

July 2004

Introduced by

1 A BILL for an Act to amend and reenact section 57-38-31.1 of the North Dakota Century Code
2 relating to filing of composite returns by pass-through entities for entities for income tax
3 purposes; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38-31.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-38-31.1. Composite returns.** ~~Partnerships and subchapter S corporations may file~~
8 ~~a composite return on behalf of nonresident individual partners or shareholders in the manner~~
9 ~~prescribed by the tax commissioner. Any amount of tax paid by the partnership or~~
10 ~~subchapter S corporation on the composite return on behalf of a nonresident partner or~~
11 ~~shareholder constitutes a credit on the North Dakota return of the nonresident individual on~~
12 ~~whose behalf the tax was paid by the partnership or subchapter S corporation. Any return filed~~
13 ~~by a partnership or subchapter S corporation under this section is considered as the return of~~
14 ~~the nonresident individual partner or shareholder on whose behalf the return is filed. The tax~~
15 ~~under this section must be computed by multiplying the aggregate of the shares of North~~
16 ~~Dakota income reportable to North Dakota by the partners or shareholders included in the~~
17 ~~composite return by five and fifty-four hundredths percent.~~

18 **1. Definitions.**

19 a. "Member" means a shareholder of an S corporation; a partner in a general
20 partnership, a limited partnership, or a limited liability partnership; a member
21 of a limited liability company; or a beneficiary of a trust;

b. "Nonresident" means an individual who is not a resident of or domiciled in the state, a business entity that does not have its commercial domicile in the state, or a trust not organized in the state.

c. "Pass-through entity" means a corporation that for the applicable tax year is treated as an S Corporation under this chapters or a general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation under this chapter;

2. Composite Return Authorized.

a. A pass-through entity may file a composite income tax return on behalf of electing nonresident members reporting and paying income tax at the highest marginal rate provided in section 57-38-29 or 57-38-30.3 for individuals or section 57-38-30 for corporations on the members' pro rata or distributive shares of income of the pass through entity from doing business in, or deriving income from sources within, this state.

b. A nonresident member whose only source of income within a state is from one or more pass-through entities may elect to be included in a composite return filed pursuant to this section.

c. A nonresident member that has been included in a composite return may file an individual income tax return and shall receive credit for tax paid on the member's behalf by the pass-through entity.

3. Withholding Required.

a. A pass-through entity shall withhold income tax at the highest tax rate provided in section 57-38-29 or 57-38-30.3 for individuals or section 57-38-30 for corporations on the share of income of the entity distributed to each non resident member and pay the withheld amount in the manner prescribed by the tax commission. The pass-through entity is liable to the state for the payment of the tax required to be withheld under this section and is not liable to such member for the amount withheld and paid over in compliance with this section. A member of a pass-through entity that is itself a pass-through entity (a "lower-tier pass-through entity") shall be subject to this same requirement

1 to withhold and pay over income tax on the share of income distributed by the
2 lower-tier pass-through entity to each of its nonresident members. The tax
3 commission shall apply tax withheld and paid over by a pass-through entity on
4 distributions to a lower-tier pass-through entity to the withholding required of
5 that lower-tier pass-through entity.

6 b. At the time of a payment made pursuant to this section, a pass-through entity
7 shall deliver to the tax commissioner a return upon a form prescribed by the
8 tax commissioner showing the total amounts paid or credited to its
9 nonresident members, the amount withheld in accordance with this section,
10 and any other information the tax commissioner may require. A pass-through
11 entity shall furnish to its nonresident member annually, but not later than the
12 fifteenth day of the third month after the end of its taxable year, a record of the
13 amount of tax withheld on behalf of such member on a form prescribed by the
14 tax commissioner.

15 c. Notwithstanding subdivision a, a pass-through entity is not required to
16 withhold tax for a nonresident member if:

- 17 (1) The member has a pro rata or distributive share of income of the
18 pass-through entity from doing business in, or deriving income from
19 sources within, this state of less than one-thousand dollars per annual
20 accounting period;
- 21 (2) The tax commissioner has determined by rule, ruling, or instruction that
22 the member's income is not subject to withholding;
- 23 (3) The member elects to have the tax due paid as part of a composite
24 return filed by the pass-through entity under subsection 2; or
- 25 (4) The entity is a publicly traded partnership as defined by section 7704(b)
26 of the Internal Revenue Code that is treated as a partnership for the
27 purposes of the Internal Revenue Code and that has agreed to file an
28 annual information return reporting the name, address, taxpayer
29 identification number, and other information requested by the tax
30 commissioner of each unitholder with an income in the state in excess
31 of five-hundred dollars.

1 **SECTION 2. EFFECTIVE DATE.** This act is effective for taxable years beginning after
2 December 31, 2004.