Fifty-seventh Legislative Assembly of North Dakota

HOUSE BILL NO. 1065

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

- 1 A BILL for an Act to create and enact section 57-38-08.1 of the North Dakota Century Code,
- 2 relating to the allocation and apportionment of partnership income for income tax purposes; to
- 3 amend and reenact subsections 4, 5, and 6 of section 57-38-04 and section 57-38-08 of the
- 4 North Dakota Century Code, relating to the allocation and apportionment of an individual's
- 5 gross income and the distribution of partnership income for income tax purposes; to repeal
- 6 section 57-38-10 of the North Dakota Century Code, relating to allocation and apportionment of
- 7 partnership income for income tax purposes; and to provide an effective date.

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

9 SECTION 1. AMENDMENT. Subsections 4, 5, and 6 of section 57-38-04 of the North
10 Dakota Century Code are amended and reenacted as follows:

- 11 4. Income derived from carrying on a trade or business activity carried on by an 12 individual as a sole proprietorship, or through a partnership, subchapter S 13 corporation, or other passthrough entity must be assigned to this state without 14 regard to the residence of the individual if the trade or business activity is 15 conducted wholly within this state. Income derived from gaming activity carried on 16 in this state by an individual must be assigned to this state without regard to the 17 residence of the individual. 18 Whenever a trade or business activity is carried on partly within and partly without 5.
- this state by a nonresident of this state, as a sole proprietorship, or through a
 partnership, subchapter S corporation, or other passthrough entity, the entire
 income therefrom must be allocated to this state and to other states, according to
 the provisions of chapter 57-38.1, providing for allocation and apportionment of
 income of corporations doing business within and without this state.

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1	6.	a.	Income and gains received by a resident of this state from tangible property		
2			not employed in the business and from tangible property employed in the		
3			business of the taxpayer, if such the business consists principally of the		
4			holding of such the property and the collection of income and gains therefrom,		
5			must be assigned to this state without regard to the situs of such the property.		
6		b.	Income derived from carrying on a trade or business <u>activity carried on</u> by		
7			residents of this state, whether the business activity is conducted as a sole		
8			proprietorship, or through a partnership, subchapter S corporation or other		
9			passthrough entity, must be assigned to this state without regard to where		
10			such trade or the business activity is conducted, and the provisions of chapter		
11			57-38.1 do not apply. If the taxpayer believes the operation of this subdivision		
12			with respect to the taxpayer's income is unjust, the taxpayer may petition the		
13			tax commissioner who may allow use of another method of reporting income,		
14			including separate accounting.		
15		C.	If a tax is paid to another state or territory of the United States or to the District		
16			of Columbia on any income assigned to this state under this subsection, a		
17			credit for any tax so paid may be deducted from the tax assessed under this		
18			chapter if written proof of such the payment is furnished to the tax		
19			commissioner; provided, that this credit for such the tax may not exceed the		
20			proportion of the tax otherwise due under this chapter that the amount of the		
21			taxpayer's adjusted gross income derived from sources in the other taxing		
22			jurisdiction bears to the taxpayer's adjusted gross income as computed		
23			pursuant to the Internal Revenue Code of 1954, as amended.		
24	SE	ΞΟΤΙΟ	N 2. AMENDMENT. Section 57-38-08 of the North Dakota Century Code is		
25	amended	and re	enacted as follows:		
26	57	/-38-08	B. Partnerships not subject to tax. Partnerships are not subject to tax under		
27	this chapt	er. Pe	rsons carrying on a business as partners are taxable on their share of the net		
28	profits of a partnership whether the same are distributed or not and are entitled to deduct their				
29	share of any net losses suffered by the partnership respective shares of the partnership's				
30	income, gain, loss, and deduction included in the partner's federal taxable income, as provided				
31	under section 57-38-08.1.				

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1	SECTION 3. Section 57-38-08.1 of the North Dakota Century Code is created and
2	enacted as follows:

3	57-38-08.1. Allocation and apportionment of partnership income - Taxation of						
4	partners.						
5	<u>1.</u>	<u>A pa</u>	artners	hip that carries on its business activity entirely within this state shall			
6		repo	ort all o	of its income or loss to this state. A partnership that carries on its			
7		<u>bus</u>	iness a	activity within and without this state shall allocate and apportion its			
8		inco	me or	loss to this state in the same manner as the income or loss of a			
9		corp	oratio	n is allocated and apportioned to the state under chapter 57-38.1.			
10	<u>2.</u>	Res	Resident partners, limited to individuals, estates, and trusts, must report their entire				
11		<u>dist</u>	ributive	e share to this state as provided in subdivision b of subsection 6 of			
12		sec	tion 57	-38-04, and may claim a credit for taxes paid to another state on that			
13		port	ion of	their distributive share attributable to and taxed by another state, as			
14		provided in subdivision c of subsection 6 of section 57-38-04.					
15	<u>3.</u>	<u>a.</u>	<u>In de</u>	termining the gross income of a nonresident partner, limited to			
16			indivi	duals, estates, and trusts, there must be included only that part derived			
17			from	or connected with sources in this state of the partner's distributive share			
18			<u>of ite</u>	ms of partnership income, gain, loss and deduction, or item thereof,			
19			enter	ing into the federal taxable income of the partner, as determined under			
20			section	on 57-38-04. Guaranteed payments paid to nonresident partners of a			
21			partn	ership that has business activity in this state are treated as a distributive			
22			share	e of partnership income for state tax purposes.			
23		<u>b.</u>	<u>In de</u>	termining the sources of a nonresident partner's income, no effect shall			
24			<u>be gi</u>	ven to a provision in the partnership agreement which:			
25			<u>(1)</u>	Characterizes payments to the partners as being for services or for the			
26				use of capital or allocates to the partner, as income or gain from			
27				sources outside this state, a greater proportion of the partner's			
28				distributive share of partnership income or gain than the ratio of			
29				partnership income or gain from sources outside this state to			
30				partnership income or gain from all sources, except as authorized in			
31				subdivision d; or			

1		<u>(2)</u>	Allocates to the partner a greater proportion of a partnership item of		
2			loss or deduction connected with sources in this state than the		
3			proportionate share of the partner, for federal income tax purposes, of		
4			partnership loss or deduction generally, except as authorized in		
5			subdivision d.		
6	<u>C.</u>	<u>Any ı</u>	modification to federal taxable income described in this chapter that		
7		relate	es to an item of partnership income, gain, loss, or deduction, or item		
8		there	of, must be made in accordance with the partner's distributive share, for		
9		feder	al income tax purposes, of the item to which the modification relates, but		
10		limite	d to the partner's portion of the item derived from or connected with		
11		sourc	ces in this state.		
12	<u>d.</u>	<u>On a</u>	pplication, the commissioner may authorize the use of other methods of		
13		deter	mining a nonresident partner's portion of partnership items derived from		
14		<u>or co</u>	nnected with sources in this state, and the related modifications, as may		
15		<u>be ap</u>	ppropriate and equitable, on the terms and conditions as it may require.		
16	SECTIO	N4. R	EPEAL. Section 57-38-10 of the North Dakota Century Code is		
17	repealed.				
18	SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after				
19	December 31, 2000.				