North Dakota Office of State Tax Commissioner

2011 Corporate Income Tax Credits

Cory Fong, Tax Commissioner

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Dear Taxpayer,

Thank you for your interest in North Dakota's Corporate Income Tax Credits. I know you will find this is a great state in which to do business. In addition to a tax climate that encourages growth and opportunity, supported by an array of tax incentives, it is a well known fact that North Dakota offers one of the nation's best educated and most reliable workforces.

Throughout this booklet you will find a description of various tax credits, as well as the eligibility criteria, timelines, and references to specific North Dakota Century Code for the credits.

In addition, we have included instructions, by line number, for calculating the credits to be reported on Schedule TC or the Schedule CR Part III of the Form 40, Corporation Income Tax Return. And, in many instances we have highlighted certain instructions in order to help when you claim that particular credit.

I encourage you to visit our web site at www.nd.gov/tax to learn more about North Dakota's taxes. You will also find other publications, forms, and electronic filing information for a number of our tax types.

If you have questions about North Dakota's taxes and the tax credits, please feel free to call us. We would appreciate the opportunity to help you in any way we can. Our phone, address, and e-mail information is found on the back of this booklet.

I also welcome your feedback. Please feel free to let us know what you think we are doing well and what we can do to improve our service to you.

Thank you,

Cory Fong,
Tax Commissioner

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New For 2011

- Housing Incentive Fund Tax Credit (page 10)
  A new credit is available for contributing to a new housing incentive fund administered by the North Dakota Housing Finance Agency. This credit is equal to 100% of the amount contributed to the fund. There is a statewide cap of $15 million in total credits for the 2011 and 2012 tax years. (These provisions reflect the changes made in the special legislative session in November 2011.)

- Angel Fund Credit (pages 8 and 9)
  The existing corporate tax credit has been revised to allow pass through entities to pass the credit to owners based on their respective ownership interests in the entity. The limit on this credit is now $150,000 per taxpayer. Also, for 2011 and 2012 tax years only, the taxpayer may elect to sell, assign, or transfer tax credits to another taxpayer.

- Biodiesel and Green Diesel Fuel Credits (pages 4 and 5)
  The existing biodiesel tax credits have been expanded to also apply to "green diesel."

- Future Years - Automation Equipment Purchase Credit
  A new credit was created for purchasing new or used machinery and equipment for the purpose of automating a manufacturing process. The credit will be equal to 20% of the cost of the machinery and equipment approved by the Commerce Department. The credit must be claimed in the tax year in which the purchase occurs, and the excess, if any, may be carried over and used on subsequent years' returns for up to five tax years. Note: This credit does not take effect until the 2013 tax year, and then only applies to the 2013, 2014, and 2015 tax years.

For details on these and other corporate income tax credits, see the instructions in this booklet.

Special Reminders

The instructions in this booklet are in effect for periods beginning after December 31, 2010 unless otherwise noted. For other periods, see the instructions for the appropriate year in the corporate income section of our web site under 'Forms'.

Property tax credit

2008 was the final year in the two-year program for a corporation to take a credit on its North Dakota corporate income tax return for taxes paid on property classified as commercial property located in North Dakota. If a corporation failed to claim a property tax credit available to it on the 2007 and 2008 tax returns, an amended return must be filed within the statute of limitations, which is normally three years.

Unused credits previously claimed for 2007 and 2008 may be carried forward for 5 taxable years following the tax year and are reported on line 24 of Schedule TC or the Schedule CR part III.

Lines 1 and 2

Contributions to nonprofit private colleges and high schools

North Dakota Century Code (N.D.C.C.) § 57-38-01.7

Tax credits are available for making contributions to qualifying nonprofit private institutions of secondary and higher education located in North Dakota *(including the North Dakota Independent College Fund)*. Contributions do not qualify unless they are made directly to, or are specifically designated for the exclusive use of, a qualifying institution. **A contribution to an account, fund or entity benefiting both qualifying and nonqualifying institutions does not qualify for the credit.** The credits are available if the contribution(s) is made by the due date of the return, including extensions. Following are the qualifying schools in each category of institutions:

High schools

St. Mary's Central High School (Bismarck)

Dakota Memorial High School (Minot)

Dickinson Trinity High School (Dickinson)

Shiloh Christian School (Bismarck)

Shanley High School (Fargo)

Dakota Adventist Academy (Bismarck)

Oak Grove Lutheran High School (Fargo)

Johnson Corners Christian Academy (Watford City)

Our Redeemer's Christian School (Minot)

Anne Carlsen School (Jamestown)

Bishop Ryan High School (Minot)

Trinity Christian School (Williston)

Prairie Learning Education Center (Raleigh)

New Testament Baptist Christian School (Larimore)

Colleges

University of Mary (Bismarck)

Trinity Bible College (Ellendale)

Jamestown College (Jamestown)

North Dakota Independent College Fund

United Tribes Technical College (Bismarck)

College of Nursing Medcenter One Health Systems (Bismarck)

The tax credit for contributions made to all eligible schools in ***each*** category of institution is equal to the lesser of:

- 50% of the contributions but not to exceed 20% of the total North Dakota income tax due for each corporation;
- $2,500.

Enter on line 1 the tax credit computed for contributions to nonprofit private institutions of higher education *(and the North Dakota Independent College Fund)* and enter on line 2 the tax credit computed for contributions to nonprofit private institutions of secondary education.

For each contribution, attach a copy of a receipt from the nonprofit private institution or a copy of a cancelled check *(front and back)*.

Line 3

Geothermal, solar, wind or biomass energy device credits

N.D.C.C. § 57-38-01.8

A corporation may claim a tax credit for the cost of acquisition and installation of a geothermal, solar, wind, or biomass energy device installed before January 1, 2015. The credit is equal to 3% of the installation cost, each year for five years. The device must be installed in North Dakota on property owned or leased by the taxpayer.

- "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.
- "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.
- "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.

If a geothermal, solar, wind or biomass energy device is 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.

For such devices installed after December 31, 2006, if ownership of the device is transferred when installation is complete and the device is fully operational, a purchaser of the device is eligible to claim the credit, rather than the installer of the device. Subsequent purchasers of the device are not eligible for the tax credit.

A corporation that holds an interest in a passthrough entity (partnership, subchapter S Corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends.

Corporate taxpayers in a consolidated combined return may apply the credit against the aggregate tax liability on their North Dakota income tax return.

The credit may not exceed the corporation's income tax liability. Any excess tax credits earmed for wind energy devices installed after September 30, 2008, and before January 1, 2012, may be carried foward to each of the twenty succeeding taxable years. Any excess tax credits for geothermal, solar, or biomass energy devices installed after September 30, 2008, and wind energy devices installed after December 31, 2011 may be carried forward to each of the ten succeeding taxable years.

Attach a worksheet substantiating date of purchase, actual cost of acquisition and installation, and computation of the tax credit. If the tax credit is from a partnership or other passthrough entity, attach a statement showing the passthrough entity's name and Federal Employer Identification Number, and a copy of the statement received from the passthrough entity.

Line 4

Employment of the developmentally disabled or chronically mentally ill credit

N.D.C.C. § 57-38-01.16

A corporation may claim a tax credit for a portion of North Dakota wages paid to a developmentally disabled or chronically mentally ill employee. The tax credit is 5% of up to $6,000 in wages paid to each such employee during the first twelve months of employment. The credit may not exceed 50% of the total tax liability. Only North Dakota wages actually paid during the taxable year may be considered for the tax credit. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

Attach an affidavit listing the amount of wages paid, the name, and the social security number of each employee.

Line 5

Research and experimental expenditure credits generated by the taxpayer

N.D.C.C. § 57-38-30.5

A corporation claiming a federal credit and incurring research and experimental expenditures within North Dakota is entitled to a tax credit.

A worksheet must be attached showing computation of the credit.

1. The amount of the credit for taxpayers that earned or claimed a credit 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 25% of the first $100,000 of the qualified research expenses for the taxable year in excess of the base amount plus 7½% of all qualified research expenses more than $100,000 in excess of the base amount.
   b. For the second taxable year beginning after December 31, 2006, the credit is equal to 25% of the first $100,000 of the qualified research expenses for the taxable year in excess of the base amount plus 11% of all qualified research expenses for the taxable year more than $100,000 in excess of the base amount.
   c. For the third taxable year beginning after December 31, 2006, the credit is equal to 25% of the first $100,000 of the qualified research expenses for the taxable year in excess of the base amount plus 14 ½% of all qualified research expenses for the taxable year more than $100,000 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 25% of the first $100,000 of the qualified research expenses for the taxable year in excess of the base amount plus 18% of all qualified research expenses for the taxable year more than $100,000 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 25% of the first $100,000 of the qualified research expenses for the taxable year in excess of the base amount plus 8% of all qualified research expenses for the taxable year more than $100,000 in excess of the base amount.
   f. The maximum annual credit a taxpayer may obtain is $2 million dollars. Any credit amount earned in the taxable year in excess of $2 million dollars may not be carried back or forward.
2. For taxpayers that have not earned or claimed a credit in taxable years beginning before January 1, 2007, and who 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:
   a. 25% of the first $100,000 of the qualified research expenses for the taxable year in excess of the base amount plus 20% of all qualified research expenses more than $100,000 in excess of the base amount. 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 25% of the first $100,000 of the qualified research expenses for the taxable year in excess of the base amount plus 8% of all qualified research expenses for the taxable year more than $100,000 in excess of the base amount.
3. For taxpayers that have not earned or claimed a credit in taxable years beginning before January 1, 2007, and who 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:

   25% of the first $100,000 of the qualified research expenses for the taxable year in excess of the base amount plus 8% of all qualified research expenses for the taxable year more than $100,000 in excess of the base amount.

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

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

Tax credits that exceed the current income tax liability, except as limited in 1(f), may be carried back for three years and then carried forward for up to fifteen years. A claim to carry back credits earned after December 31, 2008 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.

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 qualfied research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the I.R.C.

Corporate taxpayers in a consolidated combined return may apply the credit against the aggregate tax liability on their North Dakota income tax return. NOTE: This provision does not apply to tax credits received or purchased from other taxpayers (see "Line 6" below).

A corporation that holds an interest in a passthrough entity (partnership, subchapter S Corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends.

Line 6

Research and experimental expenditures credit purchased by the taxpayer

N.D.C.C. § 57-38-30.5

A taxpayer that is certified as a qualified research and development company may elect to sell, transfer or assign the unused research and experimental expenditure tax credits earned. A qualified research and development company is defined as a company that:

- is a primary sector business,
- has less than $750,000 in annual gross revenues, and
- has not previously conducted research and development in North Dakota.

For more information on the certification process or to apply for certification, contact the Director of the North Dakota Department of Commerce Division of Economic Development and Finance at 701.328.5300 or access their web site at http://www.business.nd.gov. Certification applications may be accessed on the Commerce Department's web site.

The sale, transfer or assignment of the credits is subject to the following:

- the tax credit transferor and the tax credit purchaser jointly shall submit the following information to the Tax Commissioner within 30 days after the purchase agreement is fully executed:
  - a copy of the purchase agreement,
  - 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,
  - the taxable year or years for which the credit may be claimed,
  - a confidentiality waiver allowing the Tax Commissioner to disclose information to either the tax credit transferor or the tax credit purchaser for the purpose of verifying the correct amount of the credit transferred.
- A taxpayer's total credit assignment may not exceed $100,000 over any combination of taxable years.
- 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.
- The original purchaser of the tax credit may not sell, assign, or transfer the credit purchased. The purchaser is not allowed to carry back any unused credits.
- If the amount of the credit available is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the IRS 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 IRS or the Tax Commissioner. The tax credit purchaser is required to file amended returns reporting the additional tax due or to claim a refund. The Tax Commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed may have expired for the purchaser.
- Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- Net proceeds received by the tax credit transferror should be excluded from North Dakota taxable income on line 11 of the Form 40 Schedule SA.
- 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.

A corporation that holds an interest in a passthrough entity (partnership, subchapter S Corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends.

Line 7

Wage and salary credits for new industry

N.D.C.C. § 57-38-30.1

A corporation which has been incorporated in North Dakota for the first time after January 1, 1969 and which is not the result of a business reorganization or acquisition, or any out-of-state corporation that has received a certificate of authority to transact business in North Dakota for the first time after January 1, 1969 may be entitled to a tax credit. This tax credit is available only for new enterprises engaged in assembling, fabricating, manufacturing, mixing, or processing any agricultural, mineral, or manufactured products or any combination thereof. However, a corporation which is receiving any property tax or income tax exemption allowed by N.D.C.C. ch. 40-57.1 shall not be allowed this credit.

The tax credit is computed as a percentage of the annual gross amount expended by the corporation for salaries and wages within North Dakota. The following percentages apply:

- 1% for each of the first three taxable years a corporation qualifies for the tax credit;
- ½ % for each of the fourth and fifth taxable years a corporation qualifies for the credit.

Attach a worksheet substantiating the date of incorporation or initial authority to transact business in this state, annual gross amount of salaries and wages within this state, and type of business activity.

Line 8

Payment to a certified nonprofit development corporation credit

N.D.C.C. § 57-38-01.17

A tax credit is available to a corporation for buying membership in, paying dues to, or contributing to a certified nonprofit development corporation as provided in N.D.C.C. § 10-33-124.

- "Certified nonprofit development corporation" means a corporation which meets the following requirements:
  - Is certified by the secretary of state;
  - Invests a majority of its funds in primary sector businesses; and
  - No part of the income is distributable to its members, directors, or officers.
- "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that, through a process employing knowledge and labor, adds value to a product produced for resale.

The maximum tax credit allowed is 25% of the total investment, not to exceed $2,000. Any unused credit may be carried forward for up to seven tax years.

Attach a completed copy of the certified nonprofit development corporation investment reporting form (see: http://www.nd.gov/tax/genforms/certified-nonprofit-dev-corp-invest-report-form).

Line 9

Renaissance zone credits

N.D.C.C. ch. 40-63

A corporation may qualify for a credit for purchasing, leasing, or making improvements to real property located in a North Dakota renaissance zone. A renaissance zone is a designated area within a city that is approved by the North Dakota Department of Commerce Division of Community Services. For more information, contact the local zone authority, the Department of Commerce Division of Community Services, or the Office of State Tax Commissioner.

If a corporation is claiming a tax credit as a result of the Renaissance Zone Act, enter the total amount of credits from the summary part of Schedule RZ and attach the Schedule RZ to the Form 40 when filed. Contact the Office of State Tax Commissioner for Schedule RZ or access the schedule on our web site at http://www.nd.gov/tax/genforms/.

A corporation that holds an interest in a passthrough entity (partnership, subchapter S Corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends. A copy of the statement received from the passthrough entity must be attached to the Form 40 along with the Schedule RZ.

A corporation may also be eligible to claim exempt income as a result of the Renaissance Zone Act. See Schedule RZ for more information on this exemption.

Line 10

Biodiesel or green diesel production credit

N.D.C.C. § 57-38-30.6

A corporation is allowed an income tax credit equal to 10% per year for five years of the direct costs incurred to adapt or add equipment to retrofit an existing facility or to construct a new facility in North Dakota to produce or blend diesel fuel containing at least 2% biodiesel or green diesel volume. "Biodiesel" means fuel meeting the specifications adopted by the American Society for Testing and Materials. "Green diesel" means a fuel produced from nonfossil renewable resources, including agricultural or silvicultural plants, animal fats, residue, and waste generated from the production, processing, and marketing of agricultural products, silvicultural products, and other renewable resources, which meets applicable American society for testing and materials specifications.

The first taxable year in which the credit may be claimed is the taxable year in which the facility begins producing or blending biodiesel or green diesel fuel. Eligible costs incurred before the taxable year in which production or blending begins are taken into account in calculating the credit.

The credit may not exceed the corporation's tax liability in any year, but any unused portion of a taxable year's credit may be carried forward for up to five taxable years. The maximum cumulative credit allowed to a taxpayer for all taxable years is limited to $250,000.

Attach a worksheet showing the calculation of the credit

Line 11

Soybean and canola crushing equipment costs credit

N.D.C.C. § 57-38-30.6

Effective for tax years beginning after December 31, 2008, the biodiesel fuel production credit (Line 10) was amended to include direct costs incurred to adapt or add equipment to retrofit an existing facility or to construct a new facility for the purpose of producing crushed soybeans or canola. Refer to line 10 for further instructions on claiming this credit.

Line 12

Seed capital business investment tax credit

N.D.C.C. ch. 57-38.5

A tax credit is available to a corporation, a limited liability company treated like a corporation or an angel fund for its investment in a qualified business certified to participate in the seed capital investment program. The amount of the allowable credit is equal to 45% of the amount invested by the taxpayer in qualified businesses during

the taxable year. The maximum annual credit a taxpayer may claim is $112,500. The maximum cumulative amount a qualified business may claim for all tax years is limited to $500,000.

For an investment to qualify it must be made on or after the date the business was certified for the program and must be claimed first in the taxable year in which the investment is received by the qualified business. The investment must be at risk and must remain in the business for at least three years. Investment monies placed in escrow are not at risk until paid out of escrow to the qualified business for its use.

A corporation that holds an interest in a passthrough entity (partnership, subchapter S Corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends.

An angel fund which is subject to North Dakota income tax is not eligible itself for the seed capital investment tax credit. Rather, the tax credit calculated on an angel fund's investment must be passed through to the fund's investors, based on their respective interests in the fund.

The amount of the allowable credit not used in the taxable year the investment was made may be carried over to the following four taxable years.

The amount of tax credits allowed for all investments made in all qualified businesses is limited to $3.5 million per calendar year.

A copy of the completed qualified seed capital business investment reporting form (see: http://www.nd.gov/tax/genforms/seed-capital-invest-report-form) must be attached to the Form 40 for each year the credit is claimed, or if the credit is from a passthrough entity, a copy of the statement received from the passthrough entity must be attached.

Line 13

Biodiesel or green diesel fuel blending credit

N.D.C.C. § 57-38-01.22

A fuel supplier (wholesaler) licensed under North Dakota law that blends biodiesel fuel is entitled to an income tax credit equal to five cents for each gallon blended during the taxable year. To qualify, the biodiesel or green diesel fuel must have at least a 5% blend ("B5"). "Biodiesel" means fuel meeting the specifications adopted by the American Society for Testing and Materials. "Green Diesel" means a fuel produced from nonfossil renewable resources, including agricultural or silvicultural plants, animal fats, residue, and waste generated from the production, processing, and marketing of agricultural products, silvicultural products, and other renewable resources, which meets applicable American society for testing and materials specifications.

If the credit exceeds the tax liability, the unused portion of the credit may be carried forward for five taxable years.

A corporation that holds an interest in a passthrough entity (partnership, subchapter S Corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends.

Attach a worksheet showing the calculation of the credit, or if the credit is from a partnership or other passthrough entity, attach a statement showing the passthrough entity's name and Federal Employer Identification Number and the corporation's share of the credit.

Line 14

Biodiesel or green diesel fuel sales equipment costs credit

N.D.C.C. § 57-38-01.23

A fuel seller (retailer) that incurs costs to adapt or add equipment to a facility licensed under North Dakota law to enable the facility to sell diesel fuel containing at least 2% biodiesel fuel by volume is entitled to an income tax credit. "Biodiesel" means fuel meeting the specifications adopted by the American Society for Testing and Materials. "Green Diesel" means a fuel produced from nonfossil renewable resources, including agricultural or silvicultural plants, animal fats, residue, and waste generated from the production, processing, and marketing of agricultural products, silvicultural products, and other renewable resources, which meets applicable American society for testing and materials specifications.

The credit is equal to 10% of the seller's direct costs incurred to adapt or add the equipment. The credit is allowed in each of five taxable years, beginning with the taxable year in which the seller begins selling the eligible biodiesel or green diesel fuel. The portion of the credit not used in each year may be carried forward for five taxable years. A seller may claim no more than $50,000 in credits for all taxable years. Eligible costs incurred before the taxable year in which sales begin may be included in the calculation of the credit.

A corporation that holds an interest in a passthrough entity (partnership, subchapter S Corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends.

Attach a worksheet showing the calculation of the credit, or if the credit is from a partnership or other passthrough entity, attach a statement showing the passthrough entity's name and Federal Employer Identification Number and the corporation's share of the credit.

Line 15

Agricultural commodity processing facility investment credit

N.D.C.C. ch. 57-38.6

A tax credit is available to a corporation or a limited liability company treated like a corporation for its investment in a qualified business certified or recertified to participate in the agricultural commodity processing facility investment tax credit program.

An agricultural commodity processing facility means "a facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state" and includes a livestock feeding, handling, milking, or holding operation that uses as part of its operation a by-product produced at a biofuels production facility. A biofuels production facility is a North Dakota business that produces diesel fuel containing at least 5% biodiesel or green diesel, produces corn-based or cellulose-based ethanol, or crushes soybeans or canola.

The allowable credit is equal to 30% of the total amount invested in all qualified agricultural commodity processing businesses during the taxable year. The maximum allowable credit that may be used in any taxable year is $50,000 and the investment must be made on or after the effective date in which the business became certified. The investment must be at risk and must remain in the business for at least three years. Investment monies placed in escrow are not at risk until paid out of escrow to the qualified business for its use.

A qualified investment may include a transfer of a fee simple interest in real property. In that case, the following conditions apply:

- Personal property that becomes a fixture to the real property after the transfer of the real property to the qualified business is not a qualified investment.
- The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser.
- The value of the contribution must be approved by the governing body of the qualified business, subject to the standards for valuing consideration for shares under North Dakota corporation law.
- The qualified business is required to provide to the Tax Commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the recorder.
- The tax credit is allowed in the tax year in which the instrument transferring title to the real property is recorded with the recorder.

The tax credit must be claimed first in the taxable year in which the investment is received by the qualified business. The credit can not exceed the taxpayer's tax liability and any tax credit not used in the taxable year the investment was made may be carried over to the following 10 taxable years. A taxpayer is allowed no more than $250,000 in credits for all tax years under this program.

A corporation that holds an interest in a passthrough entity (partnership, subchapter S Corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends.

A copy of the completed ag commodity processing facility investment reporting form (see http://www.nd.gov/tax/genforms/ag-commodity-reporting-form) must be attached to the Form 40 for each year the tax credit is claimed, or if the credit is from a passthrough entity, a copy of the statement received from the passthrough entity must be attached.

Line 16

Endowment fund contribution credit

N.D.C.C. § 57-38-01.21

A tax credit is available for a corporation that makes a charitable contribution to a qualified endowment fund.

A "qualified endowment" is defined as a permanent, irrevocable fund held by a North Dakota incorporated or established organization that is:

- A qualified nonprofit organization; or
- A bank or trust company holding the fund on behalf of a qualified nonprofit organization.

The credit is equal to 40% of the contribution and the maximum allowable credit for a tax year is $10,000.

North Dakota taxable income must be increased by the amount of the contribution upon which the credit is computed to the extent the contribution reduced federal taxable income. If claiming the credit, enter the amount of the contribution related to the credit claimed on line 5 of the Form 40 Schedule SA.

A corporation that holds an interest in a passthrough entity (partnership, subchapter S Corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends.

The credit may not exceed the taxpayer's income tax liability. Any unused credit may be carried forward for three taxable years.

If the contribution is recovered, the tax credit must be added to tax due in the year recovery occurs. Contact the tax department for instructions on how to report the recovery of the contribution.

Attach a copy of the front and back of the cancelled check, or a receipt from the qualified nonprofit organization acknowledging its I.R.C. § 501(c)(1) status and the date and amount of the eligible contribution. If the credit is received through a passthrough entity, attach a copy of the statement received from the passthrough entity.

Line 17

Microbusiness investment and employment credit

N.D.C.C. § 57-38-01.27

A corporation is entitled to a tax credit for new investment and new employment in a certified microbusiness in North Dakota.

A "microbusiness" means a business that employs no more than 5 employees in a community with a population of at least 100 but fewer than 2,000 people and has one or more of the following:

- An active community economic development organization;
- An ongoing relationship with a regional or urban economic development organization; or

- An existing city sales tax, all or part of the revenue from which is dedicated to economic development.

To be certified as a microbusiness, the taxpayer must:

- be actively engaged in the daily operation of the microbusiness;
- purchase eligible property or hire eligible employees, resulting in the creation of new income or jobs;
- not directly compete with any established business located within 15 miles of the taxpayer's business;
- be located at least 15 miles from a city with a population of 2,000 or more people; and
- not close or reduce its operations in one area of North Dakota and relocate substantially the same business operation to another area in North Dakota.

The credit is equal to 20% in new investment and new employment of the microbusiness during the tax year.

- "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.
- "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.

Enter on line 17a of the Form 40 Schedule TC, or Schedule CR Part III if filing a consolidated return, the total amount of the increase in qualified purchases or rents of eligible property located in North Dakota.

Enter on line 17b of the Form 40 Schedule TC, or Schedule CR Part III if filing a consolidated return, the total amount of the increase in qualified compensation paid to North Dakota resident employees.

Lines 17a and 17b are required to be reported in order to claim this credit.

No more than $10,000 of tax credits are allowed for all tax years. The credit may not exceed the taxpayer's liability and any unused credits may be carried forward for five taxable years.

A corporation that holds an interest in a passthrough entity (partnership, subchapter S Corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends.

A copy of the certification of the microbusiness issued by the North Dakota Department of Commerce must be submitted for each year the credit is claimed. If the credit is received through a passthrough entity, attach a copy of the statement received from the passthrough entity.

Attach a supporting schedule showing the calculation of the credit.

For more information on the certification process or to apply for certification, contact the Director of the North Dakota Department of Commerce Division of Economic Development and Finance at 701.328.5300 or access their web site at http://www.business.nd.gov. Certification applications may be accessed on the Commerce Department's web site.

Line 18

Internship employment credit

N.D.C.C. § 57-38-01.24

A corporation who is an employer in this state may take a tax credit for qualified compensation paid to an intern employed by the taxpayer in this state.

For the internship to qualify for the credit:

- The intern must be an enrolled student in an institution of higher education or vocational technical education program, seeking a degree or certification in a major field of study closely related to the internship work experience;
- The internship must be taken for academic credit or count toward the completion of the vocational technical education program;
- The intern must be supervised and evaluated by the taxpayer; and
- The internship must be located in North Dakota.

The credit is 10% of the stipend or salary paid to the intern employed by the taxpayer and the credit cannot be claimed for more than five interns employed at the same time. A taxpayer may not claim more than $3,000 in credits for all tax years combined.

A corporation that holds an interest in a passthrough entity (partnership, subchapter S Corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends.

Attach a schedule listing the names of the employees, their social security number and wages paid. If the credit is received through a passthrough entity, attach a copy of the statement received from the passthrough entity.

Line 19
Angel fund investment credit
N.D.C.C. § 57-38-01.26

A corporation is entitled to a tax credit for an investment made to a qualified angel fund which is incorporated in North Dakota.

The credit is equal to 45% of the investment and must be claimed in the year in which the investment was received by the angel fund. To be eligible for the credit, the investment must be at risk in the fund (not in escrow) for at least three years.

An angel fund must:

a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in North Dakota.
b. Be organized for the purpose of investing in a portfolio of at least three early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential.
   1) An "early-stage" entity is defined as having annual revenues up to $2 million, and a "mid-stage" entity is defined as having annual revenues from $2 million to $10 million.
   2) An early or mid-stage entity may not have more than 25 percent of its revenues from income-producing real estate.
c. Consist of at least six accredited investors as defined by Securities and Exchange Commission Regulation D, rule 501.
d. Not have more than 25% of its capitalized investment assets owned by an individual investor.
e. Have at least $500,000 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 and the investor members or a designated board on which enterprises are worthy of investments.
g. Be certified as an angel fund meeting these requirements by the North Dakota Department of Commerce.
h. Be in compliance with the securities laws of North Dakota.
i. File an investment reporting form with the Office of State Tax Commissioner within 30 days after an investment is made. A copy must also be provided to the investor. The form must include: (1) the investor's name, address, and social security number or federal employer identification number, (2) the investment amount, and (3) the investment date.
j. File a report with the Office of State Tax Commissioner within 30 days after the end of the calendar year showing the name and principal place of business in which the angel fund invested its funds.

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 more than 49% of the ownership interests in the enterprise. Investors in one angel fund may not receive more than $5 million dollars in aggregate credits during the life of the angel fund, but this does not limit additional investments in that angel fund.

The aggregate annual credit which a taxpayer may claim cannot exceed $45,000. Any unused credit may be carried forward to each of the seven succeeding taxable years. For investments made on or after January 1, 2011, there is a $150,000 lifetime credit per taxpayer for this credit.

A taxpayer claiming this credit may not claim any credit available to the taxpayer as a result of an investment made by an angel fund in a business qualifying for the seed capital investment credit or the agricultural commodity processing facility investment credit.

For each contribution, attach a copy of the certification notification issued by the North Dakota Department of Commerce. A receipt from the angel fund or a copy of the cancelled check *(front and back)* must also be submitted.

If a corporation is an owner of a pass-through entity and received a North Dakota K-1 showing its share of an angel fund investment credit from a partnership or other passthrough entity, also include on this line the total credit shown on the schedule.

Election to Sell, Assign, or Transfer Credit: For the 2011 and 2012 tax years only, a taxpayer may elect to sell, assign, or transfer the angel fund investment tax credit to another taxpayer, subject to the following conditions:

- The election is irrevocable.
- The credit is based on an investment made in an angel fund that is first certified by the North Dakota Commerce Department on or after August 1, 2011.
- The credit is based on an investment the taxpayer makes directly to the angel fund. Credits received by a taxpayer as an owner of a passthrough entity that invests in an angel fund are not eligible for transfer.
- If the taxpayer is a passthrough entity, the taxpayer must transfer the credit to only one other taxpayer.
- A taxpayer may not transfer more than $100,000 of credits over the taxpayer's lifetime.
- If the transfer consists of a sale of the credit, the transferor must assign the gross proceeds received to North Dakota on the transferor's North Dakota income tax return.
- The transferor and transferee must file a joint statement with the Office of State Tax Commissioner within thirty days after the transfer showing (1) their names, addresses, and federal employer identification numbers, (2) the amount of the transferred credit, and (3) the tax years in which the credit may be claimed. If the credit is sold, the joint statement also must show the gross proceeds from the sale of the credit, and a copy of the purchase agreement must be submitted with the joint statement. They also must give written authorization to the Office of State Tax Commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred credit.

- The transferee has only those rights to claim and use the credit that applied to the transferor.
- The transferee may not transfer the credit.
- The Office of State Tax Commissioner has four years after the date of the credit transfer to audit both parties' tax returns to verify the correctness of the credit. Any tax due resulting from a correction to the credit amount will be assessed to the transferee.
- If the amount of the credit calculated by the transferor is changed as a result of an amended return or an audit, the transferor must inform the transferee about the adjusted credit amount within 30 days of filing the amended return or final audit determination. Subject to the time periods prescribed by law, the transferee must file an amended return for each affected tax year to pay any additional tax due or to claim a refund resulting from the changed credit. The Office of State Tax Commissioner may audit the original and amended returns of the transferee at any time, even though other time periods for assessment or refund have expired.

Line 20

Angel fund investment credit purchased *(New for 2011)*

N.D.C.C. § 57-38-01.26

Enter on this line the amount of tax credits purchased from another taxpayer. Enter only the total that, when combined with other credits claimed, will not exceed the corporation's total tax liability. Any unused credits may be carried forward up to seven years, but only to the extent of the transferor's unused seven year carryover period. The joint statement previously filed with the Office of State Tax Commissioner is adequate support to claim the credit. See line 19 instructions above for more details.

Line 21

Workforce recruitment credit

N.D.C.C. § 57-38-01.25

A corporation that is an employer in North Dakota is entitled to a credit for costs incurred during the tax year to recruit and hire employees for hard-to-fill employment positions for which the annual salary for the position meets or exceeds the state average wage.

- "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.
- "State average wage" means 125% of the state average wage published annually by Job Service North Dakota and which is in effect at the time the employee is hired.
- "Extraordinary recruitment methods" means using all of the following:
  - A person with the exclusive business purpose of recruiting employees and for which a fee is charged by the recruiter.
  - 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.
  - A web site, the sole purpose of which is to recruit employees and for which a fee is charged by the web site.
  - Payment of a signing bonus, moving expenses, or nontypical fringe benefits.

A credit may be claimed for 5% of the salary paid to an employee in a qualified hard-to-fill position for the first 12 consecutive months of that employee's employment in that position. The credit may be claimed in the first tax year beginning after the employee filling the hard-to-fill position has completed their first 12 consecutive months of employment in the hard-to-fill position.

Enter on line 20a of the Form 40 Schedule TC, or Schedule CR III if filing a consolidated return, the number of qualified employees hired to claim the credit. Line 20a is required to be reported in order to claim this credit. Any unused credit may be carried forward for four succeeding taxable years.

A corporation that holds an interest in a passthrough entity (partnership, subchapter S Corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends.

Attach a schedule listing the names of the employees, their social security numbers, wages paid and employment start date.

Line 22

Wages paid to a mobilized military employee credit

N.D.C.C. § 57-38-01.31

A tax credit is available to an employer of an employee in the National Guard or a reserve component of the U.S. armed forces who is mobilized for federal active duty under Title 10 of the U.S. Code.

The credit is equal to 25% of the lesser of:

- the amount of compensation the employer continues to pay during the period of mobilization; or
- the reduction in compensation.

Reduction in compensation is defined as the excess of the amount of compensation the employer would have paid had there been no mobilization over the total military compensation paid because of the mobilization. In determining the amount of compensation the employer would have paid, the amount may include the employer's portion of any voluntary or matching contributions paid, or that would have been paid, into a defined contribution plan. In determining the reduction in compensation, the civilian and military compensation must be compared for the same time period. If the military compensation is equal to or more than the civilian compensation, the reduction in compensation is zero and no credit is allowed.

The maximum credit allowed per eligible employee is $1,000, and the credit may not exceed the taxpayer's income tax liability. Any unused credit may be carried foward for five taxable years.

A corporation that holds an interest in a passthrough entity (partnership, subchapter S corporation, or limited liability company) that qualifies for this credit may claim its share of the tax credit in proportion to its interest in the entity. The credit must be claimed in the same taxable year in which the taxable year of the passthrough entity ends.

To claim this credit, attach a copy of the completed Schedule ME, Credit for Wages Paid to Mobilized Employee (see http://www.nd.gov/tax/genforms/scheduleme) to the Form 40. If the credit is from a passthrough entity, a copy of the statement received from the passthrough entity must be attached.

Line 23

Housing incentives fund credit *(New for 2011)*

N.D.C.C. § 57-35.3-05

A tax credit is available for contributing to the housing incentive fund administered by the North Dakota Housing Finance Agency. The credit is equal to 100% of the amount contributed to the fund. Any unused portion of the credit may be carried forward for up to ten years.

If you made a qualifying contribution to the housing incentive fund administered by the North Dakota Housing Finance Agency, enter on this line the total credit shown on the credit certificate issued to you. If you received a North Dakota Schedule K-1 showing your share of a housing incentive fund credit from a partnership or other passthrough entity, include on this line the total credit shown on the schedule.

Attach a copy of the certification of the contribution to the fund issued by the North Dakota Housing Finance Agency for each year the credit is claimed. If the credit is received through a passthrough entity, attach a copy of the statement received from the passthrough entity.

Adjustment to taxable income - Your North Dakota taxable income must be increased by the amount of the contribution to the fund to the extent it reduced your federal taxable income. See the instructions to the 2011 Form 40, Schedule SA, line 6.

Line 24

Property tax credit carried forward from 2007 and 2008

Enter on this line the amount, if any, of unused property tax credits from Schedule Form 40-PT carried forward from taxable years 2007 and 2008. Enter only the total that, when combined with the other credits claimed, will not exceed the corporation's total tax liability.

Taxpayer Bill of Rights

You may obtain a copy of the North Dakota Taxpayer Bill of Rights by contacting the Office of State Tax Commissioner or visiting our web site at **www.nd.gov/tax**

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