

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2246

Introduced by

Senators G. Nelson, Mathern, Tomac

Representatives Boucher, Glassheim, Maragos

1 A BILL for an Act to amend and reenact section 57-38-30.3 of the North Dakota Century Code,
2 relating to individual income tax determination under the simplified optional method of
3 computing tax; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-38-30.3. Simplified optional method of computing tax.**

8 1. Notwithstanding the other provisions of this chapter, an individual, estate, or trust
9 may elect to determine ~~state an~~ income tax liability ~~by applying the provisions of~~
10 ~~under~~ this section. ~~Any taxpayer~~ An individual, estate, or trust electing to
11 determine ~~his an~~ income tax liability ~~pursuant to~~ under this section is ~~only~~ eligible
12 for ~~only~~ those adjustments or credits ~~which that~~ are specifically provided ~~for~~ in this
13 section. ~~Provided, that for purposes of this section, any person~~ If a nonresident
14 individual otherwise required to file a state income tax return ~~pursuant to the~~
15 ~~provisions of~~ under this chapter is not required to file a federal income tax return or
16 is allowed to exclude income in computing federal taxable income because of an
17 income tax treaty between the United States and a foreign country, the individual
18 shall compute, or recompute, but who has not computed a federal taxable income
19 or federal income tax liability figure shall compute such a federal taxable income
20 figure using a pro forma return pursuant to the provisions of this section in order to
21 determine a federal income tax liability figure in the manner prescribed by the tax
22 commissioner to be used as a starting point in computing ~~state income~~ the tax
23 under subsection 3, the purpose of which is to prevent income otherwise taxable

under this chapter from becoming exempt because of the treaty, if the treaty does not specifically preempt state taxation of the income.

2. A tax is hereby imposed for each taxable year upon all income earned or received in that taxable year by ~~every~~ a resident ~~and nonresident~~ individual, estate, ~~and or~~ trust, or on the income derived from sources in this state by a nonresident individual, estate, or trust, electing to determine an income tax under this section. ~~This tax is fourteen percent of the individual's, estate's, or trust's adjusted federal income tax liability for the taxable year.~~ The tax is equal to the amount determined under subsection 3.

3. The tax under this section applies to taxable income as defined under this subsection. For purposes of this subsection, "taxable income" means federal taxable income computed under the United States Internal Revenue Code of 1954, as amended, plus the adjustments provided under subsection 4. The tax is equal to the amount determined in accordance with the applicable table in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes multiplied by the fraction determined under subsection 5. For an estate or trust, the table in subdivision e must be used for purposes of this subsection.

- a. Single, other than head of household or surviving spouse.

If taxable income is:

The tax is equal to:

Not over \$24,6502.10 %

Over \$24,650 but not over \$59,750\$517.65 plus 3.92% of amount over \$24,650

Over \$59,750 but not over \$124,650 ...\$1,893.57 plus 4.34% of amount over \$59,750

Over \$124,650 but not over \$271,050 . \$4,710.23 plus 5.04% of amount over \$124,650

Over \$271,050\$12,088.79 plus 5.54% of amount over \$271,050

- b. Married filing jointly and surviving spouse.

If taxable income is:

The tax is equal to:

Not over \$41,2002.10 %

Over \$41,200 but not over \$99,600\$865.20 plus 3.92% of amount over \$41,200

Over \$99,600 but not over \$151,750 ...\$3,154.48 plus 4.34% of amount over \$99,600

Over \$151,750 but not over \$271,050 . \$5,417.79 plus 5.04% of amount over \$151,750

Over \$271,050\$11,430.51 plus 5.54% of amount over \$271,050

c. Married filing separately.

If taxable income is:

The tax is equal to:

Not over \$20,6002.10 %

Over \$20,600 but not over \$49,800\$432.60 plus 3.92% of amount over \$20,600

Over \$49,800 but not over \$75,875\$1,577.24 plus 4.34% of amount over \$49,800

Over \$75,875 but not over \$135,525 ...\$2,708.90 plus 5.04% of amount over \$75,875

Over \$135,525\$5,715.26 plus 5.54% of amount over \$135,525

d. Head of household.

If taxable income is:

The tax is equal to:

Not over \$33,0502.10 %

Over \$33,050 but not over \$85,350\$694.05 plus 3.92% of amount over \$33,050

Over \$85,350 but not over \$138,200 ...\$2,744.21 plus 4.34% of amount over \$85,350

Over \$138,200 but not over \$271,050 . \$5,037.90 plus 5.04% of amount over \$138,200

Over \$271,050\$11,733.54 plus 5.54% of amount over \$271,050

e. Estates and trusts.

If taxable income is:

The tax is equal to:

Not over \$1,6502.10 %

Over \$1,650 but not over \$3,900\$34.65 plus 3.92% of amount over \$1,650

Over \$3,900 but not over \$5,950\$122.85 plus 4.34% of amount over \$3,900

Over \$5,950 but not over \$8,100\$211.82 plus 5.04% of amount over \$5,950

Over \$8,100\$320.18 plus 5.54% of amount over \$8,100

f. The tax commissioner shall publish the tax tables under this subsection in the instructions accompanying the individual income tax return in the manner deemed appropriate by the tax commissioner.

g. Where married persons who file a joint federal income tax return are required to file separate state income tax returns under subsection 6, the tax under this subsection for each spouse must be determined by applying the rates under subdivision b to the spouses' total federal taxable income and prorating the result between the spouses based on their respective shares of the total federal adjusted gross income.

1 h. For taxable years beginning after December 31, 1997, the tax commissioner
2 shall prescribe new tables that apply in lieu of the tables set forth in
3 subdivisions a through e. The new tables must be determined by increasing
4 the minimum and maximum dollar amounts for each income bracket for which
5 a tax is imposed by the cost-of-living adjustment for the taxable year as
6 determined by the secretary of the United States treasury for purposes of
7 section 1(f) of the United States Internal Revenue Code of 1954, as
8 amended. For this purpose, the rate applicable to each income bracket may
9 not be changed, and the manner of applying the cost-of-living adjustment
10 must be the same as that used for adjusting the income brackets for federal
11 income tax purposes.

12 3. ~~The adjusted federal income tax liability for a resident individual, estate, and trust~~
13 ~~must be determined by multiplying the federal income tax liability by a fraction, the~~
14 ~~numerator of which is the adjusted gross income taxable to this state and the~~
15 ~~denominator of which is the total adjusted gross income as reported on the federal~~
16 ~~income tax return. To the extent they are included in the taxpayer's federal~~
17 ~~adjusted gross income, the following amounts must be excluded from the~~
18 ~~numerator:~~

19 a. ~~Interest income from obligations of the United States and income exempt~~
20 ~~from state income tax under federal statute or United States or North Dakota~~
21 ~~constitutional provisions.~~

22 b. ~~The portion of a distribution from a qualified investment fund described in~~
23 ~~subsection 4.2 of section 57-38-01 which is attributable to investments by the~~
24 ~~qualified investment fund in obligations of the United States, obligations of~~
25 ~~North Dakota or its political subdivisions, and any other obligation the interest~~
26 ~~from which is exempt from state income tax under federal statute or United~~
27 ~~States or North Dakota constitutional provisions.~~

28 4. ~~The adjusted federal income tax liability of a nonresident individual, estate, and~~
29 ~~trust must be determined by multiplying the federal income tax liability by a~~
30 ~~fraction, the numerator of which is the adjusted gross income derived from sources~~
31 ~~within this state and the denominator of which is the total adjusted gross income as~~

1 ~~reported on the federal income tax return. To the extent they are included in the~~
2 ~~taxpayer's federal adjusted gross income, the following amounts must be excluded~~
3 ~~from the numerator:~~

4 a. ~~Interest income from obligations of the United States and income exempt~~
5 ~~from state income tax under federal statute or United States or North Dakota~~
6 ~~constitutional provisions.~~

7 b. ~~The portion of a distribution from a qualified investment fund described in~~
8 ~~subsection 4.2 of section 57-38-01 which is attributable to investments by the~~
9 ~~qualified investment fund in obligations of the United States, obligations of~~
10 ~~North Dakota or its political subdivisions, and any other obligation the interest~~
11 ~~from which is exempt from state income tax under federal statute or United~~
12 ~~States or North Dakota constitutional provisions.~~

13 4. For purposes of subsection 3, federal taxable income must be increased by the
14 following:

15 a. The amount of a lump-sum distribution allowed as a deduction from federal
16 gross income under section 402(d)(3) of the United States Internal Revenue
17 Code of 1954, as amended; and

18 b. Except for obligations of the state of North Dakota or its political subdivisions,
19 the amount of interest from obligations of states and their political
20 subdivisions.

21 5. For purposes of subsection 3, the fraction is equal to North Dakota adjusted gross
22 income divided by federal adjusted gross income. For this purpose, "North Dakota
23 adjusted gross income" means federal adjusted gross income reduced by:

24 a. Interest income from obligations of the United States;

25 b. Income exempt from state income tax under federal statute, the Constitution
26 of the United States, or the Constitution of North Dakota;

27 c. The portion of a distribution from a qualified investment fund as defined under
28 subsection 4.2 of section 57-38-01 which is attributable to investments by the
29 qualified investment fund in obligations of the United States, obligations of
30 North Dakota or its political subdivisions, and any other obligation the interest

1 from which is exempt from state income tax under federal statute, the
2 Constitution of the United States, or the Constitution of North Dakota; and
3 d. For a nonresident individual, estate, or trust, the portion of federal adjusted
4 gross income not allocable or apportionable to this state under this chapter.

5 5. ~~For the purposes of this section, the term "federal income tax liability" means the~~
6 ~~individual's, estate's, or trust's federal income tax liability as computed for federal~~
7 ~~income tax purposes using tax tables, tax rate schedules, or form 8615, plus~~
8 ~~additional taxes due on federal income tax schedules or forms 4970, 4972, section~~
9 ~~72(m)(5) penalty tax, 5329, 6251, and 8656, less any credit for prior year minimum~~
10 ~~tax (form 8801), and before credit for the elderly or the disabled (schedule R),~~
11 ~~credit for child and dependent care expenses (form 2441), investment credit (form~~
12 ~~3468), foreign tax credit (form 1116), general business credit (form 3800), jobs~~
13 ~~credit (form 5884), credit for alcohol used as fuel (form 6478), credit for increasing~~
14 ~~research activities (form 6765), low income housing credit (form 8586) and~~
15 ~~nonconventional fuel credit, and before reduction for federal income tax withheld,~~
16 ~~estimated payments, earned income credit, amount paid with form 4868, excess~~
17 ~~social security tax, and the federal Railroad Retirement Tax Act, tax withheld,~~
18 ~~credit for federal tax on gasoline and special fuels (form 4136), and regulated~~
19 ~~investment company credits (form 2439). The term does not include amounts due~~
20 ~~for self-employment tax or social security tax and railroad retirement tax on tips.~~
21 ~~For purposes of this subsection, additional taxes due on federal income tax form~~
22 ~~6251 or form 8656 must be reduced, but not below zero, by the amount of any~~
23 ~~investment credit used to reduce the federal tax liability before calculation of the~~
24 ~~additional tax due on form 6251 or form 8656.~~

25 6. ~~A husband and wife filing a joint federal income tax return shall file a joint state~~
26 ~~income tax return if the return is filed under this section. The same filing status~~
27 ~~used by the taxpayer to file the federal income tax return must be used when filing~~
28 ~~the return under this chapter. However, in the case of married persons filing a joint~~
29 ~~federal income tax return, separate state income tax returns must be filed if one~~
30 ~~spouse is a resident and the other spouse is a nonresident. If separate federal~~
31 ~~income tax returns are filed by married persons, or if separate state income tax~~

returns are required to be filed under this subsection, one spouse's state income tax return may be filed under this section and the other spouse's state income tax return may be filed under the other provisions of this chapter.

7. a. A resident individual, estate, or trust must be allowed a credit against the tax otherwise due under this section for the amount of any income tax imposed on the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources therein and which is also subject to tax under this section.

b. The credit provided under this subsection may not exceed the proportion of the tax otherwise due under this section that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's entire adjusted gross income as reported on the taxpayer's federal income tax return.

~~8. a. Individuals, estates, or trusts receiving a refund of federal income tax for a year for which an election to file state income tax returns has been made under this section shall file amended state income tax returns reducing the federal income tax liability for the year for which the federal income tax refund is granted and may not report the federal income tax refund in the year received.~~

~~b. Individuals, estates, or trusts assessed additional federal income tax for a year for which an election to file state income tax returns has been made under this section shall file amended state income tax returns increasing the federal income tax liability for the year for which the additional federal income tax is assessed and may not report increased federal income tax liability in the year in which the additional federal income tax is paid.~~

9. ~~8.~~ The tax commissioner may ~~prescribe procedures and guidelines~~ adopt rules to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may ~~prescribe procedures and guidelines~~ adopt rules to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.

1 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
2 December 31, 1997.