

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2098
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to create and enact a new subdivision to subsection 5 of section 57-38-30.3 of the North Dakota Century Code, relating to requirements for claiming a credit for income tax paid to another state; to amend and reenact subsections 2 and 6 of section 57-38-04 of the North Dakota Century Code, relating to requirements for claiming a credit for income tax paid to another state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 6 of section 57-38-04 of the North Dakota Century Code are amended and reenacted as follows:

2. Except as provided in subsection 1:
 - a. Income received from personal or professional services performed by residents of this state, regardless of where such services are performed, and income received by residents of this state from intangible personal property must be assigned to this state. If a tax is paid to another state or territory of the United States or to the District of Columbia on any income assigned to this state under this subsection, a credit for any tax so paid may be deducted from the tax assessed under this chapter ~~if written proof of such payment is furnished to the tax commissioner~~; provided, that this credit for such tax may not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's adjusted gross income as computed pursuant to the Internal Revenue Code of 1954, as amended. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
 - b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, shall be excluded from income to the extent that such income is subject to an income tax imposed by the state of the individual's residence; provided, that such state allows a similar exclusion of such compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For the purposes of this subdivision, the words "an individual who performs services for a common carrier engaged in interstate transportation" must be limited to an individual who performs such services for a common carrier only during the course of making regular "runs" into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier.
6. a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists principally of the holding of the property and the collection of income and gains therefrom, must be assigned to this state without regard to the situs of the property.

- b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation or other passthrough entity, must be assigned to this state without regard to where the business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.
- c. If a tax is paid to another state or territory of the United States or to the District of Columbia on any income assigned to this state under this subsection, a credit for any tax so paid may be deducted from the tax assessed under this chapter ~~if written proof of the payment is furnished to the tax commissioner~~; provided, that this credit for the tax may not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's adjusted gross income as computed pursuant to the Internal Revenue Code of 1954, as amended. The tax commissioner may require written proof of the tax paid to another state. The required proof shall be provided in a form and manner as determined by the tax commissioner.

SECTION 2. A new subdivision to subsection 5 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2098.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 90 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State