume or begins crushing soybeans or canola, but eligible costs incurred before the taxable year production, blending, or crushing begins may be claimed for purposes of the credit under this section for taxable years on or after the taxable year production, blending, or crushing begins.

57-38-31. Duty of individuals and fiduciaries to make return.

1. Every resident individual, every fiduciary for a resident individual, estate, or trust, who is required by the provisions of the United States Internal Revenue Code of 1954, as amended, to file a federal income tax return, and every individual or fiduciary who receives income derived from sources in this state, shall file an income tax return with the state tax commissioner in such form as the commissioner may prescribe. Any person who is required to file a state income tax return but not required to compute a federal taxable income figure for federal income tax purposes is required to compute such a federal taxable income figure using a pro forma return pursuant to the provisions of the Internal Revenue Code of 1954, as amended, in order to determine a starting point for the computation of state income tax. Any person required to file an income tax return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, with respect to income that is exempt from taxation under this chapter either because it cannot be constitutionally taxed or because it is exempt by any provision of law shall file a return prescribed by the tax commissioner in such form as will permit computation of the tax liability under this chapter on only that part of the income which is subject to taxation pursuant to the provisions of this chapter; provided, that such person elects to use that form of return rather than any other form of return that may be prescribed. The return must be signed by the person required to make it and must contain a written declaration that it is made and subscribed under penalties of perjury.
2. The same filing status and deduction method used by a husband and wife when filing federal income tax returns must be used when filing state income tax returns.
3. If the taxpayer is unable to make the taxpayer's own return, the return must be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.
4. Every fiduciary subject to taxation under the provisions of this chapter shall make a return for the individual, estate, or trust for which the fiduciary acts; the return must be signed by the person required to make it and must contain a written declaration that it is made and subscribed under penalties of perjury.
5. The return made by a fiduciary must state such facts as the tax commissioner may prescribe.
6. A fiduciary required to make a return under this chapter is subject to all of the provisions of the chapter which apply to an individual.
7. If required by the tax commissioner, the return must be accompanied by a true copy of the federal income tax return of the taxpayer or by equivalent information in the form and manner prescribed by the tax commissioner. A true copy of the federal income tax return of the taxpayer or equivalent information must be furnished to the tax commissioner by the taxpayer or fiduciary at any time after filing of the return required by this chapter if so required by the tax commissioner.
8. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall

have the same validity and consequence as the actual signature and written declaration for a paper return.

57-38-31.1. (Effective for taxable years beginning before January 1, 2014) Composite returns.

1. For purposes of this section, unless the context otherwise requires:
   a. "Member" means an individual who is a shareholder of an S corporation; a partner in a general partnership, a limited partnership, or a limited liability partnership; a member of a limited liability company; or a beneficiary of a trust.
   b. "Nonresident" means an individual who is not a resident of or domiciled in the state or a trust not organized in the state.
   c. "Passthrough entity" means an entity that for the applicable tax year is treated as an S corporation under this chapter or a general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation under this chapter.
2. a. A passthrough entity may file a composite income tax return on behalf of electing nonresident members reporting and paying income tax, at the highest marginal rate provided in section 57-38-30.3 for individuals, on the members' pro rata or distributive shares of income of the passthrough entity from doing business in, or deriving income from sources within, this state.
   b. A nonresident member whose only source of income within the state is from one or more passthrough entities may elect to be included in a composite return filed under this section.
   c. A nonresident member that has been included in a composite return may file an individual income tax return and shall receive credit for tax paid on the member's behalf by the passthrough entity.
3. a. A passthrough entity shall withhold income tax, at the highest tax rate provided in section 57-38-30.3 for individuals, on the share of income of the entity distributed to each nonresident member and pay the withheld amount in the manner prescribed by the tax commissioner. The passthrough entity is liable to the state for the payment of the tax required to be withheld under this section and is not liable to any member for the amount withheld and paid over in compliance with this section. A member of a passthrough entity that is itself a passthrough entity (a lower-tier passthrough entity) is subject to this same requirement to withhold and pay over income tax on the share of income distributed by the lower-tier passthrough entity to each of its nonresident members. The tax commissioner shall apply tax withheld and paid over by a passthrough entity on distributions to a lower-tier passthrough entity to the withholding required of that lower-tier passthrough entity.
   b. At the time of a payment made under this section, a passthrough entity shall deliver to the tax commissioner a return upon a form prescribed by the tax commissioner showing the total amounts paid or credited to its nonresident members, the amount withheld in accordance with this section, and any other information the tax commissioner may require. A passthrough entity shall furnish to its nonresident member annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax withheld on behalf of such member on a form prescribed by the tax commissioner.
   c. Notwithstanding subdivision a, a passthrough entity is not required to withhold tax for a nonresident member if:
      (1) The member has a pro rata or distributive share of income of the passthrough entity from doing business in, or deriving income from sources within, this state of less than one thousand dollars per annual accounting period;
      (2) The tax commissioner has determined by rule, ruling, or instruction that the member's income is not subject to withholding;

(3) The member elects to have the tax due paid as part of a composite return filed by the passthrough entity under subsection 2; or

(4) The entity is a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code which is treated as a partnership for the purposes of the Internal Revenue Code and which has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the tax commissioner of each unitholder with an income in the state in excess of five hundred dollars.

d. A passthrough entity failing to file a return, or failing to withhold or remit the tax withheld, as required by this section, is subject to the provisions of section 57-38-45.

(Effective for taxable years beginning after December 31, 2013) Composite returns.

1. For purposes of this section, unless the context otherwise requires:
   a. "Member" means an individual or passthrough entity that is a shareholder of an S corporation; a partner in a general partnership, a limited partnership, or a limited liability partnership; or a member of a limited liability company, settlor of a grantor trust, or a beneficiary of a trust.
   b. "Nonresident" means an individual who is not a resident of or domiciled in the state, a trust not organized in the state, or a passthrough entity that does not have its commercial domicile in the state.
   c. "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, or a general partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, grantor trust, or similar entity recognized by the laws of this state that is not taxed for federal income tax purposes at the entity level.
2. a. A passthrough entity may file a composite income tax return on behalf of electing nonresident members reporting and paying income tax, at the highest marginal rate provided in section 57-38-30.3, on the members' pro rata or distributive shares of income of the passthrough entity from doing business in, or deriving income from sources within, this state.
   b. A nonresident member whose only source of income within the state is from one or more passthrough entities may elect to be included in a composite return filed under this section.
   c. A nonresident member that has been included in a composite return may file an individual income tax return and shall receive credit for tax paid on the member's behalf by the passthrough entity.
3. a. A passthrough entity shall withhold income tax, at the highest tax rate provided in section 57-38-30.3, on the share of income of the entity distributed to each nonresident member and pay the withheld amount in the manner prescribed by the tax commissioner. The passthrough entity is liable to the state for the payment of the tax required to be withheld under this section and is not liable to any member for the amount withheld and paid in compliance with this section. A member of a passthrough entity that is itself a passthrough entity (a lower-tier passthrough entity) is subject to this same requirement to withhold and pay income tax on the share of income distributed by the lower-tier passthrough entity to each of its nonresident members. The tax commissioner shall apply tax withheld and paid by a passthrough entity on distributions to a lower-tier passthrough entity to the withholding required of that lower-tier passthrough entity.
   b. At the time of a payment made under this section, a passthrough entity shall deliver to the tax commissioner a return on a form prescribed by the tax commissioner showing the total amounts paid or credited to its nonresident members, the amount withheld in accordance with this section, and any other

information the tax commissioner may require. A passthrough entity shall furnish to its nonresident member annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax withheld on behalf of the member on a form prescribed by the tax commissioner.

c. Notwithstanding subdivision a, a passthrough entity is not required to withhold tax for a nonresident member if:
   (1) The member has a pro rata or distributive share of income of the passthrough entity from doing business in, or deriving income from sources within, this state of less than one thousand dollars per annual accounting period;
   (2) The tax commissioner has determined by rule, ruling, or instruction that the member's income is not subject to withholding;
   (3) The member elects to have the tax due paid as part of a composite return filed by the passthrough entity under subsection 2;
   (4) The entity is a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code which is treated as a partnership for the purposes of the Internal Revenue Code and which has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the tax commissioner of each unitholder with an income in the state in excess of five hundred dollars; or
   (5) The member is a lower-tier passthrough entity that elects to be exempted from the withholding requirement under this subsection. The election must be made on a form and in a manner prescribed by the tax commissioner. The form must include a statement that the member certifies that the member will file any return and pay any tax required by this chapter on its distributive share of income from the source passthrough entity and that the member is subject to this state's jurisdiction for the collection of that tax and any applicable penalty and interest. The tax commissioner may revoke the exemption under this paragraph if the source passthrough entity or member fails to comply with the requirements of this paragraph. If the exemption is revoked, the source passthrough entity shall begin withholding from the member within sixty days of receiving notification of the revocation from the tax commissioner. The tax commissioner may prescribe any procedures and guidelines necessary to administer this paragraph.

d. A passthrough entity failing to file a return, or failing to withhold or remit the tax withheld, as required by this section, is subject to the provisions of section 57-38-45.

57-38-32. Duty of corporations to make returns.

Each corporation that receives income from the sources designated in section 57-38-14, whether or not required to file an income tax return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, shall, unless exempted by the provisions of section 57-38-09, make a return in such form as the tax commissioner may prescribe, stating specifically such facts as the tax commissioner may require for the purpose of making any computation required by this chapter. Any corporation which is required to file a state income tax return but not required to compute a federal taxable income figure for federal income tax purposes is required to compute such a federal taxable income figure using a pro forma return pursuant to the provisions of the Internal Revenue Code of 1954, as amended, in order to determine a starting point for the computation of state income tax. Any foreign loan and investment company engaged in business in this state, and whose income in this state consists solely of income exempt from taxation under this chapter, need not file an annual report unless specially requested to do so by the tax commissioner, but may file in lieu thereof an affidavit claiming exemption under this chapter. The return must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act and it and any other declaration, statement, or document required to be

made must contain or be verified by a written declaration that it is made under the penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

57-38-33. Failure to complete return or supply information.

If the tax commissioner is of the opinion that any person has failed to include in a return as filed, or to provide during the course of an audit, either intentionally or through error or for any other reason, information necessary to properly determine North Dakota taxable income, the tax commissioner may require from that person an amended return or any supplementary information as is necessary to properly and accurately determine a person's North Dakota taxable income, in the form as the tax commissioner shall prescribe. If the person fails or refuses to file the amended return or to furnish the supplementary information requested, the tax commissioner may, after thirty days' notice, determine the North Dakota taxable income of the person from the best information available and assess any tax due, including interest and penalty. If the tax commissioner finds that the taxpayer's failure to provide an amended return or supplementary information was unreasonable and willful, the assessment of tax is final as to the tax commissioner. A North Dakota district court may reverse the tax commissioner's assessment only if it finds that the taxpayer's failure was not willful or that the tax commissioner's request was unreasonable.

57-38-34. Time and place of filing returns - Interest on tax when time for filing is extended.

1. Returns must be in such form as the tax commissioner from time to time may prescribe and may include the requirement that a copy of the taxpayer's federal income tax return or a portion thereof or information reflected thereon be attached to, furnished with, or included in the taxpayer's state income tax return. The taxpayer's state income tax return must contain a method for the taxpayer to identify the school district in which the taxpayer resides and must be filed with the tax commissioner's office in Bismarck, North Dakota. The tax commissioner shall prepare blank forms for use in making returns and shall cause them to be distributed throughout this state, but failure to receive or secure a form does not relieve a taxpayer from making a return.
2. Returns made on the basis of the calendar year must be filed on or before the fifteenth day of April following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. A return filed for a period of less than one year must be filed on or before April fifteenth, or on or before the date prescribed by the United States internal revenue service, whichever is later.
3. Returns for cooperatives, domestic international sales corporations, and foreign sales corporations, however, made on the basis of the calendar year must be filed on or before the fifteenth day of September following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the ninth month following the close of the fiscal year.
4. Returns for exempt organizations required to report unrelated business taxable income under subsection 2 of section 57-38-09 made on the basis of the calendar year must be filed on or before the fifteenth day of May following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the fifth month following the close of the fiscal year.
5. A taxpayer actively serving in the armed forces or merchant marine, outside the boundaries of the United States, may defer the filing of an income tax return and the payment of the income tax until such time as the federal income tax return is required to be filed at which time the state income tax return, with payment of tax, will also be due. No interest or penalty accrues to the date of such filing.
6. The tax commissioner may grant a reasonable extension of time for filing a return when, in the judgment of the tax commissioner, good cause exists.

7. For a person that was subject to the tax under chapter 57-35.3 for the calendar year ending December 31, 2012, payment of the tax under this chapter is due six months after the due date of the return as required under this section. The provisions of subdivision a of subsection 1 of section 57-38-45 do not apply to the tax due under this subsection. This subsection applies to the first tax year beginning after December 31, 2012.
8. A person that previously reported under chapter 57-35.3 on a calendar year basis and files its federal income tax return on a fiscal year basis must file a short period return for the period beginning January 1, 2013, and ending on the last day of the tax year in calendar year 2013.

57-38-34.1. Optional card income tax return.

Repealed by S.L. 2001, ch. 526, § 3.

57-38-34.2. Filing of separate income tax returns by a husband and wife after joint income tax returns have been filed.

Repealed by S.L. 1989, ch. 710, § 4.

57-38-34.3. Optional contributions to nongame wildlife fund.

An individual taxpayer may designate on the tax return of that individual a contribution to the nongame wildlife fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the individual. On the individual state income tax return the tax commissioner shall notify the individual of this optional contribution. The amount of these optional contributions must be transferred by the tax commissioner to the state treasurer for deposit in the nongame wildlife fund for use as provided in section 20.1-02-16.2.

57-38-34.4. Requirement to report federal changes.

1. If a person's federal taxable income or federal income tax liability for any taxable year is changed or corrected by the United States internal revenue service, or other competent authority, the person shall report the changes or corrections within ninety days after the date of the final determination of them by filing an amended state income tax return or other information as required by the tax commissioner.
2. Notwithstanding the provisions of subsection 1, if a person files an amended federal income tax return for any taxable year, the person shall file an amended state income tax return and a copy of the amended federal income tax return within ninety days after the amended federal income tax return is filed.

57-38-34.5. Optional contributions to centennial tree program trust fund.

Expired under S.L. 1991, ch. 573, § 2.

57-38-34.6. Optional contributions to trees for North Dakota program trust fund.

An individual may designate on the tax return of that individual a contribution to the trees for North Dakota program trust fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the individual. The tax commissioner shall notify taxpayers of this optional contribution on the individual state income tax returns. The tax commissioner shall transfer the amount of optional contributions under this section to the state treasurer for deposit in the trees for North Dakota program trust fund for use as provided in chapter 4-21.2.

57-38-35. Payment of tax.

Every taxpayer shall compute the amount of tax due under the return and shall attach thereto a check, draft, or money order, payable to the state tax commissioner, Bismarck, North Dakota, for the amount of the tax computed.

57-38-35.1. Minimum refunds and collections - Application of refunds.

1. No refunds may be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars. Notwithstanding the provisions of section 57-38-55, the tax commissioner shall transfer any amount that is not refunded to a taxpayer under this subsection to the state treasurer for deposit in the organ transplant support fund.
2. No remittance of tax need be made nor any assessment or collection of tax should be made unless the amount is at least five dollars, including penalties and interest.
3. All refunds and credits for overpayment to any taxpayer, including excess income tax withheld or overpayment of estimated tax, may be applied to payment of taxpayer's unpaid tax, interest, or penalty or delayed until taxpayer's delinquent returns have been filed.

57-38-35.2. Interest payments.

1. Interest at the rate of one percent per month or fraction of a month must be allowed and paid upon overpayments of tax as follows:
   a. Interest on refunds arising from excess income tax withholding or overpayment of estimated tax accrues for payment forty-five days after the due date of the return or after the date the return was filed, whichever comes later.
   b. Interest on refunds arising from amended returns or claims made for credit or refund accrues for payment from the due date of the return to the date of payment of the refund excepting the month in which the return was required to be filed.
   c. Interest on refunds arising from net operating loss carrybacks, capital loss carrybacks, or tax credit carrybacks accrues for payment from the due date of the return for the year, determined without regard to extensions of the time for filing, giving rise to the loss carryback, to the date of payment of the refund, except that no interest accrues if the refund payment is made within forty-five days of the date the amended return or claim is filed to claim the refund attributable to the carryback.
2. No interest may be paid on refunds arising from amended returns or other claims filed for taxable years beginning before January 1, 1979.

57-38-36. When payment of tax may be made in quarterly installments.

Repealed by S.L. 1983, ch. 637, § 1.

57-38-37. Receipt.

The tax commissioner, as soon as possible after the receipt of the return and remittance, if paid by cash or currency, shall issue a receipt to the taxpayer for the amount of the taxpayer's remittance. Such receipt is not a receipt in full for the amount of the tax due, but only for the remittance made by the taxpayer.

57-38-38. Tax commissioner to audit returns and assess tax.

1. Except as otherwise provided in this section, the tax commissioner shall proceed to audit the returns of taxpayers and, not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later, assess the tax and, if any additional tax is found due, shall notify the taxpayer in detail as to the reason for the increase.
2. For taxable years beginning before January 1, 1991, as to any corporation or other person whose principal place for managing or directing a business is outside North Dakota, the tax commissioner has six years after the due date of the return or six years after the return was filed, whichever period expires later, to audit the return of the corporation or other person and assess any additional tax found due. Effective for the taxable years beginning after December 31, 1990, and before January 1, 1993, the tax commissioner has five years to audit the return of the corporation or other person

and assess any additional tax found due. Effective for taxable years beginning after December 31, 1992, and before January 1, 1995, the time period for assessment under this subsection is four years. Effective for taxable years beginning after December 31, 1994, the time period for assessment under this subsection is three years.

3. If there is a change in taxable income or income tax liability by an amount which is in excess of twenty-five percent of the amount of taxable income or income tax liability stated in the return as filed, any additional tax determined to be due may be assessed at any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.
4. If a person has failed to file a return of income as required by this chapter, the tax may be assessed under section 57-38-33 or subsection 6 of section 57-38-45, or an action brought under section 57-38-47, at any time within ten years after the due date of the return.
5. If false or fraudulent information is given in the return, or if the failure to file a return is due to the fraudulent intent or the willful attempt of the taxpayer in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed at any time.
6. a. If a person files an amended state income tax return, or other information as required by the tax commissioner, pursuant to section 57-38-34.4, the tax commissioner has two years after the amended state income tax return, or other information as required by the tax commissioner, is filed to audit the state income tax return and assess any additional state income tax attributable to the changes or corrections made by the United States internal revenue service, or other competent authority, or that is attributable to the amended federal income tax return, even though other time periods prescribed in this section for the assessment of tax may have expired. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired as of the end of the two-year period prescribed in this subsection.
   b. For taxable years beginning before January 1, 1991, any person who consents to an extension of time for the assessment of taxes with the internal revenue service shall be presumed to have consented to a similar extension of time for the assessment or refund of state income tax with the state tax commissioner. Refunds under this subdivision are limited to tax years beginning after July 1, 1983.
   c. If a determination is made under subdivision a that additional tax is due and the tax commissioner has previously refunded income taxes related to the amended return or claim, subsection 2 of section 57-38-45 does not apply to the refunded amount.
7. If a person fails to file an amended state income tax return, or other information as required by the tax commissioner, under section 57-38-34.4, the tax commissioner may assess any additional tax found due which is attributable to the changes or corrections made by the United States internal revenue service, or other competent authority, or which is attributable to the amended federal income tax return, at any time, even though other time periods prescribed in this section may have expired.
8. If before the expiration of the time periods prescribed in subsections 1, 2, and 3 the tax commissioner and a person consent in writing to an extension of time for the assessment of the tax, an assessment of additional state income tax may be made at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. If a person refuses to consent to an extension of time or a renewal thereof, the tax commissioner may make an assessment based on the best information available. The period agreed upon in this subsection, including extensions, expires upon issuance of an assessment by the tax commissioner.

9. Except for an amended return required to be filed under section 57-38-34.4, if a person files an amended state income tax return within the time periods prescribed in subsections 1, 2, and 3 of this section or subsections 1 and 2 of section 57-38-40, the tax commissioner has two years after the amended state income tax return is filed to audit the state income tax return and assess any additional state income tax attributable to the changes or corrections on the amended return, even though other time periods prescribed in this section for the assessment of tax may have expired. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired at the end of the two-year period prescribed in this subsection.
10. For investments made under chapters 57-38.5 and 57-38.6 after December 31, 2002, the tax commissioner has four years after the due date of the return, or four years after the return was filed, whichever period expires later, to audit any seed capital investment tax credit or agricultural business investment tax credit claimed by a taxpayer and assess the tax if additional tax is found due. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax.
11. This section applies if additional tax would be due under the provisions of chapter 57-35.3 in effect for taxable years beginning before January 1, 2013.

57-38-39. Deficiency, protest, and appeal.

1. When tax is understated on a return because of a mathematical or clerical error, the tax commissioner shall notify the person of the nature of the error and the amount of additional tax due. This notice is not a notice of deficiency and the person has no right to protest.
2. If upon audit the tax commissioner finds additional tax due, the tax commissioner shall notify the person of the deficiency in the tax payment. Such notice of deficiency must be sent first-class mail and must assess the amount of additional tax due and set forth the reasons for the increase.
3. A person has thirty days, ninety days if the person is outside the United States, to file a written protest objecting to the tax commissioner's assessment of additional tax due. The protest must set forth the basis for the protest and any other information which may be required by the tax commissioner. If a person fails to file a written protest within the time provided, the amount of additional tax assessed in the notice of deficiency becomes finally and irrevocably fixed. If a person protests only a portion of the tax commissioner's finding, the portion which is not protested becomes finally and irrevocably fixed.
4. If a protest is filed, the tax commissioner shall reconsider the assessment of additional tax due. The reconsideration may include further examination by the tax commissioner or the tax commissioner's representative of a person's books, papers, records, or memoranda. The tax commissioner, upon request, may grant the person an informal conference.
5. Within a reasonable time after the protest, the tax commissioner shall mail to the taxpayer a notice of reconsideration and assessment which must respond to the person's protest and assess the amount of additional tax due. The amount set forth in that notice becomes finally and irrevocably fixed unless the person within thirty days commences formal administrative review as provided for in chapter 28-32 by the filing of a complaint.
6. Upon written request, the tax commissioner may grant an extension of time to file a protest as provided for in subsection 3 or an extension of time to commence formal review as provided in subsection 5.
7. In all cases in which the tax commissioner finds that a person has an obligation to file an income tax return in North Dakota and has failed to do so, the tax commissioner shall notify the person by first-class mail of the tax commissioner's finding and of the remedies provided for in sections 57-38-33, 57-38-45, and 57-38-47. The remedies provided for in the above-listed sections are mutually exclusive and if a person fails to

file an income tax return after being notified, the tax commissioner may elect a remedy under which to proceed. If the tax commissioner elects to take the action provided for in section 57-38-33 or subsection 6 of section 57-38-45, the amount so assessed is not reviewable.

57-38-40. Claim for credit or refund.

1. Except as otherwise provided in this section, a person may file a claim for credit or refund of an overpayment of any tax imposed by this chapter within three years after the due date of the return or within three years after the return was filed, whichever period expires last.
   a. As to any corporation or other person whose principal place for managing or directing a business is outside North Dakota, if the period for assessment remains open under subsection 2 of section 57-38-38, the period of time for filing of a claim for credit or refund will remain open for the same period prescribed in subsection 2 of section 57-38-38.
   b. An individual who filed a return of income as a resident of this state and is assessed tax by another state or territory of the United States or the District of Columbia on that income after the time for filing a claim has expired under this section is entitled to a credit or refund for the amount of tax paid to the other jurisdiction, not including penalty or interest, as provided under subsection 1 or 4 of section 57-38-30.3, notwithstanding the time limitations of this section. The claim for the credit or refund under this subdivision must be submitted to the commissioner within one year from the date the taxes were paid to the other jurisdiction. The taxpayer must submit sufficient proof to show entitlement to a credit or refund under this subdivision.
2. If there is a change in taxable income or income tax liability by an amount which is in excess of twenty-five percent of the amount of taxable income or income tax liability stated in the return as filed, a person may file a claim for credit or refund of any tax imposed by this chapter within six years after the due date of the return or within six years after the return was filed, whichever period expires last. The provisions of this subsection do not create or increase any net operating loss otherwise recognized under this chapter for purposes of carryover to any subsequent taxable period or carryback to any prior taxable period.
3. A corporation may file a claim for credit or refund of an overpayment of tax resulting from the carryback of a net operating loss under subsection 3 of section 57-38-01.3, or resulting from a federal capital loss carryback, within three years after the prescribed due date for filing the return, including extensions, for the tax year in which the loss was incurred. The provisions of this subsection applicable to net operating losses are ineffective for loss years beginning after December 31, 2002.
4. A person other than a corporation may file a claim for credit or refund of an overpayment of tax resulting from the carryback of a net operating loss within three years after the prescribed due date for filing the return, including extensions, for the tax year in which the loss was incurred. The provisions of this subsection are effective for loss years beginning after December 31, 1986.
5. Notwithstanding any other provision in this section, if any taxpayer, with or without intent to evade any tax imposed by this chapter, fails to file a state income tax return within three years after the due date of the return prescribed in this chapter, no credit or refund of overwithheld income tax or overpaid estimated income tax may be made.
6. If any person consents to an extension of time for the assessment of state income tax, under subsection 8 of section 57-38-38, the period of time for filing a claim for credit or refund will be similarly extended. Provided, however, if an assessment is issued, the taxpayer has sixty days from the assessment to file a claim for refund. If a claim for refund is filed in any year extended by an agreement under subsection 8 of section 57-38-38, the tax commissioner may assess additional tax for any year extended by the same agreement which has otherwise expired. The additional assessment is limited to issues raised in the claim for refund.

7. a. If a person required to file an amended state income tax return, or other information as required by the tax commissioner, under section 57-38-34.4, does so within the ninety-day period prescribed therein, an overpayment of state income tax attributable to the changes or corrections made by the United States internal revenue service, or other competent authority, must be credited or refunded to the person by the tax commissioner, even though other time periods prescribed in this section may have expired; provided the person submits a notice or other pertinent documentation as proof of the final determination of the changes or corrections by the United States internal revenue service, or other competent authority.
   b. If a person required to file an amended state income tax return, or other information as required by the tax commissioner, under section 57-38-34.4, does not do so within the ninety-day period prescribed therein, an overpayment of state income tax attributable to the changes or corrections made by the United States internal revenue service, or other competent authority, must be credited or refunded to the person by the tax commissioner if the person files the amended state income tax return, or other information as required by the tax commissioner, within two years after the final determination of the changes or corrections made by the United States internal revenue service, or other competent authority, even though other time periods prescribed in this section may have expired. This provision does not limit or restrict any other time period prescribed in this section that has not expired as of the end of the two-year period prescribed in this subsection. Any interest otherwise allowed by section 57-38-35.2 does not accrue after the ninety-day period prescribed in section 57-38-34.4, if this subdivision applies.
   c. This subsection applies to any taxable year of an individual, estate, or trust for which changes or corrections have been made by the United States internal revenue service or other competent authority.
8. a. If a return is filed by an individual or an individual and spouse and, after the death of the individual, a refund claim is filed or becomes payable, the tax commissioner shall approve the refund for payment to the legal representative of the decedent upon application and presentation of certified copies of letters testamentary or letters of administration establishing the fiduciary relationship of the legal representative.
   b. If the legal representative of the taxpayer has not made application for the refund of the deceased taxpayer within one year from the date of the taxpayer's death, the tax commissioner may approve the refund to any person within the classifications set out herein and with the following priority: surviving spouse, children, grandchildren, parents, grandparents, and other relatives, upon proper application establishing the relationship of the claimant. Should an application be received from more than one individual in any of the classifications set out herein, the tax commissioner shall honor the earliest postmarked application which is properly filed pursuant to rules adopted by the tax commissioner.
   c. When the tax commissioner acting in good faith has approved a refund payment pursuant to the provisions of this subsection, the tax commissioner shall not be held responsible to any person or legal representative of the decedent who may have qualified to make a proper application but has failed to do so within one year from the date of death of the deceased taxpayer.
9. Every claim for credit or refund shall be made by filing with the tax commissioner an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
10. If the tax commissioner disallows a claim for credit or refund, in part or in full, the tax commissioner shall notify the taxpayer accordingly. The decision of the tax commissioner denying a claim for credit or refund is final and irrevocable thirty days

after the date the notice is mailed to the taxpayer unless, within this thirty-day period, the taxpayer has filed a protest with the tax commissioner.

11. The protest shall set forth the grounds on which the protest is based, along with any other information as may be required by the tax commissioner. If the taxpayer has so requested, the tax commissioner may grant the taxpayer or the authorized representative of the taxpayer an informal conference.
12. The tax commissioner shall reconsider the denial of the claim for credit or refund after the filing of a protest. The reconsideration may include the further examination by the tax commissioner or the authorized representative of the tax commissioner of a taxpayer's books, papers, records, or memoranda, including corporate minutes and committee notes.
13. Within a reasonable period of time after protest, the tax commissioner shall notify the taxpayer of the tax commissioner's reconsideration of claim for credit or refund. If the decision of the tax commissioner is a denial, the decision is final and irrevocable unless the taxpayer within thirty days following the date of the tax commissioner's decision seeks formal administrative review of the tax commissioner's reconsideration of claim for credit or refund by filing a complaint and requesting an administrative hearing. The complaint must be personally served on the tax commissioner or sent by certified mail. The provisions of chapter 28-32 shall apply to and govern the administrative hearing procedure, including appeals from any decision rendered by the tax commissioner. Upon written request of a taxpayer, the tax commissioner may grant a reasonable extension of time for the filing of a complaint.
14. If the tax commissioner determines that an amount in excess of the correct amount of tax, interest, or penalty due from any person has been paid by or on behalf of that person because of income tax withheld or estimated tax paid, the tax commissioner may approve a refund of the excess amount which shall be paid to that person in the manner provided for payment of other claims against the state, except that it shall not be necessary to first file a claim for refund if the amount to be refunded was paid with respect to a return or report filed by that person with the tax commissioner in the form prescribed therefor.
15. If the tax commissioner determines there has been an overpayment of tax, any overpaid penalty and interest on that tax must be refunded or credited by the tax commissioner. If interest is paid under section 57-38-35.2, no interest will be paid under this subsection.
16. A person that would have been entitled to a credit or refund under chapter 57-35.3 for a taxable year beginning before January 1, 2013, may file a claim for refund or credit of an overpayment of tax.

57-38-40.1. Income tax refund reserve.

A reserve for income tax refunds is hereby created as a special fund in the state treasury. The state tax commissioner shall deposit in such fund such amounts from income tax collections as the commissioner deems necessary to pay refunds to which taxpayers may be entitled under the provisions of this chapter and appropriated pursuant to section 12 of article X of the Constitution of North Dakota.

57-38-41. Appeal.

Repealed by S.L. 1945, ch. 293, § 1.

57-38-42. Information at the source.

Information as to income must be furnished at the source in the manner following:

1. Except for employers subject to sections 57-38-59 through 57-38-61, every person, a resident of, or having ownership of property with a situs in, or carrying on a trade or business in, this state, including officers and employees of this state or of any political subdivision within this state, making payment of rents, compensation for personal or professional services performed in this state, or other fixed or determinable annual or

periodical gains, profits, and income during the calendar year to any taxpayer shall make a complete return thereof to the tax commissioner, in the form and manner prescribed by the tax commissioner. This subsection applies only if an information return for the same item is also required to be filed for federal income tax purposes. Except for those payments from which state income tax was withheld, interest, dividend, pension, and annuity payments are excluded from the reporting requirements of this subsection; provided, if any person has withheld state income tax from an interest, dividend, pension, or annuity payment, that person must be deemed to be an employer for purposes of sections 57-38-59 through 57-38-61 and shall comply with the requirements of those sections. For purposes of this subsection, the tax commissioner is authorized to prescribe rules to specifically exclude items that are otherwise required to be reported under this subsection from the reporting requirements of this subsection if, in the tax commissioner's judgment, the reporting of the items does not contribute to the effective administration of the state's income tax laws.

2. Every partnership carrying on a trade or business in this state shall make a return, stating specifically the items of its gross income and the deductions allowed by this chapter, and shall include in the return the name, address, social security number or federal identification number, whichever applies, and the amount of the distributive share of each partner.
3. All information returns required under subsection 1 must be made on the basis of a calendar year for payments made during the calendar year and must be filed with the tax commissioner on or before the due date for filing similar returns with the internal revenue service. All partnership returns required under subsection 2 must be made on or before the fifteenth day of the fourth month following the close of the fiscal year of the partnership required to make the return, or if the return is made on the basis of a calendar year, then the return must be made on or before the fifteenth day of April in the year following the calendar year for which such return is made.
4. Each information return required under subsection 1 must be deemed to be filed with the tax commissioner if the person required to make the return files with the tax commissioner a copy of the information return along with a copy of the transmittal form required to be filed with the internal revenue service. Each partnership return required under subsection 2 must be signed and must contain or be verified by a written declaration that it is made under the penalties of perjury.
5. Each information return required under subsection 1 must be deemed to be filed with the tax commissioner if the person required to make the return has filed an information report on magnetic tape with the United States internal revenue service. All such persons who have received permission from the United States internal revenue service to file on magnetic tape must notify the tax commissioner, by letter, within thirty days of obtaining such permission. This subsection is conditioned on the existence of an agreement between the state of North Dakota and the United States internal revenue service to participate in combined federal-state information reporting.
6. In case of failure to file an information at the source return as required by subsection 1 by the date prescribed in subsection 3, and after thirty days' notice to file is given by the tax commissioner, the tax commissioner may assess a penalty of ten dollars for each failure to file, not to exceed two thousand dollars. In case of failure to file a partnership return as required by subsection 2 on the date prescribed in subsection 3, and after thirty days' notice to file is given by the tax commissioner, the tax commissioner may assess a penalty of five hundred dollars for each failure to file.

57-38-43. Interest on delinquent tax.

Repealed by S.L. 1969, ch. 514, § 4.

57-38-44. Tax a personal debt.

Every tax imposed by this chapter, and all increases, interest, and penalties thereon, becomes, from the time it is due and payable, a personal debt from the person or corporation liable to pay the same to this state.

57-38-45. Interest and penalties.

1. In addition to other increases to tax and penalty prescribed in this chapter, a taxpayer is subject to interest as follows:
   a. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest on the tax at the rate of twelve percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.
   b. If any amount of tax imposed by this chapter, including tax withheld by an employer, is not paid on or before the due date or extended due date for the payment, there must be added to the tax interest at the rate of one percent per month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid excepting the month in which the return was required to be filed or the tax became due.
   c. If upon audit an additional tax is found to be due, there must be added to the additional tax due interest at the rate of one percent of the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
   d. If the mathematical verification of a taxpayer's return results in additional tax due, there must be added to the additional tax interest at the rate of one percent of the additional tax due for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
   e. If a deficiency is determined for a tax period for which there was an overpayment that was applied to the following tax period's estimated tax under subsection 6 of section 57-38-62, interest accrues with respect to the amount of the deficiency that is equal to or less than the amount of the overpayment applied from the estimated tax payment date to which the overpayment was applied.
   f. If a deficiency is determined for a tax period for which there was an overpayment of estimated tax that was refunded, interest accrues, with respect to the amount of the deficiency which is equal to or less than the amount of the overpayment of estimated tax refunded, from the date of payment of the refund.
2. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to penalties as follows:
   a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to pay the amount shown as tax due on any return, including tax withheld by an employer, filed on or before the due date or extended due date prescribed therefor, there shall be added to the tax a penalty of five percent thereof, or five dollars, whichever is greater.
   b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to file a return, including the employer's withheld tax return, on or before the due date or extended due date prescribed therefor, there shall be added a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent in the aggregate.
   c. If upon audit of a taxpayer's return, including tax withheld by an employer, an additional tax is found to be due, there shall be added to the tax the penalty as prescribed in subdivision a or b.

d. If the mathematical verification of a taxpayer's return, including tax withheld by an employer, results in additional tax due, there shall be added to the tax the penalty as prescribed in subdivision a or b.
e. The provisions of subdivision a, b, c, or d do not apply to the extent it has been determined that the taxpayer has offsetting overpayments of income taxes which have not been refunded.

3. Any person including any officer or employee of any corporation or any member or employee of any partnership or any member, employee, governor, or manager of a limited liability company who, with intent to evade any requirement of this chapter, shall fail to pay any tax, or to make, sign, or verify any return, or to supply any information required by law, or under the provisions of this chapter, or who with like intent shall make, render, sign, or verify any false or fraudulent information, shall be subject to a penalty of not more than one thousand dollars to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction. Such person shall also be guilty of a class A misdemeanor.
4. In case any person or any corporation fails to pay any tax, addition to tax, interest, or penalty imposed by this chapter, the attorney general shall bring action for the recovery of the amount of the tax, addition to tax, interest, or penalty which may be due, in the name of the state, in any court of competent jurisdiction.
5. The tax commissioner may for good cause shown waive all or any part of any civil penalty or interest that attached pursuant to the provisions of this chapter.
6. If any taxpayer who has failed to file a return and has been notified by the tax commissioner of the delinquency, refuses or neglects within thirty days after such notice to file a proper return, the tax commissioner shall determine the income of such taxpayer according to the best information available, and shall assess the tax at not more than double the amount so determined. The appropriate interest and penalty prescribed in subsections 1 and 2 shall also be added.
7. If any corporation fails to file an income tax return as required by section 57-38-32 on the date prescribed in section 57-38-34, and after thirty days' notice to file is given by the tax commissioner, the tax commissioner may assess a penalty of up to five hundred dollars for each failure to file.

57-38-46. Certificate of tax commissioner prima facie evidence.

The certificate of the tax commissioner to the effect that a tax has not been paid, or that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this chapter, is prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

57-38-47. Mandamus to compel filing return.

If any taxpayer fails to file a return within sixty days after the time prescribed in this chapter and refuses to file such return within thirty days after having been notified by the tax commissioner to do so, any judge of the district court, upon petition of the tax commissioner, shall issue a writ of mandamus requiring such person to file a return. The order or notice upon the petition shall be returnable not more than ten days after the filing of the petition. The petition must be heard and determined on the return day, or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case consistent with the rights of the parties. The judgment must include costs in favor of the prevailing party. All writs and process may be issued from the clerk's office in any county and, except as aforesaid, must be returnable as the court shall order.

57-38-48. Lien of tax.

Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, is a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to said taxpayer. Such lien

attaches at the time the tax becomes due and payable and continues until the liability for such amount is satisfied.

57-38-49. (Effective through July 31, 2015, or see note) Preservation of lien.

Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state a notice of the lien provided for in section 57-38-48, takes free of, or has priority over, the lien. The commissioner shall index in the central indexing system the following data:

1. The name of the taxpayer.
2. The name "State of North Dakota" as claimant.
3. The date and time the notice of lien was indexed.
4. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed. The commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state.

(Effective after July 31, 2015, or see note) Preservation of lien. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state a notice of the lien provided for in section 57-38-48, takes free of, or has priority over, the lien. The commissioner shall index in the central indexing system the following data:

1. The name of the taxpayer.
2. The name "State of North Dakota" as claimant.
3. The date and time the notice of lien was indexed.
4. The amount of the lien.
5. The internal revenue service taxpayer identification number or social security number of the taxpayer.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed. The commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state.

57-38-50. Satisfaction of lien.

Upon payment of the tax, together with any accrued penalties and interest, as to which the commissioner has filed a notice of lien, the commissioner shall index a satisfaction of the lien in the central indexing system without fees or costs.

57-38-51. Enforcement of lien.

The attorney general, upon the request of the tax commissioner, shall bring suit without bond, to enforce payment of any taxes and penalties, and to foreclose any lien provided for in this chapter, and, in such action, the attorney general shall have the assistance of the state's attorney of the county in which the action is brought. The foregoing remedy of the state is cumulative and no action taken by the tax commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy provided by law for the enforcement or collection of an income tax or penalty or interest.

57-38-52. Field auditors.

Repealed by S.L. 1983, ch. 630, § 2.

57-38-53. Oath and acknowledgment.

The tax commissioner, and such other officers as the tax commissioner may designate, has the power to administer an oath to any person, or to take the acknowledgment of any person, in respect to any return or report required by this chapter, or by the rules and regulations of the tax commissioner.

57-38-54. Publication of statistics.

The tax commissioner shall prepare and publish biennially statistics reasonably available with respect to the operation of this chapter, including amounts collected, classification of taxpayers, and such other facts as are deemed pertinent and valuable. The commissioner shall publish the tax rate imposed under section 57-38-30.3 as a percentage of adjusted federal tax liability and as the corresponding range of marginal tax rates as if the tax were imposed on taxable income.

57-38-55. Disposition of revenues.

As soon as practicable, after receipt thereof, the tax commissioner shall turn over to the state treasurer all income taxes collected by the tax commissioner. The state treasurer shall issue a receipt for such collections, which must be made a permanent record in the office of the tax commissioner. Such moneys must be deposited by the state treasurer to the credit of the general fund for the purpose of defraying the general expenses of the state government.

57-38-56. Powers of tax commissioner.

The tax commissioner is charged with the administration of this chapter and shall enforce the assessment, levy, and collection of taxes imposed under this chapter. The tax commissioner has power to examine, or cause to be examined by any agent or representative designated by the tax commissioner for that purpose, any books, papers, records, or memoranda bearing upon the matters required to be included in any return or report under this chapter, and may require the attendance of the taxpayer or of any other person having knowledge in the premises, and may take testimony and require proof material for the tax commissioner's information. The tax commissioner may prescribe all rules, not inconsistent with the provisions of this chapter, necessary and advisable for its detailed and efficient administration, and may enter into reciprocal agreements with the authorized tax officials of other states to assist in the enforcement of this chapter and to avoid injustice to taxpayers from double taxation.

57-38-57. Secrecy as to returns - Penalty.

The secrecy of returns must be guarded except as follows:

1. a. Except as is otherwise specifically provided by law, the tax commissioner, the tax commissioner's deputies, agents, clerks, and other officers and employees, may not divulge nor make known, in any manner, whether or not any report or return required under this chapter has been filed, the amount of income, or any particulars set forth or disclosed in any report or return required under this chapter, including the copy or any portion thereof or information reflected in the taxpayer's federal income tax return that the tax commissioner may require to be attached to, furnished with, or included in the taxpayer's state income tax return. This provision may not be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this chapter. This section does not prohibit disclosure of the fact that a report or return required under this chapter has not been filed if the disclosure is made to further a tax investigation being conducted by the tax commissioner. Reports and returns must be preserved for three years and thereafter until the tax commissioner orders them to be destroyed.

b. A court of competent jurisdiction may issue an order or subpoena directing the tax commissioner to disclose state tax return information to a local, state, or federal law enforcement official conducting a criminal investigation if the court determines that the facts submitted by the applicant satisfy the following:
   (1) There is probable cause to believe that a specific criminal act has been committed and that the return or return information constitutes evidence of a criminal offense or may be relevant to a matter relating to the commission of the criminal offense;
   (2) The return or return information is sought exclusively for use in a criminal investigation or proceeding concerning such act; and
   (3) The information sought to be disclosed cannot reasonably be obtained under the circumstances, from another source.

c. Before obtaining an order under this subsection, a law enforcement official may request information from the tax commissioner as to whether a taxpayer, which is the subject of a criminal investigation for which a return or return information is or may be relevant to the commission of a criminal offense, has complied with the requirements of this chapter. For purposes of this request, the tax commissioner is limited to stating that the taxpayer has or has not complied with these requirements.

d. Except as required during court proceedings, tax return information disclosed to law enforcement under this section remains confidential during an active criminal investigation, after the investigation, after prosecution concludes, or until the time period for appeals has expired, whichever is later.

2. Repealed by S.L. 1975, ch. 106, § 673.

3. The tax commissioner, however, may permit the commissioner of internal revenue of the United States or the proper officer of any state or of the District of Columbia or of any territory of the United States, imposing an income tax similar to that imposed by this chapter, or the authorized representative of any such officer or the authorized agent of the multistate tax commission, to inspect the income tax returns of any taxpayer, or may furnish to such officer or the officer's authorized representative an abstract or copy of the return of income of any taxpayer, or supply the officer or representative with information concerning any item contained in any return, or disclosed by the report of any investigation of the income, or return of income, of any taxpayer, but such permission may be granted, or such information furnished, to such officers or representatives only if the statutes of the United States or of such other state or of the District of Columbia or of a territory of the United States, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter; provided, that any information furnished or made available by the tax commissioner to any other person pursuant to this subsection may be used by such person only for tax administration purposes; and provided, further, that similar information furnished or made available to the tax commissioner by a representative or officer of the United States or of any other state or of the District of Columbia or a territory of the United States may be used by the tax commissioner only for tax administration purposes.

4. The tax commissioner is hereby authorized to furnish to workforce safety and insurance, to job service North Dakota, or to the secretary of state, upon their request a list or lists of employers showing only the names, addresses, and the tax department file identification numbers of such employers; provided, that any such list may be used only for the purpose of administering the duties of the requesting governmental unit.

5. Notwithstanding any other provision of law relating to confidentiality of information contained on returns, the tax commissioner may use information for income and withholding tax compliance purposes contained on any federal form W-2 or federal form 1099 filed under subsection 3 or 4 of section 57-38-60, a fiduciary return filed under section 57-38-07, a return filed by a subchapter S corporation under section 57-38-32, or an information at the source return filed under section 57-38-42.

6. Upon request, the tax commissioner may furnish to the unclaimed property division of the board of university and school lands, a taxpayer's name, address, and federal identification number for identifying the taxpayer as the owner of an unclaimed voucher authorized by the tax commissioner or to locate the apparent owner of unclaimed property as provided under chapter 47-30.1.
7. The tax commissioner, upon written request from the director of the North Dakota lottery, may provide a written statement to the director, employees, or agents of the North Dakota lottery, in which the tax commissioner is limited to stating that the lottery retailer applicant has complied or not complied with the requirements of this chapter. The information obtained under this subsection is confidential and may be used for the sole purpose of determining whether the applicant meets the requirements of subsections 3, 4, and 5 of section 53-12.1-07.
8. The tax commissioner, upon written request from the secretary of commerce of the United States, may furnish officers and employees of the bureau of census an individual taxpayer's identification number and county of residence as reported on the individual's return. However, any information obtained may be used only for the purpose of establishing migration methodologies in estimating the annual shifts in the state's population. A person who receives return information under this subsection may not disclose the return information to any person other than the taxpayer to whom it relates except in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.
9. The tax commissioner may disclose a taxpayer's name, address, and identification number to the Bank of North Dakota for the sole purpose of administering the tax deduction for contributions to the North Dakota higher education savings plan.
10. The tax commissioner may disclose confidential tax information to the insurance commissioner to be used for the sole purpose of suspending, revoking, placing on probation, refusing to continue or refusing to issue an insurance producer license, assessing a civil penalty, or investigating fraudulent insurance acts under the insurance laws of this state. The tax information may be disclosed only upon written request that provides the taxpayer's name, federal identification number, and address. The insurance commissioner may make a written request only if the insurance commissioner has started an investigation of an applicant or licensee on grounds other than failure to comply with chapter 57-38 or has started an investigation of a suspected or actual fraudulent insurance act. Upon receipt of the request, the tax commissioner may disclose whether the taxpayer has complied with the requirements of this chapter. If the taxpayer has not complied with these requirements, the tax commissioner may provide the tax type, the tax period for which a return has not been filed, and if the taxpayer has failed to pay any tax, the amount of tax, penalty, and interest owed. The information obtained under this subsection is confidential and may be used only for the purposes identified in this subsection. For the purposes of this subsection, a taxpayer is deemed in compliance with this chapter if the taxpayer has entered an agreement with the tax commissioner to cure the taxpayer's noncompliance and the taxpayer is current with those obligations under the agreement.

57-38-58. Definitions.

Repealed by S.L. 1987, ch. 695, § 8.

57-38-59. Withholding from wages of employees - Penalty.

1. Except as provided in section 57-38-59.3, every employer making payment of wages to employees shall deduct and withhold from their wages such percentage or percentages, as determined by the tax commissioner, multiplied times the total amount required to be deducted by an employer from wages of an employee under the provisions of the Internal Revenue Code of 1986, as amended, as will approximate the income taxes due the state. The amount of tax withheld must be computed without

regard to any other amount required to be withheld, but the tax withheld must as closely as possible pay any tax liability imposed by this chapter.

2. In the event that the tax deducted and withheld under subsection 1 should prove to be disproportionate to the tax liability, the tax commissioner may adjust the percentage that, when withheld, will, as closely as may be possible, pay the income tax liability imposed by this chapter.
3. The tax commissioner may, in lieu of the requirement above for deducting and withholding tax based upon a percentage of federal income tax withheld, adopt by rule tax tables that, when the tax provided for in the tables is withheld, will, as closely as possible, pay the income tax liability imposed by this chapter. When adopted by the tax commissioner, said tables must be followed by every employer required to deduct and withhold any tax imposed by this chapter.

57-38-59.1. Reciprocal arrangement with other states for withholding income taxes.

The tax commissioner may enter into an agreement with the tax commissioner or other taxing officials of another state for the interpretation and administration of the acts of their several states providing for the collection of income tax at source on wages for the purpose of promoting fair and equitable administration of such acts and to eliminate duplicate withholding. The tax commissioner may furnish information on a reciprocal basis to the taxing officials of another state in order to implement the purposes set forth above.

57-38-59.2. Withholding of lottery winnings.

The North Dakota lottery shall deduct and withhold at the highest marginal rate provided in section 57-38-30.3 of the total proceeds of state lottery winnings as North Dakota withholding tax if the winnings are subject to withholding. For purposes of this section, "winnings subject to withholding" means the proceeds in excess of five thousand dollars won from a lottery game operated pursuant to chapter 53-12. Every person who receives a payment from the winnings that are subject to withholding shall furnish the lottery director with a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the recipient. The North Dakota lottery shall file returns as provided in section 57-38-60 and is liable for the payment of the tax required to be withheld but is not liable to any person for the amount of the payment.

57-38-59.3. Nonresident mobile workforce - Computation of taxable income - Exclusion - Exception for employer withholding - Returns required.

1. a. Compensation subject to withholding under section 57-38-59, without regard to subsection 3, that is received by a nonresident for employment duties performed in this state, shall be excluded from state source income if:
   (1) The nonresident has no other income from sources in this state for the tax year in which the compensation was received;
   (2) The nonresident is present in this state to perform employment duties for not more than twenty days during the tax year in which the compensation is received. Presence in this state by the nonresident for any part of a day constitutes presence for that day unless the presence is purely for purposes of transit through the state; and
   (3) The nonresident's state of residence provides a substantially similar exclusion or does not impose an individual income tax or the nonresident's income is exempt from taxation by this state under the United States Constitution or federal statute.

   b. This subsection does not apply to compensation received in this state by:
   (1) A professional athlete or member of a professional athletic team;
   (2) A professional entertainer performing services in the professional performing arts;
   (3) A person of prominence performing services for compensation on a per event basis;

(4) A person performing construction services to improve real property;
(5) A key employee under section 416(i) of the Internal Revenue Code, as amended [26 U.S.C. 416(i)], for the year immediately preceding the current tax year. A determination under this paragraph must be made without regard to ownership or the existence of a benefit plan; or
(6) An employee of a noncorporate employer, who would be a key employee without regard to ownership or the existence of a benefit plan, for the year immediately preceding the current tax year under section 416(i) of the Internal Revenue Code [26 U.S.C. 416(i)], if the term "employee" were substituted for the term "officer" in section 416(i)(1)(A)(i) of the Internal Revenue Code and if such person is one of the noncorporate employer's fifty highest paid employees without regard to whether such person is an officer.

c. This subsection shall not prevent the operation, renewal, or initiation of any agreement with another state authorized under section 57-38-59.1.

d. This subsection creates an exclusion from nonresident compensation under certain de minimus circumstances and has no application to this state's jurisdiction to impose this or any other tax on any taxpayer.

2. a. A nonresident whose only state source income is compensation excluded under subsection 1 does not have an income tax liability and is not required to file a return as prescribed in section 57-38-31, except nothing in this subsection prohibits the tax commissioner from exercising the commissioner's discretion to require the filing of an informational return by a nonresident employee described in subdivision a of subsection 1.

b. This subsection is applicable to the determination of an individual income taxpayer's filing requirement and has no application to the imposition of, or this state's jurisdiction to impose, this or any other tax on any taxpayer.

3. a. No amount is required to be deducted or retained from compensation paid to a nonresident for employment duties performed in this state if the compensation is excluded from state source income under subsection 1, without regard to paragraph 1 of subdivision a of subsection 1. The number of days a nonresident employee is present in this state for purposes of paragraph 2 of subdivision a of subsection 1 must include all days the nonresident employee is present and performing employment duties on behalf of the employer and any other related person.

(1) For purposes of this subsection, "related person" means a person that, with respect to the employer during all or any portion of the taxable year, is:
(a) A related entity;
(b) A component member as defined in section 1563(b) of the Internal Revenue Code [26 U.S.C. 1563(b)];
(c) A person to or from whom there is attribution to stock ownership as provided in section 1563(e) of the Internal Revenue Code; or
(d) A person that, notwithstanding its form of organization, bears the same relationship to the employer as a person described in subparagraphs a through c.

(2) For purposes of this subsection, "related entity" means:
(a) A stockholder who is an individual, or a member of the stockholder's family as provided in section 318 of the Internal Revenue Code [26 U.S.C. 318] if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the employer's outstanding stock;
(b) A stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own, directly, indirectly, beneficially, or constructively, in

the aggregate, at least fifty percent of the value of the employer's outstanding stock; or

(c) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the federal Internal Revenue Code if the employer owns, directly, indirectly, beneficially, or constructively, at least fifty percent of the value of the corporation's outstanding stock. The attribution rules of the federal Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

b. An employer that erroneously applies the income tax withholding exception solely as a result of miscalculating the number of days a nonresident employee is present in this state to perform employment duties shall not be subject to the penalty imposed in section 57-38-45 if:

(1) The employer relied on the employer's regularly maintained time and attendance system that:

(a) Requires the employee to contemporaneously record the employee's daily work location each day the employee is present in a state other than the employee's state of residence; and

(b) Is used by the employer to allocate the employee's wages between all taxing jurisdictions in which the employee performs duties;

(2) The employer relied on the employee's travel records that the employer requires the employee to regularly maintain and contemporaneously record the employee's travel and daily work location; or

(3) The employer does not require the records described in paragraph 1 or 2, and relied on travel expense reimbursement records that the employer requires the employee to submit on a regular and contemporaneous basis.

c. This subsection establishes an exception to income tax withholding and deduction requirements and does not apply to the imposition of, or the state's jurisdiction to impose this, or any other tax on the employer.

57-38-59.4. (Effective for taxable years beginning after December 31, 2013) Withholding requirement for oil and gas royalty payments to nonresidents.

1. For purposes of this section:
   a. "Publicly traded partnership" means a publicly traded partnership as defined in section 7704 of the Internal Revenue Code [26 U.S.C. 7704] which is not treated as a corporation.
   b. "Remitter" means any person who distributes royalty payments to royalty owners.
   c. "Royalty owner" means a person or entity entitled to receive periodic royalty payments for a nonworking interest in the production of oil or gas.
2. Except as provided in subsection 3, each remitter shall deduct and withhold from the net amount of the royalty payment made to each nonresident individual or business entity that does not have its commercial domicile in this state at the highest marginal rate provided in sections 57-38-30 and 57-38-30.3. Sections 57-38-59 and 57-38-60 apply to the filing of the returns and payment of the tax under this subsection.
3. This section does not apply to royalty payments made to a royalty owner if the royalty owner is:
   a. The United States or an agency of the federal government, this state or a political subdivision of this state, or another state or a political subdivision of another state;
   b. A federally recognized Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered under the Indian Mineral Leasing Act of 1938 [25 U.S.C. 396a through 396g];
   c. The United States as trustee for individual Indians;
   d. A publicly traded partnership;

e. An organization that is exempt from the tax under this chapter; or
f. The same person or entity as the remitter.

4. a. This section does not apply to a remitter that produced less than three hundred fifty thousand barrels of oil or less than five hundred million cubic feet of gas in the preceding calendar year as certified to the tax commissioner in the manner and on forms prescribed by the tax commissioner.
   b. Each remitter that is exempt from withholding under this subsection shall make an annual return to report royalty payments that exceed the dollar amounts in subsection 6 and must be reported in the same manner as provided in section 57-38-60.
5. a. Each year, a publicly traded partnership that is exempt from withholding under subsection 3 shall transmit to the tax commissioner, in an electronic format approved by the tax commissioner, each partner's United States department of the treasury schedule K-1, form 1065, or form 1065-B, as applicable, filed electronically for the year with the United States internal revenue service.
   b. A royalty owner that is a publicly traded partnership, or an organization exempt from taxation under section 57-38-09, shall report to the remitter and tax commissioner under oath, on a form prescribed by the tax commissioner, all information necessary to establish that the remitter is not required under subsection 2 to withhold royalty payments made to the partnership or organization.
6. If the royalty payment made to a royalty owner under this section is less than six hundred dollars for the current withholding period, or is less than one thousand dollars if the payment is annualized, the tax commissioner may grant a remitter's request to forego withholding the tax from the royalty payment made to that royalty owner for the current withholding period or, if applicable, the royalty payments for the annual period.

57-38-60. Employer's returns and remittances.

1. Every employer shall, on or before the last day of April, July, October, and January, pay over to the tax commissioner the amount required to be deducted and withheld from wages paid to all employees during the preceding calendar quarter under section 57-38-59. If the amount required to be deducted and withheld from wages paid to all of an employer's employees during the previous calendar year was less than five hundred dollars, the employer may file an annual return. The tax commissioner may alter the time or period for making reports and payment when in the tax commissioner's opinion, the tax is in jeopardy, or may prescribe the use of any other time or period as will facilitate the collection and payment of the tax by the employer.
2. Every employer shall file a return on forms prescribed by the tax commissioner with each payment made to the tax commissioner under this section which shows the amount of tax imposed under this chapter which was deducted and withheld during the period covered by the return, and such other information as the tax commissioner may require.
3. Every employer required to withhold state income tax shall make an annual return to the tax commissioner on forms provided and approved by the tax commissioner, summarizing the total compensation paid, the federal income tax deducted and withheld, and the state income tax deducted and withheld during the calendar year. The annual return must be accompanied by a statement of the compensation paid, the federal income tax deducted and withheld, and the state income tax deducted and withheld for each employee. The annual return and accompanying statements must be filed with the tax commissioner on or before the due date for filing similar returns with the internal revenue service.
4. Every employer not required to withhold state income tax shall provide to the tax commissioner a statement of the compensation paid and the federal income tax deducted and withheld for each employee. The statement must be filed on or before the due date for filing similar returns with the internal revenue service.

5. In case of failure to timely file an information statement as required by subsections 3 and 4, and after thirty days' notice to file is given by the tax commissioner, the tax commissioner may assess a penalty of ten dollars for each failure to file, not to exceed two thousand dollars.
6. Every employer shall also, in accordance with rules adopted by the tax commissioner, provide each employee from whom state income tax has been withheld, with a statement of the amounts of total compensation paid and the amounts deducted and withheld for the employee during the preceding calendar year in accordance with section 57-38-59. The statement must be made available to the employee on or before January thirty-first of the year following that for which the report is made.
7. The employer shall be liable to the tax commissioner for the payment of the tax required to be deducted and withheld under section 57-38-59, and the employee shall not thereafter be liable for the amount of any such payment, nor shall the employer be liable to any person or to any employee for the amount of any such payment. For the purpose of making penalty provisions of this chapter applicable, any amount deducted or required to be deducted and remitted to the tax commissioner under this section shall be considered to be the tax of the employer and with respect to such amounts the employer is considered the taxpayer.
8. Every employer who deducts and withholds any amounts under section 57-38-59 shall hold the same in trust for the state of North Dakota for payment thereof to the tax commissioner in the manner and at the time provided for in this section, and the state of North Dakota shall have a lien on the property of the employer to secure the payment of any amounts withheld and not remitted as provided herein, which lien shall attach at the time prescribed and to the property described in section 57-38-48 and shall be subject to the provisions of sections 57-38-49, 57-38-50, and 57-38-51.
9. An employer, at the discretion of the tax commissioner, may be required to either make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state in an amount reasonably calculated to ensure the payment to the state of taxes deducted and withheld from wages.
10. An employer is not subject to this section or section 57-38-59 for wages paid to any employee solely for agricultural labor, as defined in section 3121(g) of the Internal Revenue Code [26 U.S.C. 3121(g)].
11. A payroll service provider authorized under the provisions of this chapter to file and remit withholding taxes on behalf of an employer shall file the returns required by subsections 2, 3, and 4, and pay any tax due, by electronic data interchange or other electronic media as determined by the commissioner. As used in this subsection, a "payroll service provider" means a person that, for federal tax purposes, electronically processes and transmits an employer's withholding returns and taxes, including wage information returns. The commissioner may waive, upon a showing of good cause, the requirement to file a return or pay the tax electronically.

57-38-60.1. Corporate officer liability.

1. If a corporation is an employer and fails for any reason to file the required returns or to pay the tax due, the president, vice president, secretary, or treasurer, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments is personally liable for such failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation 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 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 be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual income tax withholding liability of the corporation.

57-38-60.2. Governor and manager liability.

1. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the tax due, the governors, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of the preparation of the returns and payments are personally liable for such 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 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 be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual income tax withholding liability of the limited liability company.

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.

57-38-61. Provisions of chapter applicable.

The provisions of sections 57-38-33, 57-38-34, 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-53, 57-38-54, 57-38-55, 57-38-56, and 57-38-57 shall, insofar as consistent therewith, govern the administration of sections 57-38-59, 57-38-60, and 57-38-60.1. The term "employer" as used in sections 57-38-59, 57-38-60, and 57-38-60.1 also means "taxpayer" as used in this chapter. In addition, the authority of the tax commissioner to adopt rules includes the authority to make such agreements with the United States government or any of its agencies as are necessary to provide for the deducting and withholding of tax from the wages of federal employees in this state.

57-38-62. Payment of estimated income tax.

1. An individual, estate, or trust that is subject to section 6654 of the Internal Revenue Code relating to a failure to pay federal estimated income tax shall, at the time prescribed in this chapter, pay estimated tax for the current taxable year. Notwithstanding any other provision of this section, an individual, estate, or trust whose net tax liability for the preceding taxable year was less than one thousand dollars is not required to pay estimated tax for the current taxable year. Married individuals who file a joint federal income tax return and are subject to section 6654 of the Internal Revenue Code must each be deemed to be subject to the federal provision. If payment of estimated tax is required, the individual, estate, or trust shall, at the time prescribed in this chapter, pay the lesser of the following:
   a. An amount which, when added to the taxpayer's withholding, equals ninety percent of the taxpayer's current taxable year's net tax liability.

b. An amount which, when added to the taxpayer's withholding, equals one hundred percent of the taxpayer's net tax liability for the immediately preceding taxable year.
   (1) This subdivision does not apply to any taxpayer who was not required by this chapter to file a return for the immediately preceding taxable year, to an individual who moved into this state during the immediately preceding taxable year, or to an estate or trust that was not in existence for the entire immediately preceding taxable year. The amount under this subdivision must be deemed to be equal to the amount in subdivision a if this part applies.
   (2) In order to satisfy the requirements of this subdivision, married individuals who are required to file separate state returns for the current taxable year but who were required to file a joint state return for the immediately preceding taxable year must each be required to pay estimated tax in an amount which, when added to the individual's withholding, equals the net tax liability which would have been computed for the immediately preceding taxable year if separate state returns had been required to be filed.
   (3) In order to satisfy the requirements of this subdivision, married individuals who are required to file a joint state return for the current taxable year but were required to file separate state returns for the immediately preceding taxable year must be required to pay estimated tax in an amount which, when added to their withholding, equals the sum of their separate net tax liabilities for the immediately preceding taxable year.

2. A corporation shall, at the time prescribed in this chapter, pay estimated tax for the current taxable year if the corporation's estimated tax can reasonably be expected to exceed five thousand dollars and if the corporation's net tax liability for the immediately preceding taxable year exceeded five thousand dollars. If payment of estimated tax is required, the corporation shall, at the time prescribed in this chapter, pay the lesser of the following:
   a. Ninety percent of the corporation's current taxable year's net tax liability.
   b. One hundred percent of the corporation's net tax liability for the immediately preceding taxable year.
3. The provisions of section 57-38-45, except those provisions relating to the imposition of a penalty, apply in case of nonpayment, late payment, or underpayment of estimated tax. For purposes of applying the interest provisions of section 57-38-45, interest accrues on a per annum basis from the due date of an installment to the fifteenth day of the fourth month following the end of the current taxable year or, with respect to any portion of the estimated tax required to be paid, the date on which the portion thereof is paid, whichever date is earlier. Notwithstanding the other provisions of this section, no interest is due if the estimated tax paid on or before each due date under section 57-38-63 by a corporation is based on the annualized or adjusted seasonal method under section 6655 of the Internal Revenue Code. Notwithstanding the other provisions of this section, no interest is due if the estimated tax of an individual, estate, or trust is less than one thousand dollars per income tax return filed.
4. For purposes of this section, "estimated tax" means the amount that a taxpayer estimates to be income tax under this chapter for the current taxable year less the amount of any credits allowable, including tax withheld.
5. For purposes of this section, "net tax liability" means the amount of income tax computed for the taxable year as shown on the return less the amount of any credits allowable except tax withheld and estimated tax paid.
6. An individual or corporation may apply a tax overpayment from a preceding taxable year as an estimated tax payment on the individual's or corporation's behalf for the taxable year succeeding the overpayment. The individual or corporation may elect to apply the overpayment to specific estimated tax installments. If the individual or corporation does not specify the installment period toward which the overpayment is to be applied, the individual or corporation must be considered to have elected to apply

the overpayment toward the first required estimated tax installment for the succeeding taxable year.

57-38-63. Due date for payment of estimated income tax.

A taxpayer shall pay no less than one-quarter of the estimated tax to the tax commissioner on April fifteenth, June fifteenth, and September fifteenth of the taxable year, and January fifteenth of the following taxable year; provided, that a taxpayer having a taxable year other than a calendar year shall pay the estimated tax on the fifteenth day of the fourth, sixth, and ninth months of the taxable year, and the fifteenth day of the first month of the following taxable year. In the case of a tax year that is for a period of less than one year, and the short tax year ends prior to any remaining due dates under this section, the final estimated tax payment is due on the fifteenth day of the last month of the short tax year. In the case of a tax year that is for a period of less than one hundred twenty days, no estimated tax payment is due.

57-38-64. Application for quick refund of overpaid estimated tax by a corporation.

A corporation may, after the close of the taxable year and before the fifteenth day of the fourth month thereafter, file an application for an adjustment of an overpayment by it of estimated tax for the taxable year. A claim for credit or refund must be verified and paid as are other claims against the state. No application under this section may be allowed unless the amount of the adjustment exceeds five hundred dollars. No interest may accrue or be paid on any credit or refund allowed under this section as otherwise provided for under section 57-38-35.2.

57-38-65. Exemption.

No transportation company is required to deduct and withhold with respect to wages paid to nonresident employees for work performed within North Dakota but whose total work during any one payroll period is performed within more than one state; provided, however, that any such employee furnish a certificate to the state tax commissioner that the employee will be taxable with respect to all such wages earned in North Dakota pursuant to this chapter.

57-38-66. Business and corporation privilege tax.

Repealed by S.L. 1979, ch. 612, § 3.

57-38-67. Definitions applicable to sections 57-38-67 through 57-38-70.

Repealed by S.L. 2009, ch. 545, § 32.

57-38-68. Income tax deduction for land sale to beginning farmers.

Repealed by S.L. 2009, ch. 545, § 32.

57-38-69. Rent from beginning farmers exempt from income tax.

Repealed by S.L. 2009, ch. 545, § 32.

57-38-70. Claim for income tax deduction for land sale or rental to a beginning farmer.

Repealed by S.L. 2009, ch. 545, § 32.

57-38-71. Definitions applicable to sections 57-38-71 through 57-38-74.

Repealed by S.L. 2007, ch. 18, § 51.

57-38-72. Income tax deduction for revenue-producing enterprise sale to beginning entrepreneur.

Repealed by S.L. 2007, ch. 18, § 51.

57-38-73. Rent from beginning entrepreneur exempt from income tax.

Repealed by S.L. 2007, ch. 18, § 51.

57-38-74. Claim for income tax deduction for revenue-producing enterprise sale or rental to a beginning entrepreneur.

Repealed by S.L. 2007, ch. 18, § 51.

57-38-75. Rounding.

With respect to any amount required to be shown on any return, form, statement, or other document required to be filed with the tax commissioner and for purposes of amounts in tax tables prescribed under subsection 12 of section 57-38-30.3 and subsection 3 of section 57-38-59, the amount may be rounded to the nearest dollar. The cents must be disregarded if the cents amount to less than one-half dollar. If the cents amount to one-half dollar or more, the amount must be increased to the next whole dollar.