

September 2004

Introduced by

1 A BILL for an Act to amend and reenact section 57-38-31.1 of the North Dakota Century Code,
2 relating to filing of composite income tax returns by passthrough entities; and to provide an
3 effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38-31.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-38-31.1. Composite returns.** ~~Partnerships and subchapter S corporations may file~~
8 ~~a composite return on behalf of nonresident individual partners or shareholders in the manner~~
9 ~~prescribed by the tax commissioner. Any amount of tax paid by the partnership or~~
10 ~~subchapter S corporation on the composite return on behalf of a nonresident partner or~~
11 ~~shareholder constitutes a credit on the North Dakota return of the nonresident individual on~~
12 ~~whose behalf the tax was paid by the partnership or subchapter S corporation. Any return filed~~
13 ~~by a partnership or subchapter S corporation under this section is considered as the return of~~
14 ~~the nonresident individual partner or shareholder on whose behalf the return is filed. The tax~~
15 ~~under this section must be computed by multiplying the aggregate of the shares of North~~
16 ~~Dakota income reportable to North Dakota by the partners or shareholders included in the~~
17 ~~composite return by five and fifty four hundredths percent.~~

18 1. Definitions. For purposes of this section, unless the context otherwise requires:

19 a. "Member" means an individual who is a shareholder of an S corporation; a
20 partner in a general partnership, a limited partnership, or a limited liability
21 partnership; a member of a limited liability company; or a beneficiary of a
22 trust.

23 b. "Nonresident" means an individual who is not a resident of or domiciled in the
24 state or a trust not organized in the state.

- 1 c. "Passthrough entity" means an entity that for the applicable tax year is treated
2 as an S corporation under this chapter or a general partnership, limited
3 partnership, limited liability partnership, trust, or limited liability company that
4 for the applicable tax year is not taxed as a corporation under this chapter.
- 5 2. Composite return authorized.
- 6 a. A passthrough entity may file a composite income tax return on behalf of
7 electing nonresident members reporting and paying income tax, at the highest
8 marginal rate provided in section 57-38-30.3 for individuals, on the members'
9 pro rata or distributive shares of income of the passthrough entity from doing
10 business in, or deriving income from sources within, this state.
- 11 b. A nonresident member whose only source of income within the state is from
12 one or more passthrough entities may elect to be included in a composite
13 return filed under this section.
- 14 c. A nonresident member that has been included in a composite return may file
15 an individual income tax return and shall receive credit for tax paid on the
16 member's behalf by the passthrough entity.
- 17 3. Withholding required.
- 18 a. A passthrough entity shall withhold income tax, at the highest tax rate
19 provided in section 57-38-30.3 for individuals, on the share of income of the
20 entity distributed to each nonresident member and pay the withheld amount in
21 the manner prescribed by the tax commissioner. The passthrough entity is
22 liable to the state for the payment of the tax required to be withheld under this
23 section and is not liable to any member for the amount withheld and paid over
24 in compliance with this section. A member of a passthrough entity that is itself
25 a passthrough entity (a lower-tier passthrough entity) is subject to this same
26 requirement to withhold and pay over income tax on the share of income
27 distributed by the lower-tier passthrough entity to each of its nonresident
28 members. The tax commissioner shall apply tax withheld and paid over by a
29 passthrough entity on distributions to a lower-tier passthrough entity to the
30 withholding required of that lower-tier passthrough entity.

- 1 b. At the time of a payment made under this section, a passthrough entity shall
2 deliver to the tax commissioner a return upon a form prescribed by the tax
3 commissioner showing the total amounts paid or credited to its nonresident
4 members, the amount withheld in accordance with this section, and any other
5 information the tax commissioner may require. A passthrough entity shall
6 furnish to its nonresident member annually, but not later than the fifteenth day
7 of the third month after the end of its taxable year, a record of the amount of
8 tax withheld on behalf of such member on a form prescribed by the tax
9 commissioner.
- 10 c. Notwithstanding subdivision a, a passthrough entity is not required to withhold
11 tax for a nonresident member if:
- 12 (1) The member has a pro rata or distributive share of income of the
13 passthrough entity from doing business in, or deriving income from
14 sources within, this state of less than one thousand dollars per annual
15 accounting period;
- 16 (2) The tax commissioner has determined by rule, ruling, or instruction that
17 the member's income is not subject to withholding;
- 18 (3) The member elects to have the tax due paid as part of a composite
19 return filed by the passthrough entity under subsection 2; or
- 20 (4) The entity is a publicly traded partnership as defined by section 7704(b)
21 of the Internal Revenue Code which is treated as a partnership for the
22 purposes of the Internal Revenue Code and which has agreed to file an
23 annual information return reporting the name, address, taxpayer
24 identification number, and other information requested by the tax
25 commissioner of each unitholder with an income in the state in excess
26 of five hundred dollars.

27 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
28 December 31, 2004.