



Income Tax Update

News and developments for tax practitioners

A publication of the Tax Administration Division

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Tax Commissioner

2015 legislative rundown

This newsletter provides a summary of the bills passed by the 2015 North Dakota Legislative Assembly that affects North Dakota’s income tax laws. If a bill contains changes affecting areas of the

law not related to income tax, this summary only covers the income tax portions of the bill. For the text of the bills and other legislative information, see [64th North Dakota Legislative Assembly](#).

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HB 1014 - Housing incentive fund tax credit

This is the budget bill for the North Dakota Industrial Commission. Section 20 of the bill amended the provisions governing the income tax credit for making a contribution to the North Dakota Housing Incentive Fund, which is administered by the North Dakota Housing Finance Agency. This bill extends the availability of the tax credit to the 2015 and 2016 tax years. The bill also sets a ceiling of \$30 million on the total credits allowed to all taxpayers under the program for the 2015 and 2016 tax years. The credit equals the amount contributed to the fund and is evidenced by a tax credit certificate issued to the taxpayer by the North Dakota

Housing Finance Agency. If the entire credit cannot be used in the year of the contribution, the unused credit may be carried over and used on subsequent tax years’ returns for up to 10 years. 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 the taxpayer’s federal taxable income. For more information about the program, see [Housing Incentive Fund Program](#).

Statutory change: Amended N.D.C.C. § 57-38-01.32.

Effective date: Applies to the first two taxable years beginning on or after January 1, 2015.

HB 1060 - Disclosure to Commerce Department

The income tax confidentiality law was revised to allow the Office of State Tax Commissioner to disclose to the North Dakota Commerce Department certain information obtained in the administration of the income tax laws. The Commerce Department must make a written request for the information, which is limited to information necessary to evaluate the degree of success and compliance with statutory or contractual performance standards established for employers who received North Dakota state economic development assistance. The Commerce Department may not publicly divulge the information it receives except in an aggregate form that does not identify any taxpayer and does not attribute the information to any taxpayer.

Statutory change: Amended N.D.C.C. § 57-38-57.

Effective date: August 1, 2015.



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HB 1133 - Tax Department technical bill

This bill makes a number of technical changes to the income, sales, and other tax laws. The following three changes affect the income tax law:

- The law governing the new or expanding business income tax exemption was revised to provide that to be eligible for the exemption a project operator must satisfy all state and local tax obligations, not just state and local tax liens.
- North Dakota's research income tax credit law is dependent on certain definitions contained in the federal research income tax credit law. This bill revised state law to reinstate and make permanent a provision that provides that, if the federal research credit law ever becomes ineffective, state law will use the definitions under federal tax law that applied to the most recent tax year the federal credit was in effect. *(This provision was originally added to the law in 2013 but expired on December 31, 2014.)*
- Prior to 2015, North Dakota income tax withholding was not accounted for in the corporation estimated income tax calculation. This bill revised the corporation estimated income tax law to provide that North Dakota income tax withheld from a corporation's income is to be taken into account in determining the amount of North Dakota estimated income tax that must be paid. 

Statutory change: Amended N.D.C.C. §§ 40-57.1-04.4, 57-38-30.5, and 57-38-62.

Effective date: The change to the new or expanding business income tax exemption provisions applies to applications filed after June 30, 2015. The changes affecting the research credit and corporation estimated tax provisions apply to tax years beginning on or after January 1, 2015.

HB 1228 - Wind energy device income tax credit

Note: Also see SB 2037 later in this newsletter for an additional change affecting wind energy devices.

The law governing the income tax credit for installing a wind energy device was revised to increase the unused credit carryover period from 20 to 30 years for wind devices installed after September 30, 2008, and before January 1, 2012. 

Statutory change: Amended N.D.C.C. § 57-38-01.8.

Effective date: Applies to taxable years beginning on or after January 1, 2015.

HB 1462 - Private school income tax credit

Note: Also see SB 2015 later in this newsletter for a correction made to HB 1462.

Prior to 2015, two separate income tax credits were allowed to a C corporation for making charitable contributions to certain private schools located in North Dakota—one for contributions to a qualifying nonprofit private high school and the other for contributions to a qualifying nonprofit private college or the North Dakota Independent College Fund. The amount of each credit allowed in a tax year is the lesser of (1) 50% of the contributions made during the tax year, (2) 20% of the tax liability for the tax year, or (3) \$2,500. The provisions governing these credits were revised as follows:

- A third income tax credit was created for a corporation that makes charitable contributions to a qualifying nonprofit private elementary school located in North Dakota. To qualify, the school must offer education in kindergarten through 8th grade, maintain a regular faculty and curriculum approved by the North Dakota Department of Public Instruction, and have an organized body of students in attendance at the place where it carries on its educational activities. The credit is calculated in the same manner as the credits for nonprofit private high schools and colleges. The annual limitations (*20% of tax liability and \$2,500*) were separately provided for in Senate Bill 2015.
- A passthrough entity, such as a partnership or S corporation, that makes a charitable contribution to any of the three types of qualifying nonprofit private schools is allowed to claim the credit(s). At the passthrough entity level, the credit is calculated by multiplying the qualifying contributions by 50%. The credit calculated at the passthrough entity level must be passed through to the entity's

A third income tax credit was created for a corporation that makes charitable contributions to a . . . private elementary school . . . in North Dakota.

owners based on their respective ownership interests in the entity. At the owner level, the amount of each type of credit allowed in a tax year is the lesser of (1) 20% of the owner's tax liability for the tax year or (2) \$2,500.

- An individual, estate, or trust that owns an interest in a passthrough entity that qualifies for any of the three credits for nonprofit private school contributions is allowed to claim its share of the credit(s) received from the passthrough entity. The credits are not allowed to an individual, estate, or trust for making a direct contribution to a qualifying school. 

Statutory change: Amended N.D.C.C. §§ 57-38-01.7 and 57-38-30.3.

Effective date: Applies to taxable years beginning on or after January 1, 2015.

HCR 3032 - Federal "repair regs"

In this House Concurrent Resolution, the North Dakota Legislature urges Congress and the Internal Revenue Service to end the requirement to capitalize business machinery repair costs under the so-called tangible property "repair regs" issued by the Internal Revenue Service on September 19, 2013 ([Treas. Dec. 9636](#)). The resolution was prompted by the regulations' added complexity and cost of doing business, the IRS's disregard of the increased regulatory burden, and the business reality of the immediate out-of-pocket cost of what are frequent and costly unplanned expenses. The resolution requests the North Dakota Secretary of State to provide copies of the resolution to the North Dakota Congressional Delegation, the majority and minority leaders of the U.S. Senate and House of Representatives, the Secretary of the U.S. Treasury, and the IRS Director. 

Statutory change: Not applicable.

Effective date: Not applicable.

SB 2015 - Private school income tax credit

Note: Also see HB 1462 earlier in this newsletter.

This is the budget bill for the North Dakota Office of Management and Budget. Section 31 of the bill amended House Bill 1462 (which the legislature had already passed) to correct an omission. House Bill 1462 created a new income tax credit for making a charitable contribution to a qualifying nonprofit private elementary school. The calculation of the new credit was intended to be the same as the calculation for the existing credits for contributing to nonprofit private high schools and colleges. However, the annual limitations on the credit (20% of tax liability and \$2,500) were inadvertently omitted from House Bill 1462. The amendment added to Senate Bill 2015 corrects this omission. 

Statutory change: Amended N.D.C.C. § 57-38-01.7, as amended by House Bill 1462.

Effective date: Applies to taxable years beginning on or after January 1, 2015.

SB 2037 - Wind energy device income tax credit

Note: Also see HB 1228 earlier in this newsletter.

The income tax credit for installing a biomass, geothermal, solar, or wind energy device expired on January 1, 2015. However, in the case of a wind energy device only, this bill extends the expiration date to January 1, 2017, if the construction of the wind energy device commenced before January 1, 2015. To qualify for the credit, installation of a wind energy device eligible for this extension must be completed before January 1, 2017. (For biomass, geothermal, and solar energy devices, and wind energy devices not eligible for the extension provided by this bill, the expiration date of January 1, 2015, still applies.) 

Statutory change: Amended N.D.C.C. § 57-38-01.8.

Effective date: Applies to taxable years beginning on or after January 1, 2015.

A passthrough entity . . . that makes a charitable contribution to any of the three types of . . . private schools is allowed to claim the credit(s).

SB 2057 - Study of tax incentives for business

This bill requires the North Dakota Legislative Management to assign to an interim committee the responsibility to review economic development tax incentives to ascertain if they are serving their intended purposes in an equitable and cost-effective manner. The interim committee is required to do the following:

- Analyze each of the economic-development tax incentives identified in the bill using the criteria specified in the bill and any other relevant criteria.
- Develop a plan that provides for a review of all of the incentives every six years, beginning with the 2015-16 biennium.
- On or before October 1st of each odd-numbered year, identify the incentives to be reviewed during the interim, identify the perceived legislative goals of each incentive as a baseline for review, and identify the data and testimony required for an effective analysis.
- Request data and analysis from North Dakota agencies. If data is either not available or cannot be disclosed, the agency must explain the reason and advise the committee on how the data might be obtained and the estimated cost to obtain it, or provide an adequate substitute.
- Report to Legislative Management the progress of its review, findings, and recommendations at the end of each interim. 

Statutory change: Created a new section to N.D.C.C. ch. 54-35.

Effective date: August 1, 2015.

SB 2069 - Withholding from oil and gas royalties

The law governing the withholding of income tax from oil and gas royalty payments was revised as follows, effective for royalty payments made to royalty owners on or after January 1, 2016:

- The amount of income tax to withhold must be calculated on the gross royalty amount instead of the net royalty amount.
- The two rates under pre-2015 law, which equal the highest marginal income tax rates for individuals and corporations, were replaced with a single rate equal to the highest individual income tax rate reduced by 0.75%.

Note: In Senate Bill 2349, discussed later in this newsletter, the highest marginal income tax rates for individuals and corporations were reduced to 2.90% and 4.31%, respectively, effective for tax years beginning on or after January 1, 2015. Accordingly, the withholding rates applicable to royalty payments made during the 2015 calendar year to individuals and corporations dropped to 2.90% and 4.31%, respectively. Starting January 1, 2016, a single withholding rate of 2.15% (2.90% - 0.75%) will apply to royalty payments made to all recipients. 

Statutory change: Amended N.D.C.C. § 57-38-59.4.

Effective date: Applies to taxable years beginning on or after January 1, 2016.

SB 2286 - Qualified endowment income tax credit

The law governing the endowment fund income tax credit was revised to expand the definition of a qualified endowment fund to include a fund held by an organization that meets all of the following conditions:

- It is a tax-exempt charitable organization under section 501(c) of the Internal Revenue Code.
- It is incorporated or established in a state bordering North Dakota.
- Its purpose is to support a hospital, nursing home, medical facility, or a facility providing any combination of these services that is physically located outside North Dakota but within 5 miles of a North Dakota city with a population of 5,000 or more that does not have a hospital. 

Statutory change: Amended N.D.C.C. § 57-38-01.21.

Effective date: Applies to taxable years beginning on or after January 1, 2015.

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SB 2292 - Corporation apportionment formula

This bill made changes to the law governing how a C corporation determines the amount of its business income reportable to North Dakota. As explained in more detail below under separate headings, the bill made changes to the Uniform Division of Income Tax Act (N.D.C.C. ch. 57-38.1) and the Multistate Tax Compact (N.D.C.C. ch. 57-59.1). The changes apply only to a C corporation and do not apply to an individual, estate, trust, partnership, S corporation, or any other type of entity.

Uniform Division of Income Tax Act (N.D.C.C. ch. 57-38.1)

The Uniform Division of Income Tax Act was amended to provide for an alternative to the equally-weighted three-factor apportionment formula that a C corporation is required to use to determine the amount of its business income reportable to North Dakota. Under the equally-weighted three-factor formula, the weighting is property-1/3 (or 33.33%), payroll-1/3 (or 33.33%), and sales-1/3 (or 33.33%). Under the alternative, a C corporation may make an election to use an apportionment formula that weights the sales factor more heavily, phased in as follows:

- For the 2016 and 2017 tax years, the weighting is property-25%, payroll-25%, and sales-50%.
- For the 2018 tax year, the weighting is property-12.5%, payroll-12.5%, and sales-75%.
- For tax years 2019 and after, the weighting is sales-100%. (There is no property or payroll factor.)
- The election to use the alternative apportionment formula is subject to the following conditions:
 - o The election must be made on a timely-filed original corporation income tax return (Form 40).
 - o The election applies to all C corporations in a unitary group and for all C corporations filing a consolidated North Dakota corporation income tax return.
 - o The election is binding for 5 tax years, after which it automatically lapses.
 - o After a 5-year election period lapses, a new election must be made to continue using the alternative apportionment formula. The new election must be made on a timely-filed original corporation income tax return filed for the tax year following the last year of the lapsed 5-year period.
 - o After a 5-year election period lapses, if a new election is not made in the prescribed manner, the equally-weighted three-factor apportionment formula must be used for the next 3 tax years, after which the election to use the alternative apportionment formula may be made again.

Multistate Tax Compact (N.D.C.C. ch. 57-59.1)

The Multistate Tax Compact was revised to remove a number of provisions relating to the apportionment and allocation of a multistate business's income to make the Compact's provisions consistent with the changes made to the Uniform Division of Income Tax Act described in the previous section. 

Statutory change: Amended N.D.C.C. §§ 57-38-04, 57-38.1-09, and 57-59-01; and repealed N.D.C.C. § 57-59-02.

Effective date: Applies to taxable years beginning on or after January 1, 2015. (Note: The 2016 tax year is the first tax year for which the election to use a more heavily-weighted sales factor may be used.)

SB 2329 - Renaissance zones

The law governing the North Dakota renaissance zone tax incentive program was revised as follows:

- **Size of zone**—For a city with a population up to 5,000, the maximum allowable size of a zone was increased from 23 to 34 blocks. For a city with a population greater than 5,000, which is allowed an additional block for each additional 5,000 in population, the maximum allowable

... a multistate C corporation may make an election to use an apportionment formula that weights the sales factor more heavily ...

size of a zone was increased from 38 to 49 blocks. For purposes of establishing a city’s population, the most recent federal census estimate published since the last federal decennial census may be used.

- **Renaissance fund organization investment tax credit**—The maximum amount of tax credits allowed to all taxpayers in all tax years for investments made in renaissance fund organizations was increased from \$8.5 million to \$10.5 million. 

Statutory change: Amended N.D.C.C. §§ 40-63-03 and 40-63-07.

Effective date: Applies to taxable events occurring on or after January 1, 2015.

SB 2340 - Automation income tax credit

The law governing the income tax credit allowed for purchasing machinery and equipment to automate a manufacturing process in North Dakota was revised as follows:

- The availability of the credit was extended through the 2017 tax year. *(Under pre-2015 law, the credit provisions were set to expire after the 2015 tax year.)*
- A purchase was expanded to include the acquisition of qualifying machinery and equipment by means of a capital lease. For purposes of the credit, the cost of machinery and equipment acquired through a qualifying capital lease is the property’s fair market value at the inception of the lease.
- The maximum amount of credits allowed for all qualifying purchases by all taxpayers remains at \$2 million for the 2015 calendar year. However, this limit is reduced to \$500,000 for each of the 2016 and 2017 calendar years.
- If the total credits allowed for a calendar year are less than the annual limit for that year, the amount of the unclaimed credits are rolled over to the following calendar year, which increases the maximum amount of credits available for the following calendar year.
- If the total credits attributable to qualifying purchases during a calendar year exceed the maximum amount of credits available for the calendar year, the maximum amount of credits available for the calendar year must be prorated among the qualifying taxpayers.
- The bill requires that this credit be one of the economic development tax incentives selected for analysis during the 2015-16 interim under the study required by Senate Bill 2057. *For more information on this study, see SB 2057 earlier in this newsletter.* 

Statutory change: Amended N.D.C.C. §§ 57-38-01.33 and 57-38-30.3.

Effective date: Applies to the first three taxable years beginning on or after January 1, 2015.

SB 2349 - Income tax rate reduction

For the fourth consecutive legislative session, the income tax rates for individuals, estates, trusts, and corporations have been reduced.

Individual, estate, and trust income tax rate reduction

For tax years 2015 and after, the income tax rates for individuals, estates, and trusts have been reduced by approximately 10 percent. Following are the new tax rates and the corresponding taxable income brackets for individuals, estates, and trusts for the 2015 tax year:

		2015 North Dakota Taxable Income					
		Single		Married, Joint/ Qualifying Widow(er)		Head of Household	
Bracket	Rate	Over	Not Over	Over	Not Over	Over	Not Over
1	1.10%	\$ 0	\$ 37,450	\$ 0	\$ 62,600	\$ 0	\$ 50,200
2	2.04%	37,450	90,750	62,600	151,200	50,200	129,600
3	2.27%	90,750	189,300	151,200	230,450	129,600	209,850
4	2.64%	189,300	411,500	230,450	411,500	209,850	411,500
5	2.90%	411,500	-	411,500	-	411,500	-

The availability of the [automation income tax] credit was extended through the 2017 tax year.

2015 North Dakota Taxable Income

Bracket	Rate	Married, Separate		Estate or Trust	
		Over	Not Over	Over	Not Over
1	1.10%	\$ 0	\$ 31,300	\$ 0	\$ 2,500
2	2.04%	31,300	75,600	2,500	5,900
3	2.27%	75,600	115,225	5,900	9,050
4	2.64%	115,225	205,750	9,050	12,300
5	2.90%	205,750	-	12,300	-

Estimated income taxes—Individuals, estates, and trusts making payments of estimated North Dakota income tax for the 2015 tax year may adjust their remaining estimated payment installments based on the lower tax rates. Taxpayers are responsible for determining whether or not it is advisable to adjust the amount of their estimated payments. The [2015 Form ND-1ES](#) for individuals and the [2015 Form 38-ES](#) for estates and trusts have been revised to reflect the rate reductions.

Income tax withholding by employers—The [2015 North Dakota income tax withholding tables](#) have been revised to incorporate the reduced individual income tax rates. Employers are encouraged to incorporate them into their payroll systems as soon as they are able to do so. Employers do not need to make any adjustments to the North Dakota income tax withholding returns already filed or to employees’ paychecks already issued. Similarly, they do not need to adjust the withholding from future wages to account for any reduced withholding amounts relating to the previously issued paychecks. If an employer uses the new tables for the remainder of 2015, the effect on employees’ paychecks and their total withholding for the year will depend on each employee’s situation. 

Statutory change: Amended N.D.C.C. § 57-38-30.3.

Effective date: Applies to taxable years beginning on or after January 1, 2015.

Corporation income tax rate reduction

For tax years 2015 and after, the income tax rates for corporations are reduced by approximately 5 percent. The income brackets were not changed. Following are the new tax rates and corresponding taxable income brackets for corporations for the 2015 tax year:

2015 North Dakota Taxable Income			
Bracket	Rate	Over	Not Over
1	1.41%	\$ 0	\$ 25,000
2	3.55%	25,000	50,000
3	4.31%	50,000	-

Water’s edge filers—This does not change the additional tax that a corporation must pay if it elects to use the water’s edge method to apportion its income to North Dakota. If applicable, a corporation must pay a tax equal to 3.5 percent of its North Dakota taxable income in addition to the tax computed using the regular 3-bracket tax rate schedule shown above.

Estimated income taxes—Corporations making payments of estimated North Dakota income tax for the 2015 tax year may adjust their remaining estimated payment installments based on the lower tax rates. Corporations are responsible for determining whether or not it is advisable to adjust the amount of their estimated payments. *(The corporation income tax rates are not printed in the [2015 Form 40-ES](#), and therefore no changes were required to be made to this form.)* 

Statutory change: Amended N.D.C.C. § 57-38-30.

Effective date: Applies to taxable years beginning on or after January 1, 2015.

[Taxpayers] making payments of estimated North Dakota income tax for the 2015 tax year may adjust their remaining . . . installments based on the lower tax rates.

Assistance

To assist you in your tax preparation work, the following phone numbers and e-mail addresses are provided for your convenience.

General information	701.328.7088
Toll free	877.328.7088
TDD (ask for 701.328.7088)	800.366.6888
Fax	701.328.3700
E-mail	taxinfo@nd.gov
Taxpayer services (<i>correction notices, calculation worksheets, information requests</i>) ...	701.328.1242
Individual income tax	701.328.1247
E-mail	individualtax@nd.gov
Partnership, S corporation, trust, and estate income tax	701.328.1258
E-mail	individualtax@nd.gov
Corporation income tax.....	701.328.1249
E-mail	corptax@nd.gov
Income tax withholding from wages (for employers).....	701.328.1248
E-mail	withhold@nd.gov
Income tax withholding from oil and gas royalties	701.328.1247
E-mail	individualtax@nd.gov
Collections (<i>tax due statements, lien notices, payment plans</i>).....	701.328.1244
Business registration	701.328.1241
E-mail	taxregistration@nd.gov

Additional contact information can be found on the Office of State Tax Commissioner’s website at www.nd.gov/tax under [Contact Us](#).

***Income tax update** is a publication of the Tax Administration Division, North Dakota Office of State Tax Commissioner, 600 E. Boulevard Ave. Dept. 127, Bismarck, ND 58505-0599. It is intended for tax professionals and other persons interested in developments, updates, and other information about North Dakota’s income tax and financial institution tax laws, rules, and administrative policies. An e-mail notification service is available that notifies subscribers when a new issue is placed on the Department’s website. To be added to the notification list, go to the Department’s website at www.nd.gov/tax and click on “Newsletters Subscription” located on the blue bar at the top of the home page.*