

**FIRST ENGROSSMENT  
with Senate Amendments**

Fifty-fifth  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1332**

Introduced by

Representative Timm

1 A BILL for an Act to create and enact a new subdivision to subsection 6 of section 57-38-38  
2 and a new subsection to section 57-38-62 of the North Dakota Century Code, relating to the  
3 exemption of penalties on refunded income taxes from an amended return or claim and  
4 permitting the application of a tax overpayment for a year as an estimated tax payment for the  
5 succeeding year; to amend and reenact section 57-38-35.2 and subsections 1 and 2 of section  
6 57-38-45 of the North Dakota Century Code, relating to income tax interest and penalties; and  
7 to provide an effective date.

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

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

11 **57-38-35.2. Interest payments.** ~~Interest at the rate of ten percent per annum must be~~  
12 ~~allowed and paid upon overpayments of tax as follows:~~

13 1. ~~Interest~~ If, for any portion of the time period over which interest is otherwise  
14 computed under this section on a refund, interest was previously computed under  
15 subsection 1 of section 57-38-45 on additional tax due for any tax period, the  
16 interest computed on the refund for that portion of the time period must be  
17 computed at the same rate and in the same manner that was used in computing  
18 the interest on the additional tax due, but only to the extent that the amount of the  
19 refund does not exceed the amount of the additional tax due.

20 2. To the extent subsection 1 does not apply, interest at the rate of ten percent per  
21 annum must be allowed and paid upon overpayments of income taxes as follows:

22 a. No interest accrues on refunds arising from excess income tax withholding or  
23 overpayment of declarations of estimated tax ~~accrues for~~ reported on the  
24 taxpayer's return for that tax period if a refund payment from sixty days is

made within forty-five days after the due date of the return or after the date the return was filed, whichever comes later.

~~2.~~ b. Interest on refunds arising from amended returns or claims made for credit or refund accrues for payment from ~~sixty days after the due date of the return or after the date the return was filed or after the date the tax due was fully paid, whichever comes later,~~ without regard to extensions of the time for filing the return, to the date of payment of the refund, except that if the refund payment is made within forty-five days of the date the amended return or claim is filed, interest accrues to the date the amended return or claim is filed.

~~3.~~ c. Interest on refunds arising from net operating loss carrybacks or capital loss carrybacks accrues for payment from ~~sixty days after the due date an amended of the return claiming a credit or refund because of an operating loss carryback or capital loss carryback is filed with the tax commissioner for the year,~~ determined without regard to extensions of the time for filing, giving rise to the loss carryback, to the date of payment of the refund, except that no interest accrues if the refund payment is made within forty-five days of the date the amended return or claim is filed to claim the refund attributable to the net operating loss or capital loss carryback.

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

**SECTION 2.** A new subdivision to subsection 6 of section 57-38-38 of the North Dakota Century Code is created and enacted as follows:

If a determination is made under subdivision a of this subsection that additional tax is due and the tax commissioner has previously refunded income taxes related to the amended return or claim, subsection 2 of section 57-38-45 does not apply to the refunded amount.

**SECTION 3. AMENDMENT.** Subsections 1 and 2 of section 57-38-45 of the North Dakota Century Code are amended and reenacted as follows:

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

1. In addition to other increases to tax and penalty prescribed in this chapter, a taxpayer is subject to interest as follows:

- 1           a. Any taxpayer who requests and is granted an extension of time for filing a  
2           return shall pay, with the tax, interest on the tax at the rate of twelve percent  
3           per annum from the date the tax would have been due if the extension had  
4           not been granted to the date the tax is paid.
- 5           b. If any amount of tax imposed by this chapter, including tax withheld by an  
6           employer, is not paid on or before the due date or extended due date for ~~such~~  
7           the payment, there must be added to the tax interest at the rate of one  
8           percent per month or fraction of a month during which the tax remains unpaid,  
9           computed from the due date of the return to the date paid excepting the  
10          month in which the return was required to be filed or the tax became due.
- 11          c. If upon audit an additional tax is found to be due, there must be added to the  
12          additional tax due interest at the rate of one percent of ~~such~~ the additional tax  
13          for each month or fraction of a month during which the tax remains unpaid,  
14          computed from the due date of the return to the date paid, excepting the  
15          month in which the return was required to be filed or the tax became due.
- 16          d. If the mathematical verification of a taxpayer's return results in additional tax  
17          due, there must be added to the additional tax interest at the rate of one  
18          percent of ~~such~~ the additional tax due for each month or fraction of a month  
19          during which the tax remains unpaid, computed from the due date of the  
20          return to the date paid, excepting the month in which the return was required  
21          to be filed or the tax became due.
- 22          e. If, for any portion of the time period over which interest is otherwise computed  
23          under this subsection on additional tax due, interest was previously computed  
24          under subsection 2 of section 57-38-35.2 on a refund for any tax period, the  
25          interest computed on the additional tax due for that portion of the time period  
26          must be computed at the same rate and in the same manner that was used in  
27          computing the interest on the refund, but only to the extent that the amount of  
28          the additional tax due does not exceed the amount of the refund.
- 29          f. If a deficiency is determined for a tax period for which there was an  
30          overpayment that was applied to the following tax period's estimated tax  
31          under section 4 of this Act, interest accrues with respect to the amount of the

deficiency that is equal to or less than the amount of the overpayment applied from the estimated tax payment date to which the overpayment was applied.

2. In addition to the interest prescribed in this chapter, a taxpayer ~~shall be~~ is subject to additions to tax and penalty as follows:

- a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to pay the amount shown as tax due on any return, including tax withheld by an employer, filed on or before the due date or extended due date prescribed therefor, there shall be added to the tax a penalty of five percent thereof, or five dollars, whichever is greater.
- b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to file a return, including the employer's withheld tax return, on or before the due date or extended due date prescribed therefor, there shall be added a penalty equal to five percent of the tax required to be reported, or five dollars, 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.
- 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

1                    payments is subject to a penalty of fifteen percent of the tax due or one  
2                    hundred dollars, whichever is greater.

3                    **SECTION 4.** A new subsection to section 57-38-62 of the 1995 Supplement to the  
4 North Dakota Century Code is created and enacted as follows:

5                    An individual or corporation may apply a tax overpayment from a preceding  
6                    taxable year as an estimated tax payment on the individual's or corporation's  
7                    behalf for the taxable year succeeding the overpayment. The individual or  
8                    corporation may elect to apply the overpayment to specific estimated tax  
9                    installments. If the individual or corporation does not specify the installment period  
10                   toward which the overpayment is to be applied, the individual or corporation must  
11                   be considered to have elected to apply the overpayment toward the first required  
12                   estimated tax installment for the succeeding taxable year.

13                   **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
14 December 31, 1997, except subdivision f of subsection 1 of section 57-38-45 and section 4 of  
15 this Act which are effective for taxable periods beginning after December 31, 1996.