

Introduced by

Representatives Headland, Dockter, Grueneich

Senators Cook, Wanzek

1 A BILL for an Act to amend and reenact section 57-38-30.5 of the North Dakota Century Code,  
2 relating to the alternative simplified method for calculating the research and experimental  
3 expenditure credit; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **57-38-30.5. Income tax credit for research and experimental expenditures.**

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

10 1. The amount of the credit for taxpayers that earned or claimed a credit under this  
11 section in taxable years beginning before January 1, 2007, is calculated as follows:

12 a. For the first taxable year beginning after December 31, 2006, the credit is equal  
13 to twenty-five percent of the first one hundred thousand dollars of the qualified  
14 research expenses for the taxable year in excess of the base amount and equal  
15 to seven and one-half percent of all qualified research expenses for the taxable  
16 year more than one hundred thousand dollars in excess of the base amount.

17 b. For the second taxable year beginning after December 31, 2006, the credit is  
18 equal to twenty-five percent of the first one hundred thousand dollars of the  
19 qualified research expenses for the taxable year in excess of the base amount  
20 and equal to eleven percent of all qualified research expenses for the taxable  
21 year more than one hundred thousand dollars in excess of the base amount.

22 c. For the third taxable year beginning after December 31, 2006, the credit is equal  
23 to twenty-five percent of the first one hundred thousand dollars of the qualified  
24 research expenses for the taxable year in excess of the base amount and equal

- 1 to fourteen and one-half percent of all qualified research expenses for the taxable  
2 year more than one hundred thousand dollars in excess of the base amount.
- 3 d. For the fourth through the tenth taxable years beginning after December 31,  
4 2006, the credit is equal to twenty-five percent of the first one hundred thousand  
5 dollars of the qualified research expenses for the taxable year in excess of the  
6 base amount and equal to eighteen percent of all qualified research expenses for  
7 the taxable year more than one hundred thousand dollars in excess of the base  
8 amount.
- 9 e. ~~For~~Except as provided in subsection 4, for the eleventh taxable year beginning  
10 after December 31, 2006, and for each subsequent taxable year in which the  
11 taxpayer conducts qualified research in this state, the credit is equal to  
12 twenty-five percent of the first one hundred thousand dollars of the qualified  
13 research expenses for the taxable year in excess of the base amount and equal  
14 to eight percent of all qualified research expenses for the taxable year more than  
15 one hundred thousand dollars in excess of the base amount.
- 16 f. The maximum annual credit a taxpayer may obtain under this subsection is two  
17 million dollars. Any credit amount earned in the taxable year in excess of two  
18 million dollars may not be carried back or forward as provided in subsection ~~7~~8.
- 19 2. For taxpayers that have not earned or claimed a credit under this section in taxable  
20 years beginning before January 1, 2007, and which begin conducting qualified  
21 research in North Dakota in any of the first four taxable years beginning after  
22 December 31, 2006, the amount of the credit is equal to twenty-five percent of the first  
23 one hundred thousand dollars of the qualified research expenses for the taxable year  
24 in excess of the base amount and equal to twenty percent of all qualified research  
25 expenses for the taxable year more than one hundred thousand dollars in excess of  
26 the base amount.
- 27 a. This rate applies through the tenth taxable year beginning after December 31,  
28 2006.
- 29 b. For the eleventh taxable year beginning after December 31, 2006, and for each  
30 subsequent taxable year in which the taxpayer conducts qualified research in this  
31 state, the credit is equal to twenty-five percent of the first one hundred thousand

1                   dollars of the qualified research expenses for the taxable year in excess of the  
2                   base amount and equal to eight percent of all qualified research expenses for the  
3                   taxable year more than one hundred thousand dollars in excess of the base  
4                   amount.

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

13           4. For a taxable year in which a taxpayer makes an election on the taxpayer's federal  
14           return to use the alternative simplified credit under section 41(c)(5) of the Internal  
15           Revenue Code [26 U.S.C. 41(c)] the amount of the credit under this subsection is:

16           a. Seventeen and one-half percent of the first one hundred thousand dollars of the  
17           alternative excess research and development for the taxable year plus five and  
18           six-tenths percent of the alternative excess research and development for the  
19           taxable year in excess of one hundred thousand dollars.

20           b. If a taxpayer has zero qualified research expenses in any one of the three  
21           taxable years preceding the taxable year for which the credit is determined, the  
22           amount of qualified research expenses for the taxable year multiplied by seven  
23           and one-half percent of the first one hundred thousand dollars plus two and four-  
24           tenths percent of qualified research expenses for the taxable year more than one  
25           hundred thousand dollars.

26           5. For purposes of this section:

27           a. "Alternative excess research and development" means the amount of qualified  
28           research expenses which exceeds fifty percent of the average qualified research  
29           expenses for the three taxable years preceding the taxable year for which the  
30           credit is being determined.

- 1            b.    "Alternative simplified credit" means the computation set forth in section 41(c)(5)  
2                            of the Internal Revenue Code [26 U.S.C. 41(c)(5)], except the term does not  
3                            include qualified research expenses incurred outside the state of North Dakota.
- 4            c.    "Base amount" means base amount as defined in section 41(c) of the Internal  
5                            Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted  
6                            outside the state of North Dakota.
- 7            b.d.    "Director" means the director of the department of commerce division of  
8                            economic development and finance.
- 9            e.e.    "Primary sector business" has the meaning provided in section 1-01-49.
- 10           d.f.    "Qualified research" means qualified research as defined in section 41(d) of the  
11                            Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research  
12                            conducted outside the state of North Dakota.
- 13           e.g.    "Qualified research and development company" means a taxpayer that is a  
14                            primary sector business with annual gross revenues of less than seven hundred  
15                            fifty thousand dollars and which has not conducted new research and  
16                            development in North Dakota.
- 17           f.h.    "Qualified research expenses" means qualified research expenses as defined in  
18                            section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not  
19                            include expenses incurred for basic research conducted outside the state of  
20                            North Dakota.
- 21           5.6.    The credit allowed under this section for the taxable year may not exceed the liability  
22                            for tax under this chapter.
- 23           6.7.    In the case of a taxpayer that is a partner, shareholder, or a member in a passthrough  
24                            entity, the credit allowed for the taxable year may not exceed an amount separately  
25                            computed with respect to the taxpayer's interest in the trade, business, or entity equal  
26                            to the amount of tax attributable to that portion of the taxpayer's taxable income which  
27                            is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
- 28           7.8.    Except as provided in subsection 1, if the amount of the credit determined under this  
29                            section for any taxable year exceeds the limitation under subsection 56, the excess  
30                            may be used as a research credit carryback to each of the three preceding taxable  
31                            years and a research credit carryover to each of the fifteen succeeding taxable years.

1 The entire amount of the excess unused credit for the taxable year must be carried  
2 first to the earliest of the taxable years to which the credit may be carried and then to  
3 each successive year to which the credit may be carried and the amount of the  
4 unused credit which may be added under this subsection may not exceed the  
5 taxpayer's liability for tax less the research credit for the taxable year. A claim to carry  
6 back the credit under this section must be filed within three years of the due date or  
7 extended due date of the return for the taxable year in which the credit was earned.

8 8-9. A taxpayer that is certified as a qualified research and development company by the  
9 director may elect to sell, transfer, or assign all or part of the unused tax credit earned  
10 under this section. The director shall certify whether a taxpayer that has requested to  
11 become a qualified research and development company meets the requirements of  
12 subsection 45. The director shall establish the necessary forms and procedures for  
13 certifying qualifying research and development companies. The director shall issue a  
14 certification letter to the taxpayer and the tax commissioner. A tax credit can be sold,  
15 transferred, or assigned subject to the following:

- 16 a. A taxpayer's total credit assignment under this section may not exceed one  
17 hundred thousand dollars over any combination of taxable years.
- 18 b. If the taxpayer elects to assign or transfer an excess credit under this subsection,  
19 the tax credit transferor and the tax credit purchaser jointly shall file with the tax  
20 commissioner a copy of the purchase agreement and a statement containing the  
21 names, addresses, and taxpayer identification numbers of the parties to the  
22 transfer, the amount of the credit being transferred, the gross proceeds received  
23 by the transferor, and the taxable year or years for which the credit may be  
24 claimed. The taxpayer and the purchaser also shall file a document allowing the  
25 tax commissioner to disclose tax information to either party for the purpose of  
26 verifying the correctness of the transferred tax credit. The purchase agreement,  
27 supporting statement, and waiver must be filed within thirty days after the date  
28 the purchase agreement is fully executed.
- 29 c. The purchaser of the tax credit shall claim the credit beginning with the taxable  
30 year in which the credit purchase agreement was fully executed by the parties. A  
31 purchaser of a tax credit under this section has only such rights to claim and use

1 the credit under the terms that would have applied to the tax credit transferor,  
2 except the credit purchaser may not carry back the credit as otherwise provided  
3 in this section. This subsection does not limit the ability of the tax credit purchaser  
4 to reduce the tax liability of the purchaser, regardless of the actual tax liability of  
5 the tax credit transferor.

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

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

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

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

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

29 ~~9-10.~~ If a taxpayer acquires or disposes of the major portion of a trade or business or the  
30 major portion of a separate unit of a trade or business in a transaction with another  
31 taxpayer, the taxpayer's qualified research expenses and base period must be

1 adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code  
2 [26 U.S.C. 41(f)(3)].

3 ~~40-11.~~ If a taxpayer entitled to the credit provided by this section is a member of a group of  
4 corporations filing a North Dakota consolidated tax return using the combined  
5 reporting method, the credit may be claimed against the aggregate North Dakota tax  
6 liability of all the corporations included in the North Dakota consolidated return. This  
7 section does not apply to tax credits received or purchased under subsection ~~89~~.

8 ~~41-12.~~ An individual, estate, or trust that purchases a credit under this section is entitled to  
9 claim the credit against state income tax liability under section 57-38-30.3.

10 ~~42-13.~~ A passthrough entity entitled to the credit under this section must be considered to be  
11 the taxpayer for purposes of calculating the credit. The amount of the allowable credit  
12 must be determined at the passthrough entity level. The total credit determined at the  
13 entity level must be passed through to the partners, shareholders, or members in  
14 proportion to their respective interests in the passthrough entity. An individual taxpayer  
15 may take the credit passed through under this subsection against the individual's state  
16 income tax liability under section 57-38-30.3.

17 ~~43-14.~~ For any taxable year in which the federal research tax credit provisions of section 41  
18 of the Internal Revenue Code are ineffective, the provisions of section 41 of the  
19 Internal Revenue Code [26 U.S.C. 41] referenced in this section have the same  
20 meaning and application as provided in section 41 of the Internal Revenue Code, as  
21 amended through the most recent taxable year in which the provisions were in effect.

22 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
23 December 31, 2018.