

Fifty-seventh  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1055

Introduced by

Representative 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 state income taxes; 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 ~~the taxpayer's an~~ income tax liability ~~pursuant to~~ under this section is  
12 ~~only~~ eligible for only those adjustments or credits ~~which that~~ are specifically  
13 provided ~~for~~ in this section. ~~Provided, that for purposes of this section, any person~~  
14 If a nonresident individual otherwise required to file a state income tax return  
15 ~~pursuant to the provisions of~~ under this chapter, ~~but who has not computed a~~  
16 ~~federal taxable income or federal income tax liability figure shall compute such a~~ is  
17 not required to file a federal income tax return or is allowed to exclude income in  
18 computing federal taxable income because of an income tax treaty between the  
19 United States and a foreign country, the individual shall compute or recompute  
20 federal taxable income figure using a pro forma return pursuant to the provisions of  
21 this section in order to determine a federal income tax liability figure in the manner  
22 prescribed by the tax commissioner to be used as a starting point in computing  
23 ~~state income~~ the tax 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, plus the tax determined under subsection 4, and minus the~~  
~~amount determined under subsection 5.~~

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

- a. ~~Interest income from obligations of the United States and income exempt from~~  
~~state income tax under federal statute or United States or North Dakota~~  
~~constitutional provisions.~~
- b. ~~The portion of a distribution from a qualified investment fund described in~~  
~~section 57-38-01 which is attributable to investments by the qualified~~  
~~investment fund in obligations of the United States, obligations of North~~  
~~Dakota or its political subdivisions, and any other obligation the interest from~~  
~~which is exempt from state income tax under federal statute or United States~~  
~~or North Dakota constitutional provisions.~~
- e. ~~An amount equal to the earnings that are passed through to a taxpayer in~~  
~~connection with an allocation and apportionment to North Dakota under~~  
~~chapter 57-35.3.~~

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. The tax for individuals 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 6. 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.

<u>If taxable income is:</u>	<u>The tax is equal to:</u>
<u>Not over \$27,050</u>	<u>2.10%</u>
<u>Over \$27,050 but not over \$65,550</u>	<u>\$568.05 plus 3.92% of amount over \$27,050</u>
<u>Over \$65,550 but not over \$136,750</u>	<u>\$2,077.25 plus 4.34% of amount over \$65,550</u>
<u>Over \$136,750 but not over \$297,300</u>	<u>\$5,167.33 plus 5.04% of amount over \$136,750</u>
<u>Over \$297,300</u>	<u>\$13,259.05 plus 5.54% of amount over \$297,300</u>

b. Married filing jointly and surviving spouse.

<u>If taxable income is:</u>	<u>The tax is equal to:</u>
<u>Not over \$45,200</u>	<u>2.10%</u>
<u>Over \$45,200 but not over \$109,250</u>	<u>\$949.20 plus 3.92% of amount over \$45,200</u>
<u>Over \$109,250 but not over \$166,450</u>	<u>\$3,459.96 plus 4.34% of amount over \$109,250</u>
<u>Over \$166,450 but not over \$297,300</u>	<u>\$5,942.44 plus 5.04% of amount over \$166,450</u>
<u>Over \$297,300</u>	<u>\$12,537.28 plus 5.54% of amount over \$297,300</u>

c. Married filing separately.

<u>If taxable income is:</u>	<u>The tax is equal to:</u>
<u>Not over \$22,600</u>	<u>2.10%</u>
<u>Over \$22,600 but not over \$54,625</u>	<u>\$474.60 plus 3.92% of amount over \$22,600</u>
<u>Over \$54,625 but not over \$83,225</u>	<u>\$1,729.98 plus 4.34% of amount over \$54,625</u>
<u>Over \$83,225 but not over \$148,650</u>	<u>\$2,971.22 plus 5.04% of amount over \$83,225</u>
<u>Over \$148,650</u>	<u>\$6,268.64 plus 5.54% of amount over \$148,650</u>

d. Head of household.

<u>If taxable income is:</u>	<u>The tax is equal to:</u>
<u>Not over \$36,250</u>	<u>2.10%</u>
<u>Over \$36,250 but not over \$93,600</u>	<u>\$761.25 plus 3.92% of amount over \$36,250</u>

1	<u>Over \$93,600 but not over \$151,600</u>	<u>\$3,009.37 plus 4.34% of amount over \$93,600</u>
2	<u>Over \$151,600 but not over \$297,300</u>	<u>\$5,526.57 plus 5.04% of amount over \$151,600</u>
3	<u>Over \$297,300</u>	<u>\$12,869.85 plus 5.54% of amount over \$297,300</u>

4           e. Estates and trusts.

5     If taxable income is:                                 The tax is equal to:

6	<u>Not over \$1,800</u>	<u>2.10%</u>
7	<u>Over \$1,800 but not over \$4,250</u>	<u>\$37.80 plus 3.92% of amount over \$1,800</u>
8	<u>Over \$4,250 but not over \$6,500</u>	<u>\$133.84 plus 4.34% of amount over \$4,250</u>
9	<u>Over \$6,500 but not over \$8,900</u>	<u>\$231.49 plus 5.04% of amount over \$6,500</u>
10	<u>Over \$8,900</u>	<u>\$352.45 plus 5.54% of amount over \$8,900</u>

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

14           g. If married persons who file a joint federal income tax return are required to file  
15                 separate state income tax returns under subsection 7, the tax under this  
16                 subsection for each spouse must be determined by applying the rates under  
17                 subdivision b to the spouses' total federal taxable income and prorating the  
18                 result between the spouses based on their respective shares of the total  
19                 federal adjusted gross income.

20           h. For taxable years beginning after December 31, 2001, the tax commissioner  
21                 shall prescribe new tables that apply in lieu of the tables set forth in  
22                 subdivisions a through e. The new tables must be determined by increasing  
23                 the minimum and maximum dollar amounts, for each income bracket for  
24                 which a tax is imposed, by the cost-of-living adjustment for the taxable year as  
25                 determined by the secretary of the United States treasury for purposes of  
26                 section 1(f) of the United States Internal Revenue Code of 1954, as amended.  
27                 For this purpose, the rate applicable to each income bracket may not be  
28                 changed, and the manner of applying the cost-of-living adjustment must be  
29                 the same as that used for adjusting the income brackets for federal income  
30                 tax purposes.

i. If an individual, estate, or trust is subject to the provisions of section 1(h) of the Internal Revenue Code of 1954, as amended, relating to computation of the federal income tax when federal taxable income includes a net long-term capital gain, the tax under this subsection may not exceed the lesser of the amount otherwise determined under this subsection or fourteen percent of the federal income tax determined under section 1(h) of the Internal Revenue Code of 1954, as amended.

j. If an individual, estate, or trust is subject to the provisions of section 1301 of the Internal Revenue Code of 1954, as amended, relating to income averaging for farmers, the tax under this subsection may not exceed the lesser of the amount otherwise determined under this subsection or fourteen percent of the federal income tax determined under section 1301 of the Internal Revenue Code of 1954, as amended.

k. If an individual is subject to the provisions of section 1(g) of the Internal Revenue Code of 1954, as amended, relating to computation of the federal income tax for a child under age fourteen who has investment income, the tax under this subsection may not exceed the lesser of the amount otherwise determined under this subsection or fourteen percent of the federal income tax determined under section 1(g) of the Internal Revenue Code of 1954, as amended.

4. ~~The adjusted federal income tax liability of a nonresident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income derived from sources within this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator:~~

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

- 1           b. ~~The portion of a distribution from a qualified investment fund described in~~  
2           ~~section 57-38-01 which is attributable to investments by the qualified~~  
3           ~~investment fund in obligations of the United States, obligations of North~~  
4           ~~Dakota or its political subdivisions, and any other obligation the interest from~~  
5           ~~which is exempt from state income tax under federal statute or United States~~  
6           ~~or North Dakota constitutional provisions.~~
- 7           e. ~~An amount equal to the earnings that are passed through to a taxpayer in~~  
8           ~~connection with an allocation and apportionment to North Dakota under~~  
9           ~~chapter 57-35.3.~~

10           The tax under this subsection is determined by multiplying the total of the  
11           additional federal taxes set forth in subdivision a by fourteen percent and then  
12           multiplying the result by the fraction determined under subsection 6.

- 13           a. For purposes of this subsection, additional federal taxes are:
- 14               (1) Federal alternative minimum tax computed on federal form 6251;  
15               (2) Federal tax on a lump sum distribution computed on federal form 4972;  
16               (3) Federal tax on an accumulation distribution of a trust computed on  
17               federal form 4970;  
18               (4) Federal tax on early distributions, excess contributions, excess  
19               accumulations, and excess distributions with respect to qualified  
20               retirement plans, individual retirement accounts, annuities, and modified  
21               endowment contracts computed on federal form 5329;  
22               (5) Federal excess benefits tax under section 72(m)(5) of the Internal  
23               Revenue Code of 1954, as amended; and  
24               (6) Federal tax computed on federal form 8814.
- 25           b. For a nonresident individual, estate, or trust, the federal taxes under  
26           paragraphs 2 through 6 of subdivision a are included only to the extent the  
27           related income is allocated or apportioned to this state under this chapter.

- 28           5. ~~For purposes of this section, "federal income tax liability" means the individual's,~~  
29           ~~estate's, or trust's federal income tax computed for the taxable year under Internal~~  
30           ~~Revenue Code sections 1 and 3, relating to the computation of the regular federal~~  
31           ~~income tax before credits, including calculation and tax rate modifications~~

prescribed under other provisions of the Internal Revenue Code, adjusted as follows:

- a. ~~Add the alternative minimum tax computed under Internal Revenue Code section 55;~~
- b. ~~Add the tax on a lump sum distribution computed under Internal Revenue Code section 402; however, this adjustment does not apply if the lump sum distribution is received while a nonresident of this state and is exempt from taxation by this state under federal law;~~
- c. ~~Add the tax on an accumulation distribution of a trust computed under Internal Revenue Code section 667;~~
- d. ~~Add the tax computed under Internal Revenue Code section 72(m)(5) on excess benefits received from a qualified plan under Internal Revenue Code section 401(a) or a qualified annuity under Internal Revenue Code section 403(a);~~
- e. ~~Add the tax computed under Internal Revenue Code section 72(q)(1) on an early distribution from an annuity contract;~~
- f. ~~Add the tax computed under Internal Revenue Code section 72(t)(1) on an early distribution from a qualified retirement plan;~~
- g. ~~Add the tax computed under Internal Revenue Code section 4973(a) on excess contributions to an individual retirement account, medical savings account, and certain Internal Revenue Code section 403(b) and annuity contracts; however, this adjustment does not apply if the individual, estate, or trust is a nonresident of this state;~~
- h. ~~Add the tax computed under Internal Revenue Code section 4974(a) on excess accumulations in a qualified retirement plan; however, this adjustment does not apply if the individual, estate, or trust is a nonresident of this state;~~
- i. ~~Add the tax computed under Internal Revenue Code section 4980A on excess distributions from a qualified retirement plan; and~~
- j. ~~Subtract the credit for prior year minimum tax computed under Internal Revenue Code section 53.~~

1 ~~Unless specifically provided for in this subsection, no federal income tax credit may~~  
2 ~~be subtracted in determining the federal income tax liability for purposes of this~~  
3 ~~section.~~

4 The amount under this subsection is determined by multiplying the federal credit  
5 for prior year minimum tax computed on federal form 8801 by fourteen percent and  
6 then multiplying the result by the fraction determined under subsection 6.

7 6. For purposes of subsections 3 through 5, the fraction is equal to North Dakota  
8 adjusted gross income divided by federal adjusted gross income. For this purpose,  
9 "North Dakota adjusted gross income" means federal adjusted gross income  
10 reduced by:

- 11 a. Interest income from obligations of the United States;  
12 b. Income exempt from state income tax under federal statute, the Constitution  
13 of the United States, or the Constitution of North Dakota;  
14 c. The portion of a distribution from a qualified investment fund as defined under  
15 section 57-38-01 which is attributable to investments by the qualified  
16 investment fund in obligations of the United States, obligations of North  
17 Dakota or its political subdivisions, and any other obligation the interest from  
18 which is exempt from state income tax under federal statute, the Constitution  
19 of the United States, or the Constitution of North Dakota; and  
20 d. For a nonresident individual, estate, or trust, the portion of federal adjusted  
21 gross income not allocable or apportionable to this state under this chapter.

22 6. 7. ~~A husband and wife filing a joint federal income tax return shall file a joint state~~  
23 ~~income tax return if the return is filed under this section. The same filing status~~  
24 used by the taxpayer to file the federal income tax return must be used when filing  
25 the return under this chapter. However, in the case of married persons filing a joint  
26 federal income tax return, separate state income tax returns must be filed if one  
27 spouse is a resident and the other spouse is a nonresident. If separate federal  
28 income tax returns are filed by married persons, or if separate state income tax  
29 returns are required to be filed under this subsection, one spouse's state income  
30 tax return may be filed under this section and the other spouse's state income tax  
31 return may be filed under the other provisions of this chapter.



- 1        ~~7. 8.~~ a. A resident individual, estate, or trust must be allowed a credit against the tax  
2                    otherwise due under this section for the amount of any income tax imposed  
3                    on the taxpayer for the taxable year by another state or territory of the United  
4                    States or the District of Columbia on income derived from sources therein and  
5                    which is also subject to tax under this section.
- 6                    b. The credit provided under this subsection may not exceed the proportion of  
7                    the tax otherwise due under this section that the amount of the taxpayer's  
8                    adjusted gross income derived from sources in the other taxing jurisdiction  
9                    bears to the taxpayer's entire adjusted gross income as reported on the  
10                    taxpayer's federal income tax return.
- 11        ~~8. — a. Individuals, estates, or trusts receiving a refund of federal income tax for a~~  
12                    ~~year for which an election to file state income tax returns has been made~~  
13                    ~~under this section shall file amended state income tax returns reducing the~~  
14                    ~~federal income tax liability for the year for which the federal income tax refund~~  
15                    ~~is granted and may not report the federal income tax refund in the year~~  
16                    ~~received.~~
- 17                    ~~b. Individuals, estates, or trusts assessed additional federal income tax for a~~  
18                    ~~year for which an election to file state income tax returns has been made~~  
19                    ~~under this section shall file amended state income tax returns increasing the~~  
20                    ~~federal income tax liability for the year for which the additional federal income~~  
21                    ~~tax is assessed and may not report increased federal income tax liability in the~~  
22                    ~~year in which the additional federal income tax is paid.~~
- 23        9. The ~~tax~~ commissioner may ~~prescribe procedures and guidelines~~ adopt rules to  
24                    prevent requiring income that had been previously taxed under this chapter from  
25                    becoming taxed again because of the provisions of this section and may ~~prescribe~~  
26                    ~~procedures and guidelines~~ adopt rules to prevent any income from becoming  
27                    exempt from taxation because of the provisions of this section if it would otherwise  
28                    have been subject to taxation under the provisions of this chapter.
- 29        10. A taxpayer filing a return under this section is entitled to the credit provided under  
30                    section 57-38-01.20.

1           11.    A taxpayer filing a return under this section is entitled to the exemptions or credits  
2                   provided under sections 40-63-04, 40-63-06, and 40-63-07.

3           **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
4   December 31, 2000.