

Fifty-fifth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1332

Introduced by

Representative Timm

1 A BILL for an Act to create and enact a new subsection to section 57-38-62 of the North Dakota  
2 Century Code, relating to permitting the application of a tax overpayment for a year as an  
3 estimated tax payment for the succeeding year; to amend and reenact section 57-38-35.2 and  
4 subsections 1 and 2 of section 57-38-45 of the North Dakota Century Code, relating to income  
5 tax interest and penalties; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Section 57-38-35.2 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **57-38-35.2. Interest payments.** ~~Interest at the rate of ten percent per annum must be~~  
10 ~~allowed and paid upon overpayments of tax as follows:~~

- 11 1. Interest refundable for overpayment of income taxes relating to an interest  
12 calculation period during which a full or partial offsetting underpayment of income  
13 taxes or interest, or both, either with respect to the tax period at issue or another  
14 tax period, also has been determined, must be computed at the same rate and in  
15 the same manner used in determining the interest for that underpayment.
- 16 2. To the extent subsection 1 does not apply, interest at the rate of ten percent per  
17 annum must be allowed and paid upon overpayments of income taxes as follows:
- 18 a. No interest accrues on refunds arising from excess income tax withholding or  
19 overpayment of declarations of estimated tax accrues for reported on the  
20 taxpayer's initial return for that tax period if a refund payment from sixty days  
21 is made within forty-five days after the due date of the return or after the date  
22 the return was filed, whichever comes later.
- 23 2- b. Interest on refunds arising from amended returns or claims made for credit or  
24 refund accrues for payment from ~~sixty days after~~ the due date of the return or

1 ~~after the date the return was filed or after the date the tax due was fully paid,~~  
2 ~~whichever comes later~~ without regard to extensions of the time for filing the  
3 return. Interest accrues through the date of payment unless payment is made  
4 within forty-five days of the date of the filing of the amended return or claim.

5 3. c. Interest on refunds arising from net operating loss carrybacks or capital loss  
6 carrybacks accrues for payment from ~~sixty days after the due date an~~  
7 ~~amended of the return claiming a credit or refund because of an operating~~  
8 ~~loss carryback or capital loss carryback is filed with the tax commissioner for~~  
9 the year, determined without regard to extensions of the time for filing, giving  
10 rise to the loss carryback, except no interest accrues for refunds paid under  
11 this subdivision within forty-five days of the filing date of the amended return  
12 claiming a credit or refund because of a net operating loss carryback or  
13 capital loss carryback.

14 4. 3. No interest may be paid on refunds arising from amended returns or other claims  
15 filed for taxable years beginning before January 1, 1979.

16 **SECTION 2. AMENDMENT.** Subsections 1 and 2 of section 57-38-45 of the North  
17 Dakota Century Code are amended and reenacted as follows:

18 **57-38-45. Interest and penalties.**

- 19 1. In addition to other increases to tax and penalty prescribed in this chapter, a  
20 taxpayer is subject to interest as follows:
- 21 a. Any taxpayer who requests and is granted an extension of time for filing a  
22 return shall pay, with the tax, interest on the tax at the rate of twelve percent  
23 per annum from the date the tax would have been due if the extension had  
24 not been granted to the date the tax is paid.
- 25 b. If any amount of tax imposed by this chapter, including tax withheld by an  
26 employer, is not paid on or before the due date or extended due date for ~~such~~  
27 the payment, there must be added to the tax interest at the rate of one  
28 percent per month or fraction of a month during which the tax remains unpaid,  
29 computed from the due date of the return to the date paid excepting the  
30 month in which the return was required to be filed or the tax became due.

- 1           c.    If upon audit an additional tax is found to be due, there must be added to the  
2           additional tax due interest at the rate of one percent of ~~such~~ the additional tax  
3           for each month or fraction of a month during which the tax remains unpaid,  
4           computed from the due date of the return to the date paid, excepting the  
5           month in which the return was required to be filed or the tax became due.
- 6           d.    If the mathematical verification of a taxpayer's return results in additional tax  
7           due, there must be added to the additional tax interest at the rate of one  
8           percent of ~~such~~ the additional tax due for each month or fraction of a month  
9           during which the tax remains unpaid, computed from the due date of the  
10          return to the date paid, excepting the month in which the return was required  
11          to be filed or the tax became due.
- 12          e.    If for any portion of the calculation period, with respect to either the tax period  
13          at issue or another tax period, interest was previously computed under  
14          subsection 2 of section 57-38-35.2, interest to be computed under this  
15          subsection with respect to the amount must be computed at the same rate  
16          and in a manner consistent with the previous calculations. If a deficiency is  
17          determined for a tax period for which an overpayment was applied under  
18          section 3 of this Act, interest accrues with respect to that amount from the  
19          estimated tax payment date to which the overpayment was applied.
- 20          2.    In addition to the interest prescribed in this chapter, a taxpayer ~~shall be~~ is subject  
21          to additions to tax and penalty as follows:
- 22               a.    If any taxpayer, without intent to evade any tax imposed by this chapter, shall  
23               fail to pay the amount shown as tax due on any return, including tax withheld  
24               by an employer, filed on or before the due date or extended due date  
25               prescribed therefor, there shall be added to the tax a penalty of five percent  
26               thereof, or five dollars, whichever is greater.
- 27               b.    If any taxpayer, without intent to evade any tax imposed by this chapter, shall  
28               fail to file a return, including the employer's withheld tax return, on or before  
29               the due date or extended due date prescribed therefor, there shall be added a  
30               penalty equal to five percent of the tax required to be reported, or five dollars,  
31               whichever is greater, if the failure is for not more than one month, counting

each fraction of a month as an entire month, with an additional five percent for each additional month or fraction thereof during which ~~such~~ the failure continues, not exceeding twenty-five percent in the aggregate.

c. If upon audit of a taxpayer's return, including tax withheld by an employer, an additional tax is found to be due, there shall be added to the tax penalty as prescribed in subdivision a or b.

d. If the mathematical verification of a taxpayer's return, including tax withheld by an employer, results in additional tax due, there shall be added to the tax penalty as prescribed in subdivision a or b.

e. The provisions of subdivision a, b, c, or d do not apply to the extent it has been determined that the taxpayer has offsetting overpayments of income taxes which have not been refunded or the commissioner previously has refunded income taxes which had been paid for the period.

f. An employer, required to file returns under subsection 1 of section 57-38-60, with four to eight delinquent original tax returns or payments is subject to a penalty of ten percent of the tax due or twenty-five dollars, whichever is greater. An employer with nine or more delinquent original returns or payments is subject to a penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater.

**SECTION 3.** A new subsection to section 57-38-62 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

A taxpayer may apply a tax overpayment from a preceding taxable year as an estimated tax payment on the taxpayer's behalf for the the taxable year succeeding the overpayment. The taxpayer may elect to apply the overpayment to specific estimated tax installments. If the taxpayer does not specify the installment period toward which the overpayment is to be applied, the taxpayer must be considered to have elected to apply the overpayment toward the first required estimated tax installment for the succeeding taxable year.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 1996.