North Dakota Office of State Tax Commissioner

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Income Tax Update

News and developments for tax practitioners

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2013 legislative rundown

This newsletter provides a summary of the legislation passed by the 2013 North Dakota Legislative Assembly that affects North Dakota's income and financial institution tax laws. If a bill also contains changes affecting areas of the law not related to income and financial institution taxes, this summary only covers the income and financial institution tax portions of the bill. For the text of the bills and other legislative information, go to the 63rd North Dakota Legislative Assembly's web site at **www.legis.nd.gov/assembly/63-2013/**.

Inside this issue:

HB 1029 - Housing incentive fund tax credit

The provisions of this bill apply to the 2013 and 2014 tax years only.

The tax credit allowed for making a contribution to the North Dakota Housing Incentive Fund, administered by the North Dakota Housing Finance Agency, expired at the end of the 2012 tax year. This bill extends the availability of the tax credit for two additional years through the 2014 tax year. This bill also sets a ceiling of $20 million on the total credits allowed to all taxpayers under the program for the 2013 and 2014 tax years. The credit, which equals the amount contributed to the fund, is evidenced by a tax credit certificate that the North Dakota Housing Finance Agency issues to the taxpayer. The taxpayer uses the certificate to support the credit claimed on the taxpayer's North Dakota income tax return. 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. *(Note: This bill also reenacts a provision allowing this credit to a financial institution; however, the financial institution tax was repealed starting with the 2013 tax year—see SB 2325 later in this newsletter.)*

Statutory change: *S.L. 2013, ch. 406, § 5, amending N.D.C.C. § 57-38-01.32(5).*
Effective date: *Applies to the first two taxable years beginning on or after January 1, 2013.*

HB 1098 – Disclosure to Insurance Department

The law governing the Office of State Tax Commissioner's obligation to protect the confidentiality of income tax information was revised to allow limited disclosure to the North Dakota Insurance Department for the sole purpose of administering an insurance producer license, assessing a civil penalty, or investigating a fraudulent insurance act under North Dakota's insurances laws. The disclosure is subject to the following conditions:

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- The request for information must be in writing and contain the taxpayer's name, federal identification number, and address.
- The request for information may be made only if the insurance commissioner has begun an investigation of a licensed insurance agent, or an applicant for a license, on grounds other than a failure to comply with the state's income tax laws, or on grounds of a suspected or actual fraudulent insurance act.
- The Office of State Tax Commissioner may either (1) disclose whether the taxpayer has complied with North Dakota's income tax laws or (2) disclose the type of tax, the period for which a return has not been filed, a failure to pay the tax, and the amount of any unpaid tax, penalty, and interest. For this purpose, a taxpayer is to be deemed in compliance with the state's income tax laws if the taxpayer has entered an agreement with the Office of State Tax Commissioner to remedy the noncompliance and the taxpayer is current with the terms of the agreement.
- The insurance commissioner must maintain the confidentiality of any information received from the Office of State Tax Commissioner.

Statutory change: *S.L. 2013, ch. 455, § 2, creating a new subsection 10 to N.D.C.C. § 57-38-57.*
Effective date: *Takes effect on August 1, 2013.*

HB 1106 – Tax Department technical bill

Effective for new zone projects approved on or after August 1, 2013 . . . new limitations apply . . . . .

This bill makes technical changes to the income, sales, and other tax laws administered by the Office of State Tax Commissioner. These changes simplify and provide consistency in the statutory language across different tax types, codify existing administrative policy, and remove obsolete language. Some of the more notable changes affecting the income tax laws include (1) adding a new definition of "passthrough entity" and revising the various income tax statutes to incorporate the new term, (2) adding the language "in this state" to the biodiesel fuel blending tax credit statute to clarify that the blending must be done in North Dakota, (3) adding language to the angel fund tax credit statute to codify the administrative policy of allowing a transfer of funds from a self-directed IRA to an angel fund to constitute a qualifying investment, (4) adding "limited liability limited partnership" to the list of entities eligible to be angel funds, and (5) adding language to the employer income tax withholding statute to address the personal liability of general partners in a limited liability limited partnership for the nonfiling or nonpayment obligations of the partnership.

Statutory change: *S.L. 2013, ch. 443, §§ 15 through 31, creating N.D.C.C. § 57-38-60.3, and amending N.D.C.C. §§ 57-38-01, 57-38-01.21(5), 57-38-01.22, 57-38-01.23, 57-38-01.24(2), 57-38-01.25(5), 57-38-01.26(2)(3) and (7), 57-38-01.27(9), 57-38-01.31(2), 57-38-01.32(9), 57-38-01.33(7), 57-38-30.5(6) and (12), 57-38.5-01, 57-38.5-03(4), 57-38.6-01, and 57-38.6-03(4). Those sections of the Session Laws and the Code that pertain to tax types other than the income tax laws are not cited here—see the bill.*
Effective date: *Various dates—see the bill.*

HB 1166 – Renaissance zone income exemption

One of the tax incentives under the Renaissance Zone Program is a five-year exemption from income tax for purchasing, rehabilitating, leasing, or making leasehold improvements to residential or commercial real estate, or to public utility infrastructure, used for business or investment purposes. In general, the income attributable to the zone project real estate, subject to certain apportionment rules, is exempted from income tax. Since its creation in 1999, there has been no limit on the amount of eligible income that may be exempted. Effective for new zone projects approved on or after August 1, 2013, the following new limitations apply to this exemption:

- **Expansion project limitation**—If a zone project consists of a physical expansion of an existing building, the amount of the exemption for the tax year is limited to an amount equal to the income otherwise eligible for the exemption multiplied by an expansion ratio. The expansion ratio is equal to the square footage added by the expansion divided by the total square footage of the building after expansion.

- **Per taxpayer limitation**—The maximum amount of eligible income that a taxpayer may exempt from income tax for any taxable year is $500,000. This limitation applies to the total eligible income that a taxpayer derives from all business and investment interests held during the tax year.

Statutory change: *S.L. 2013, ch. 317, amending N.D.C.C. § 40-63-04(2).*
Effective date: *Applies to zone projects approved on or after August 1, 2013.*

HB 1198 – Oil and gas royalty income tax withholding

Starting with the 2014 calendar year, a remitter of oil and gas royalty payments must withhold North Dakota income tax from payments made to nonresident royalty owners with a nonworking interest in the production. A "remitter" is any person who distributes oil and gas royalty payments directly, or indirectly through a distribution agent, to a nonresident royalty owner. A "nonresident royalty owner" means an individual who is a nonresident of North Dakota and a business entity having a commercial domicile outside North Dakota.

A remitter must withhold income tax at the highest marginal income tax rate applicable to an individual or a C corporation. Guidance on the appropriate rate to use when a remitter makes payments to more than one type of entity—i.e., an individual, C corporation, partnership, etc.—is pending and will be provided when it is finalized. *(Note: For the 2014 calendar year, the highest marginal income tax rate for an individual and C corporation is 3.22% and 4.53%, respectively—see SB 2156 later in this newsletter.)*

Exceptions to the withholding requirement—This withholding requirement does not apply in the following cases:

- *Production threshold exemption*—A remitter is not subject to the withholding requirement if the remitter produced less than 350,000 barrels of oil or 500 million cubic feet of gas during the preceding calendar year, as certified on forms and in the manner prescribed by the Office of State Tax Commissioner. *(Note: A remitter that is not required to withhold because of this threshold still must file an annual report—see "Reporting and payment requirements" below.)*
- *Royalty payment threshold exemption*—A remitter may request permission from the Office of State Tax Commissioner to forego withholding if the total royalties paid to a nonresident royalty owner during a calendar quarter is less than $600 or if the total royalties paid to a nonresident royalty owner during the calendar year is less than $1,000.
- *Statutory royalty payment exemptions*—The law specifically excludes from the withholding requirement payments that a remitter makes to the U.S. government or its agencies, a state and its political subdivisions, federally-recognized Indian tribe with respect to on-reservation production pursuant to a lease under the Indian Mineral Leasing Act, the U.S. government as trustee for an individual Indian, a publicly-traded partnership, a tax-exempt organization, or the remitter if the remitter and royalty owner are the same person. *(Note: See "Reporting and payment requirements" below for reporting requirements that apply to a publicly-traded partnership and a tax-exempt organization.)*

Reporting and payment requirements—A remitter that is required to withhold income tax from royalty payments is subject to filing and payment procedures similar to those used by an employer required to withhold income tax from an employee's wages. In general, this means that a remitter will be required to report and pay the withheld income tax on a calendar quarter basis, provide year-end information returns to the royalty owners, and submit year-end reports to the Office of State Tax Commissioner. Details on these reporting and payment procedures, including the required forms, are under development and will be released when finalized.

As described below, certain reporting requirements apply even though no withholding is required:

- *Royalty owner information*—If a remitter is exempt from the withholding requirement under the production threshold exemption, the remitter must file a year-end report with the Office of State Tax Commissioner showing the name, address, and social security number or federal employer identification number of the nonresident royalty owner, and the total amount of royalties paid to the nonresident royalty owner during the calendar year.

. . . a remitter of oil and gas royalty payments must withhold North Dakota income tax from payments made to nonresident royalty owners . . .

- *Publicly-traded partnership owner information*—A publicly-traded partnership must transmit, in an electronic format approved by the Office of State Tax Commissioner, a copy of each partner's federal Schedule K-1 (Form 1065 or Form 1065-B) that was electronically filed with the Internal Revenue Service.
- *Publicly-traded partnership or tax-exempt organization status verification*—On a form prescribed by the Office of State Tax Commissioner, a publicly-traded partnership or a tax-exempt organization must provide certain information to verify its eligibility for exemption from the withholding requirement.

Statutory change: *S.L. 2013, ch. 473, § 3, creating N.D.C.C. § 57-38-59.4.*
Effective date: *Applies to taxable years beginning on or after January 1, 2014.*

SB 2058 – Disclosure to Unclaimed Property Division

Current law governing the Office of State Tax Commissioner's obligation to protect the confidentiality of income tax information allows it to furnish the name, address, and federal identification number of a taxpayer to the Unclaimed Property Division of the North Dakota Board of University and School Lands for the sole purpose of verifying the identity of the taxpayer as the owner of an unclaimed refund check. This law was expanded to also allow the release of the identifying information to the Unclaimed Property Division for the purpose of locating the apparent owner of any unclaimed property.

Statutory change: *S.L. 2013, ch. 454, § 2, amending N.D.C.C. § 57-38-57(6).*
Effective date: *Takes effect on August 1, 2013.*

For purposes of . . . composite filing . . . this bill expands the definition of "nonresident member" to include a . . . grantor trust . . .

SB 2104 – Passthrough entity income tax withholding and composite filing

Subject to certain exceptions, current law requires a passthrough entity to withhold income tax from the year-end distributive share of North Dakota income of a nonresident member. A "passthrough entity" means a partnership (all types), an S corporation, a limited liability company treated like a partnership or S corporation, and a trust. A "nonresident member" means an owner or beneficiary consisting of an individual who is not a legal resident of North Dakota. Withholding is not required if (1) the North Dakota distributive share of income is the nonresident member's only North Dakota-sourced income and (2) the nonresident member elects to include the income in a composite income tax return filed by the passthrough entity on the nonresident member's behalf. On a composite return, no deductions or tax credits are allowed, and the income is taxed at the highest individual income tax rate. The composite return satisfies the income tax filing and payment requirements of the nonresident member.

For purposes of both the passthrough entity withholding and composite filing provisions, this bill expands the definition of "nonresident member" to include a nonresident individual who is the settlor of a grantor trust and to include a passthrough entity with a commercial domicile located outside North Dakota. The bill also provides that a passthrough entity does not have to withhold income tax from the North Dakota distributive share of income of a nonresident member if the member (1) is a passthrough entity, (2) makes an election to not have withholding, and (3) certifies that it will file any return and pay any tax required under North Dakota income tax law. This election out of withholding is subject to revocation for failure to comply with North Dakota income tax law.

Statutory change: *S.L. 2013, ch. 453, amending N.D.C.C. § 57-38-31.1.*
Effective date: *Applies to taxable years beginning on or after January 1, 2014.*

SB 2156 – Income tax rates - Rural leadership income tax credit

This bill contains a change to the angel fund investment income tax credit provisions, which is not described here. See SB 2325 later in this newsletter for a summary of the changes to the angel fund tax credit provisions.

Individual, estate, and trust income tax rate reduction

For tax years 2013 and after, the income tax rates for individuals, estates, and trusts are reduced by approximately 19.3 percent. Following are the new tax rates and the corresponding taxable income brackets for individuals, estates, and trusts for the 2013 tax year:

		2013 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	1.22%	$ 0	$ 36,250	$ 0	$ 60,650	$ 0	$ 48,600
2	2.27%	36,250	87,850	60,650	146,400	48,600	125,450
3	2.52%	87,850	183,250	146,400	223,050	125,450	203,150
4	2.93%	183,250	398,350	223,050	398,350	203,150	398,350
5	3.22%	398,350	-	398,350	-	398,350	-

		2013 North Dakota Taxable Income			
		Married, Separate		Estate or Trust	
Bracket	Rate	Over	Not Over	Over	Not Over
1	1.22%	$ 0	$ 30,325	$ 0	$ 2,450
2	2.27%	30,325	73,200	2,450	5,700
3	2.52%	73,200	111,525	5,700	8,750
4	2.93%	111,525	199,175	8,750	11,950
5	3.22%	199,175	-	11,950	-

Taxpayers may adjust the amount of their [estimated] payments for the 2013 tax year based on the lower tax rates.

Estimated income tax—The reduction of the 2013 income tax rates directly affects individuals, estates, and trusts who are currently paying estimated North Dakota income tax for the 2013 tax year. Taxpayers may adjust the amount of their remaining installment payments for the 2013 tax year 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 2013 Form ND-1ES for individuals and the 2013 Form 38-ES for estates and trusts have been revised to reflect the rate reductions. *(Note: Also see Senate Bill 2330 later in this newsletter, which increased the threshold amount under which no estimated tax has to be paid.)*

Income tax withholding by employers— The 2013 North Dakota income tax withholding tables have been revised to incorporate the reduced individual income tax rates. While use of the revised tables is optional for the remainder of calendar year 2013, 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 2013, the effect on employees' paychecks and their total withholding for the year will depend on each employee's situation.

Statutory change: *S.L. 2013, ch. 451, § 4, amending N.D.C.C. § 57-38-30.3(1).*
Effective date: *Applies to taxable years beginning on or after January 1, 2013.*

Corporation income tax rate reduction

For tax years 2013 and after, the income tax rates for corporations are reduced by approximately 11.9 percent. Following are the new tax rates and corresponding taxable income brackets for corporations for the 2013 tax year:

		2013 North Dakota Taxable Income	
Bracket	**Rate**	*Over*	*Not Over*
1	1.48%	$ 0	$ 25,000
2	3.73%	25,000	50,000
3	4.53%	50,000	-

Note: There was no change to the water's edge method tax rate. If a corporation elects to use the water's edge method to apportion its income to North Dakota, the 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 tax—Corporations making payments of estimated North Dakota income tax for the 2013 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 2013 Form 40-ES, and therefore no changes were required to be made to this form.)*

Statutory change: *S.L. 2013, ch. 451, § 3, amending N.D.C.C. § 57-38-30.*
Effective date: *Applies to taxable years beginning on or after January 1, 2013.*

. . . there is a sunset on this change that limits it to eligible research costs incurred through December 31, 2014.

Credit for contribution to rural leadership program

A "new" income tax credit is allowed to a corporation that makes a contribution to help fund tuition scholarships to individuals who participate in the Rural Leadership North Dakota Program conducted by the North Dakota State University Extension Service. This credit is new in that it is now available for income tax purposes for the first time; it is not new in that it was available to banks and other entities subject to North Dakota's financial institution tax prior to 2013. The credit is equal to 50 percent of the total contributions made during the tax year. There is no carryover of an unused credit. Contributions may be designated for a specific individual.

Statutory change: *S.L. 2013, ch. 451, § 2, creating N.D.C.C. § 57-38-01.34.*
Effective date: *Applies to taxable years beginning on or after January 1, 2013.*

SB 2207 – Research income tax credit

Under current law, North Dakota's income tax credit for research activities is dependent on certain definitions contained in Internal Revenue Code § 41, the federal income tax research credit provisions. If the provisions of I.R.C. § 41 would expire (which they are currently set to do on December 31, 2013), the North Dakota income tax research credit provisions would become ineffective. This bill provides that if the provisions of I.R.C. § 41 expire, the North Dakota income tax research credit would remain in effect by using the provisions of I.R.C. § 41 for the most recent tax year the federal provisions were in effect. However, there is a sunset on this change that limits it to eligible research costs incurred through December 31, 2014.

Statutory change: *S.L. 2013, ch. 452, creating a new subsection 13 to N.D.C.C. § 57-38-30.5.*
Effective date: *Effective through December 31, 2014, and ineffective thereafter.*

SB 2325 – Financial institution tax - Angel fund income tax credit - Capital gain and qualified dividend exclusion

Financial institution tax

This bill repealed the North Dakota financial institution tax under N.D.C.C. ch. 57-35.3, which applied to any entity that met the statutory definition of a financial institution under that law. Starting with the 2013 tax year, these entities are subject to the North Dakota income tax under N.D.C.C. ch. 57-38. The following transitional rules apply:

- If a financial institution files its federal income tax return on a fiscal year basis, it must file its first North Dakota income tax return for the short period beginning January 1, 2013, and ending on the last day of its fiscal tax year falling in the 2013 calendar year. Thereafter, it will file its North Dakota income tax return on the same fiscal year basis as its federal income tax return. *(The reason for this rule is that the North Dakota financial institution tax return was filed on a calendar year basis, and the entity reported only a portion of its federal taxable income from its 2012 federal income tax return on the 2012 North Dakota financial institution tax return. The remainder of the entity's federal taxable income from its 2012 federal income tax return, which would have been reported on the 2013 North Dakota financial institution tax return had it not been repealed, must be reported on the North Dakota short period income tax return.)*
- If a financial institution is a C corporation that has an unused North Dakota net operating loss at the end of the 2012 tax year, it may carry over and use the loss on its North Dakota corporation income tax return. The loss may be carried over for income tax purposes for the number of years that were still available to the entity at the end of the 2012 tax year.
- For the 2013 tax year only, payment of the North Dakota income tax is due 6 months after the due date (not including any extension) of the 2013 North Dakota income tax return. No penalty or interest applies during the 6-month payment extension period. *(The reason for this rule is to provide some flexibility in the timing of the 2013 income tax payment because the financial institution still must make the 2012 financial institution tax distribution fund payment due on January 15, 2014.)*
- If any tax relating to tax years during which an entity was subject to the North Dakota financial institution tax law is determined to be due or overpaid, the tax due may be assessed or the tax overpayment may be refunded under the income tax law's assessment and refund provisions.
- If a financial institution is an S corporation that has an unused North Dakota net operating loss or an unused North Dakota tax credit at the end of the 2012 tax year, it may elect to be treated like a C corporation for income tax purposes for the limited purpose of utilizing the unused loss or credit, subject to the following rules:
  - o The election must be made in the manner prescribed by the Office of State Tax Commissioner on the first North Dakota income tax return required to be filed for the tax period beginning January 1, 2013.
  - o The election is binding until the earlier of (1) the end of the first tax year for which there is a North Dakota income tax liability after tax credits or (2) the beginning of the first tax year for which the corporation elects to resume treatment as an S corporation for North Dakota income tax purposes.
  - o An unused North Dakota net operating loss or an unused North Dakota tax credit may be carried over and used for income tax purposes for the number of tax years that were still available to the entity at the end of the 2012 tax year.
  - o For individual, estate, and trust income tax purposes, the owners of the S corporation must add back any loss or subtract any income from the S corporation that is included in the owner's federal taxable income.
  - o A consolidated corporation income tax return may not be filed.

Statutory change: *S.L. 2013, ch. 449, §§ 1 through 5, 8, 11 through 15, and 17, repealing N.D.C.C. ch. 57-35.3; creating N.D.C.C. § 57-38-01.35, new subsections 7 and 8 to N.D.C.C. § 57-38-34, new subsection 11 to N.D.C.C. § 57-38-38, and new subsection 16 to N.D.C.C. § 57-38-40; and amending N.D.C.C. §§ 11-37-08(5), 40-63-01(8), 40-63-04(5), 40-63-06, 40-63-07(3) and (4), 57-38-01.3(3), 57-38-01.32(5) and (7), and 57-38-30.3(2)(c) and (f).*

Effective date: *Applies to taxable years beginning on or after January 1, 2013.*

If a financial institution is an S corporation . . . it may elect to be treated like a C corporation for the limited purpose of utilizing the unused loss . . .

This bill increases the [long-term capital gain and qualified dividend] exclusion rate from 30% to 40%.

Angel fund income tax credit

The law governing North Dakota's angel fund investment tax credit was changed as follows:

- One of the conditions for certification as a North Dakota angel fund requires it to be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage or mid-stage private, nonpublicly traded companies with strong growth potential. However, for this purpose, an early-stage or mid-stage entity does not include one that derives more than 25 percent of its revenues from income-producing real estate. This provision was changed to prohibit an angel fund from investing in any real estate or a real estate holding company. Further, an angel fund certified prior to January 1, 2013, that made an investment in real estate is not eligible for recertification by the North Dakota Department of Commerce.
- The lifetime limit on the total credits allowed to any taxpayer was increased from $150,000 to $500,000. Married individuals are considered one taxpayer for this purpose. This limit applies to the sum of the credits earned for investments directly made by the taxpayer in an angel fund and any credits the taxpayer receives as an owner of a passthrough entity that invests in an angel fund.

Statutory change: *S.L. 2013, ch. 449, § 9, amending N.D.C.C. § 57-38-01.26(1) and (3).*
Effective date: *Applies to taxable years beginning on or after January 1, 2013.*

Long-term capital gain and qualified dividend exclusion

Current law allows individuals, estates, and trusts to exclude from North Dakota taxable income 30 percent of a net long-term capital gain and 30 percent of qualified dividend income. This bill increases the exclusion rate from 30% to 40%. The bill also provides that if, in any tax year, qualified dividends are taxed at ordinary income tax rates under federal income tax law, North Dakota will continue to allow an exclusion, but the exclusion rate will drop to 30 percent and will apply to all taxable dividend income.

Statutory change: *S.L. 2013, ch. 449, § 12, amending N.D.C.C. § 57-38-30.3(2)(d).*
Effective date: *Applies to taxable years beginning on or after January 1, 2013*

SB 2330 – Individual estimated tax

Current law governing estimated income taxes for individuals, estates, and trusts provides that estimated income tax must be paid if all of the following conditions are met:

1. There is a requirement to pay estimated federal income tax for the tax year.
2. The tax liability for the preceding year was $500 or more.
3. The tax balance due for the current year is expected to be $500 or more.
4. The income tax withholding for the current year is estimated to be less than the smaller of (1) 100% of the previous year's tax liability or (2) 90% of the current year's tax liability.

This bill increased the threshold in the second and third conditions from $500 to $1,000. This change will result in some taxpayers no longer having to pay estimated income tax.

Taxpayers currently paying estimated North Dakota income tax for the 2013 tax year may adjust the amount of their remaining installment payments based on the increased thresholds. Taxpayers are responsible for determining whether or not it is advisable to adjust the amount of their estimated payments. The 2013 Form ND-1ES for individuals and the 2013 Form 38-ES for estates and trusts have been revised to reflect the increased thresholds. *(Note: Also see Senate Bill 2156 earlier in this newsletter, which reduced the income tax rates for individuals, estates, and trusts.)*

Statutory change: *S.L. 2013, ch. 456, amending N.D.C.C. § 57-38-62(1) and (3).*
Effective date: *Applies to taxable years beginning on or after January 1, 2013.*

Reminder 1: Automation Income tax credit

The 2013 tax year is the first of three tax years in which taxpayers may claim an automation income tax credit. The credit was created by Senate Bill 2057, which was passed by the 2011 North Dakota Legislature, but its effective date was delayed until the 2013 tax year. The credit will expire at the end of the 2015 tax year.

The credit is allowed for purchasing new or used machinery and equipment for the purpose of automating a manufacturing process. Eligibility is limited to a primary sector business, which is a business certified by the North Dakota Department of Commerce as one using knowledge or labor to add value to a product, process, or service that results in the creation of new wealth in North Dakota. The credit is equal to 20 percent of the cost of the machinery and equipment approved by the North Dakota Department of Commerce. The credit is first allowed in the tax year in which the taxpayer takes title to the machinery and equipment. If the credit exceeds the tax liability in the first tax year, the excess may be carried over and used on subsequent years' returns for up to 5 tax years.

The total credits allowed for all qualifying purchases by all taxpayers is limited to $2 million per calendar year. *(The North Dakota Department of Commerce will account for this annual limit after the end of each calendar year, allowing the credits to taxpayers in the chronological order of the dates on which they took title to the property. While the annual limit is measured on a calendar-year basis, a taxpayer will claim an allowable credit in the taxpayer's tax year in which the taxpayer takes title to the property.)*

In the case of a North Dakota corporation income tax return filed on a consolidated basis using the combined reporting method, a credit earned by any corporation included in the return may be offset against the combined tax liabilities of all corporations included in the return. If the taxpayer is a partnership or other passthrough entity, the credit is computed at the passthrough entity level and passed through to the entity's owners based on their respective ownership interests in the entity. The amount of the approved purchases may not be used as the basis for any other deduction or credit allowed under North Dakota income tax law.

Taxpayers interested in this credit must complete the Application for Qualification of Machinery or Equipment for the Purpose of Automating Manufacturing Processes and file it with the North Dakota Department of Commerce.

Statutory change: *S.L. 2011, ch. 50, § 14, creating N.D.C.C. § 57-38-01.33.*
Effective date: *Applies to the first three tax years beginning on or after January 1, 2013, and is ineffective thereafter.*

The credit is allowed for purchasing new or used machinery and equipment for the purpose of automating a manufacturing process.

Reminder 2: Income tax exemptions for certain nonresident individuals and their employers

The 2013 tax year is the first year in which two new North Dakota individual income tax exemptions take effect. One exemption applies to eligible nonresident individuals working in North Dakota, and the other exemption applies to their employers. The exemptions were created by Senate Bill 2170, which was passed by the 2011 North Dakota Legislature, but the effective date was delayed until the 2013 tax year.

Exemption from income tax for certain nonresident individuals working in North Dakota

Generally, compensation received by an individual for services performed in North Dakota is taxable by North Dakota even though the individual is not a legal resident of North Dakota. There are exceptions, such as U.S. armed forces servicemembers, certain interstate commerce employees, and Minnesota and Montana residents covered under the reciprocity agreements between North Dakota and those two states.

Starting with the 2013 tax year, compensation received by an individual for services performed in North Dakota is excluded from North Dakota source income and therefore not subject to North Dakota income tax ***if all of the following conditions apply***:

- The individual is not a legal resident of North Dakota for the tax year.
- The individual has no other income from sources in North Dakota for the tax year in which the compensation is received.
- The individual is present in North Dakota to perform employment duties for less than twenty-one days during the tax year.
- The individual's state of legal residence either (1) does not impose an income tax or (2) provides a substantially similar exclusion.

"Compensation" for this purpose means wages as defined for federal income tax withholding purposes. In counting the number of days present in North Dakota, presence in North Dakota for any part of a day constitutes presence for that day unless the presence is solely for purposes of transit through North Dakota.

The following individuals are not eligible for this new exemption:

- Professional athlete
- Member of a professional athletic team
- Professional entertainer
- Person of prominence performing services on a per event basis
- Person performing construction services that improve real property
- Key employee as defined under I.R.C. § 416(i) for the immediately preceding tax year (without regard to ownership or the existence of a benefit plan)
- Employee of a noncorporate employer who is one of the 50 highest paid employees, and who would be a key employee as defined under I.R.C. § 416(i) for the immediately preceding tax year (without regard to ownership or the existence of a benefit plan) if the term "officer" were replaced with the term "employee"

The provisions of this new exemption do not affect the reciprocity agreements between North Dakota and the states of Minnesota and Montana, nor do they affect North Dakota's jurisdiction to impose any tax on any taxpayer. Except where the Office of State Tax Commissioner requires the filing of an informational return, a nonresident individual whose compensation is eligible for this new exemption is not required to file a North Dakota income tax return for the tax year.

. . . a nonresident individual whose compensation is eligible for this new exemption is not required to file a North Dakota income tax return . . .

Exemption to income tax withholding from wages paid to certain nonresident individuals working in North Dakota

Generally, an employer must withhold North Dakota income tax from compensation paid to an employee working in North Dakota even though the employee is not a legal resident of North Dakota. There are exceptions, such as U.S. armed forces service members, certain interstate commerce employees, farm workers, and Minnesota and Montana residents covered under the reciprocity agreements between North Dakota and those two states.

Starting with the 2013 tax year, an employer is not required to withhold North Dakota income tax from compensation paid to an employee working in North Dakota ***if all of the following conditions apply***:

- The individual is not a legal resident of North Dakota for the tax year.
- The individual is present in North Dakota to perform employment duties for less than twenty-one days during the tax year.
- The individual's state of legal residence either (1) does not impose an income tax or (2) provides a substantially similar exclusion.

"Compensation" for this purpose means wages as defined for federal income tax withholding purposes. In counting the number of days present in North Dakota, presence in North Dakota for any part of a day constitutes presence for that day unless the presence is solely for purposes of transit through North Dakota.

Take note that this exception to the income tax withholding requirement for employers applies even if the employee has other types of income from North Dakota sources. Therefore, it is possible that a nonresident individual's compensation for services performed in North Dakota would be taxable by North Dakota even though no North Dakota income tax would have to be withheld from it. The provisions of this new exception to the income tax withholding requirement for employers does not affect North Dakota's jurisdiction to impose any tax on any taxpayer.

Statutory change: *S.L. 2011, ch. 464, § 2, creating N.D.C.C. § 57-38-59.3.*
Effective date: *Applies to tax years beginning on or after January 1, 2013.*

Who to contact for 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
E-mail .... taxinfo@nd.gov

Request for copy of return or blank tax forms and instructions 701.328.1243

Taxpayer services *(correction notices, information requests, income tax refunds)* 701.328.1242

Individual income tax questions 701.328.1247
E-mail .... individualtax@nd.gov

Partnership, S corporation, trust, and estate income tax questions 701.328.1258
E-mail .... individualtax@nd.gov

Income tax withholding questions (for employers) 701.328.1248
E-mail .... withhold@nd.gov

Corporation income tax and financial institution tax questions 701.328.1249
E-mail .... corptax@nd.gov

Speech or hearing impaired individuals (Relay North Dakota) 1-800-366-6888

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