

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1535

Introduced by

Representatives K. Koppelman, Becker, Hoverson, Jones, Satrom, Simons, Toman

Senators Bakke, Bekkedahl, Wanzek

1 A BILL for an Act to amend and reenact section 57-38-30.3 of the North Dakota Century Code,
2 relating to replacement of the individual, estate, and trust income tax rate schedule with a
3 flat-rate income 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. Individual, estate, and trust income tax.**

8 1. A tax is hereby imposed for each taxable year upon income earned or received in that
9 taxable year by every resident and nonresident individual, estate, and trust. A taxpayer
10 computing the tax under this section is only eligible for those adjustments or credits
11 that are specifically provided for in this section. Provided, that for purposes of this
12 section, any person required to file a state income tax return under this chapter, but
13 who has not computed a federal taxable income figure, shall compute a federal
14 taxable income figure using a pro forma return in order to determine a federal taxable
15 income figure to be used as a starting point in computing state income tax under this
16 section. The tax for individuals, estates, and trusts is equal to ~~two and one-half percent~~
17 ~~of North Dakota taxable income multiplied by the rates in the applicable rate schedule~~
18 ~~in subdivisions a through d corresponding to an individual's filing status used for~~
19 ~~federal income tax purposes. For an estate or trust, the schedule in subdivision e must~~
20 ~~be used for purposes of this subsection. North Dakota taxable income must be~~
21 ~~reduced by the amounts under subdivisions a through e, based on a taxpayer's filing~~
22 ~~status used for federal income tax purposes.~~

23 a. Single, other than head of household or surviving spouse, \$18,725.

24 ~~If North Dakota taxable income is:~~

| | | | | |
|----|---|-----------|---------------------|----------------|
| 1 | Over | Not over | The tax is equal to | Of amount over |
| 2 | \$0 | \$37,450 | 1.10% | \$0 |
| 3 | \$37,450 | \$90,750 | \$411.95 + 2.04% | \$37,450 |
| 4 | \$90,750 | \$189,300 | \$1,499.27 + 2.27% | \$90,750 |
| 5 | \$189,300 | \$411,500 | \$3,736.36 + 2.64% | \$189,300 |
| 6 | \$411,500 | | \$9,602.44 + 2.90% | \$411,500 |
| 7 | b. Married filing jointly and surviving spouse, \$31,300 \$37,450. | | | |
| 8 | If North Dakota taxable income is: | | | |
| 9 | Over | Not over | The tax is equal to | Of amount over |
| 10 | \$0 | \$62,600 | 1.10% | \$0 |
| 11 | \$62,600 | \$151,200 | \$688.60 + 2.04% | \$62,600 |
| 12 | \$151,200 | \$230,450 | \$2,496.04 + 2.27% | \$151,200 |
| 13 | \$230,450 | \$411,500 | \$4,295.02 + 2.64% | \$230,450 |
| 14 | \$411,500 | | \$9,074.74 + 2.90% | \$411,500 |
| 15 | c. Married filing separately, \$15,650 \$18,725. | | | |
| 16 | If North Dakota taxable income is: | | | |
| 17 | Over | Not over | The tax is equal to | Of amount over |
| 18 | \$0 | \$31,300 | 1.10% | \$0 |
| 19 | \$31,300 | \$75,600 | \$344.30 + 2.04% | \$31,300 |
| 20 | \$75,600 | \$115,225 | \$1,248.02 + 2.27% | \$75,600 |
| 21 | \$115,225 | \$205,750 | \$2,147.51 + 2.64% | \$115,225 |
| 22 | \$205,750 | | \$4,537.37 + 2.90% | \$205,750 |
| 23 | d. Head of household, <u>\$25,100.</u> | | | |
| 24 | If North Dakota taxable income is: | | | |
| 25 | Over | Not over | The tax is equal to | Of amount over |
| 26 | \$0 | \$50,200 | 1.10% | \$0 |
| 27 | \$50,200 | \$129,600 | \$552.20 + 2.04% | \$50,200 |
| 28 | \$129,600 | \$209,850 | \$2,171.96 + 2.27% | \$129,600 |
| 29 | \$209,850 | \$411,500 | \$3,993.64 + 2.64% | \$209,850 |
| 30 | \$411,500 | | \$9,317.20 + 2.90% | \$411,500 |
| 31 | e. Estates and trusts, <u>\$1,250.</u> | | | |

| | | | | |
|---|------------------------------------|----------|---------------------|----------------|
| 1 | If North Dakota taxable income is: | | | |
| 2 | Over | Not over | The tax is equal to | Of amount over |
| 3 | \$0 | \$2,500 | 1.10% | \$0 |
| 4 | \$2,500 | \$5,900 | \$27.50 + 2.04% | \$2,500 |
| 5 | \$5,900 | \$9,050 | \$96.86 + 2.27% | \$5,900 |
| 6 | \$9,050 | \$12,300 | \$168.37 + 2.64% | \$9,050 |
| 7 | \$12,300 | | \$254.17 + 2.90% | \$12,300 |

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

g. ~~The tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.~~

h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not

entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.

2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:

- a. Reduced by 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. Reduced by 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.
- c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under section 57-38-01.35.
- d. Reduced by forty percent of:
 - (1) The excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.
 - (2) Qualified dividends as defined under Internal Revenue Code section 1(h)(11), added by section 302(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963 et seq.], but only if taxed at a federal income tax rate that is lower than the regular federal income tax rates applicable to ordinary income. If, for any taxable year, qualified dividends are taxed at the regular federal income tax rates applicable to ordinary income, the reduction allowed under this subdivision is equal to thirty percent of all dividends included in federal

1 taxable income. The adjustment provided by this subdivision is allowed only
2 to the extent the qualified dividend income is allocated to this state.

- 3 e. Increased by the amount of a lump sum distribution for which income averaging
4 was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C.
5 402], as amended. This adjustment does not apply if the taxpayer received the
6 lump sum distribution while a nonresident of this state and the distribution is
7 exempt from taxation by this state under federal law.
- 8 f. Increased by an amount equal to the losses that are passed through to a
9 taxpayer in connection with an allocation and apportionment to North Dakota
10 under section 57-38-01.35.
- 11 g. Reduced by the amount received by the taxpayer as payment for services
12 performed when mobilized under title 10 United States Code federal service as a
13 member of the national guard or reserve member of the armed forces of the
14 United States. This subdivision does not apply to federal service while attending
15 annual training, basic military training, or professional military education.
- 16 h. Reduced by income from a new and expanding business exempt from state
17 income tax under section 40-57.1-04.
- 18 i. ~~Reduced by interest and income from bonds issued under chapter 11-37.~~
- 19 j. Reduced by up to ten thousand dollars of qualified expenses that are related to a
20 donation by a taxpayer or a taxpayer's dependent, while living, of one or more
21 human organs to another human being for human organ transplantation. A
22 taxpayer may claim the reduction in this subdivision only once for each instance
23 of organ donation during the taxable year in which the human organ donation and
24 the human organ transplantation occurs but if qualified expenses are incurred in
25 more than one taxable year, the reduction for those expenses must be claimed in
26 the year in which the expenses are incurred. For purposes of this subdivision:
- 27 (1) "Human organ transplantation" means the medical procedure by which
28 transfer of a human organ is made from the body of one person to the body
29 of another person.
- 30 (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine,
31 lung, or bone marrow.

1 (3) "Qualified expenses" means lost wages not compensated by sick pay and
2 unreimbursed medical expenses as defined for federal income tax
3 purposes, to the extent not deducted in computing federal taxable income,
4 whether or not the taxpayer itemizes federal income tax deductions.

5 k-j. Increased by the amount of the contribution upon which the credit under section
6 57-38-01.21 is computed, but only to the extent that the contribution reduced
7 federal taxable income.

8 l-k. Reduced by the amount of any payment received by a veteran or beneficiary of a
9 veteran under section 37-28-03 or 37-28-04.

10 m-l. Reduced by the amount received by a taxpayer that was paid by an employer
11 under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire
12 the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the
13 extent the amount received by the taxpayer is included in federal taxable income.
14 The reduction applies only if the employer is entitled to the credit under section
15 57-38-01.25. The taxpayer must attach a statement from the employer in which
16 the employer certifies that the employer is entitled to the credit under section
17 57-38-01.25 and which specifically identified the type of payment and the amount
18 of the exemption under this section.

19 n-m. Reduced by the amount up to a maximum of five thousand dollars, or ten
20 thousand dollars if a joint return is filed, for contributions made under a higher
21 education savings plan administered by the Bank of North Dakota, pursuant to
22 section 6-09-38.

23 o-n. Reduced by the amount of income of a taxpayer, who resides anywhere within
24 the exterior boundaries of a reservation situated in this state or situated both in
25 this state and in an adjoining state and who is an enrolled member of a federally
26 recognized Indian tribe, from activities or sources anywhere within the exterior
27 boundaries of a reservation situated in this state or both situated in this state and
28 in an adjoining state.

29 p-o. For married individuals filing jointly, reduced by an amount equal to the excess of
30 the recomputed itemized deductions or standard deduction over the amount of
31 the itemized deductions or standard deduction deducted in computing federal

1 taxable income. For purposes of this subdivision, "itemized deductions or
2 standard deduction" means the amount under section 63 of the Internal Revenue
3 Code that the married individuals deducted in computing their federal taxable
4 income and "recomputed itemized deductions or standard deduction" means an
5 amount determined by computing the itemized deductions or standard deduction
6 in a manner that replaces the basic standard deduction under section 63(c)(2) of
7 the Internal Revenue Code for married individuals filing jointly with an amount
8 equal to double the amount of the basic standard deduction under section 63(c)
9 (2) of the Internal Revenue Code for a single individual other than a head of
10 household and surviving spouse. If the married individuals elected under
11 section 63(e) of the Internal Revenue Code to deduct itemized deductions in
12 computing their federal taxable income even though the amount of the allowable
13 standard deduction is greater, the reduction under this subdivision is not allowed.
14 Married individuals filing jointly shall compute the available reduction under this
15 subdivision in a manner prescribed by the tax commissioner.

16 ~~q-p.~~ Reduced by an amount equal to the exemption available for a qualifying child
17 under section 152 of the Internal Revenue Code [26 U.S.C. 152], as amended,
18 for each birth resulting in stillbirth, as defined in section 23-02.1-01, for which a
19 fetal death certificate has been filed under section 23-02.1-20. For purposes of
20 this subdivision, the exemption may only be claimed in the taxable year in which
21 the stillbirth occurred.

22 3. The same filing status used when filing federal income tax returns must be used when
23 filing state income tax returns.

24 4. a. A resident individual, estate, or trust is entitled to a credit against the tax imposed
25 under this section for the amount of income tax paid by the taxpayer for the
26 taxable year by another state or territory of the United States or the District of
27 Columbia on income derived from sources in those jurisdictions that is also
28 subject to tax under this section.

29 b. For an individual, estate, or trust that is a resident of this state for the entire
30 taxable year, the credit allowed under this subsection may not exceed an amount
31 equal to the tax imposed under this section multiplied by a ratio equal to federal

1 adjusted gross income derived from sources in the other jurisdiction divided by
2 federal adjusted gross income less the amounts under subdivisions a and b of
3 subsection 2.

4 c. For an individual, estate, or trust that is a resident of this state for only part of the
5 taxable year, the credit allowed under this subsection may not exceed the lesser
6 of the following:

7 (1) The tax imposed under this chapter multiplied by a ratio equal to federal
8 adjusted gross income derived from sources in the other jurisdiction
9 received while a resident of this state divided by federal adjusted gross
10 income derived from North Dakota sources less the amounts under
11 subdivisions a and b of subsection 2.

12 (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal
13 adjusted gross income derived from sources in the other jurisdiction
14 received while a resident of this state divided by federal adjusted gross
15 income derived from sources in the other states.

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

19 5. Individuals, estates, or trusts that file an amended federal income tax return changing
20 their federal taxable income figure for a year for which an election to file state income
21 tax returns has been made under this section shall file an amended state income tax
22 return to reflect the changes on the federal income tax return.

23 6. The tax commissioner may prescribe procedures and guidelines to prevent requiring
24 income that had been previously taxed under this chapter from becoming taxed again
25 because of the provisions of this section and may prescribe procedures and guidelines
26 to prevent any income from becoming exempt from taxation because of the provisions
27 of this section if it would otherwise have been subject to taxation under the provisions
28 of this chapter.

29 7. A taxpayer filing a return under this section is entitled to the following tax credits:

30 a. Family care tax credit under section 57-38-01.20.

31 b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.

- 1 c. Agricultural business investment tax credit under section 57-38.6-03.
- 2 d. Seed capital investment tax credit under section 57-38.5-03.
- 3 e. Planned gift tax credit under section 57-38-01.21.
- 4 f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and
- 5 57-38-01.23.
- 6 g. Internship employment tax credit under section 57-38-01.24.
- 7 h. Workforce recruitment credit under section 57-38-01.25.
- 8 ~~i. Angel fund investment tax credit under section 57-38-01.26 (effective for the first~~
- 9 ~~taxable year beginning after December 31, 2016).~~
- 10 ~~j. Marriage penalty credit under section 57-38-01.28.~~
- 11 ~~k.i.i.~~ Research and experimental expenditures under section 57-38-30.5.
- 12 ~~l.k.i.~~ Geothermal energy device installation credit under section 57-38-01.8.
- 13 ~~m.l.k.~~ Long-term care partnership plan premiums income tax credit under section
- 14 57-38-29.3.
- 15 ~~n.m.l.~~ Employer tax credit for salary and related retirement plan contributions of
- 16 mobilized employees under section 57-38-01.31.
- 17 ~~o. Automating manufacturing processes tax credit under section 57-38-01.33~~
- 18 ~~(effective for the first five taxable years beginning after December 31, 2012).~~
- 19 ~~p.n.m.~~ Income tax credit for passthrough entity contributions to private education
- 20 institutions under section 57-38-01.7.
- 21 ~~q.o.n.~~ Angel investor tax credit under section 57-38-01.26.
- 22 8. A taxpayer filing a return under this section is entitled to the any exemption provided for
- 23 which the taxpayer qualifies under section 40-63-04.
- 24 9. a. If an individual taxpayer engaged in a farming business elects to average farm
- 25 income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the
- 26 taxpayer may elect to compute tax under this subsection. If an election to
- 27 compute tax under this subsection is made, the tax imposed by subsection 1 for
- 28 the taxable year must be equal to the sum of the following:
- 29 (1) The tax computed under subsection 1 on North Dakota taxable income
- 30 reduced by elected farm income.

1 (2) The increase in tax imposed by subsection 1 which would result if North
2 Dakota taxable income for each of the three prior taxable years were
3 increased by an amount equal to one-third of the elected farm income.
4 However, if other provisions of this chapter other than this section were
5 used to compute the tax for any of the three prior years, the same
6 provisions in effect for that prior tax year must be used to compute the
7 increase in tax under this paragraph. For purposes of applying this
8 paragraph to taxable years beginning before January 1, 2001, the increase
9 in tax must be determined by recomputing the tax in the manner prescribed
10 by the tax commissioner.

11 b. For purposes of this subsection, "elected farm income" means that portion of
12 North Dakota taxable income for the taxable year which is elected farm income
13 as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C.
14 1301], as amended, reduced by the portion of an exclusion claimed under
15 subdivision d of subsection 2 that is attributable to a net long-term capital gain
16 included in elected farm income.

17 c. The reduction in North Dakota taxable income under this subsection must be
18 taken into account for purposes of making an election under this subsection for
19 any subsequent taxable year.

20 d. The tax commissioner may prescribe rules, procedures, or guidelines necessary
21 to administer this subsection.

22 ~~10. The tax commissioner may prescribe tax tables, to be used in computing the tax~~
23 ~~according to subsection 1, if the amounts of the tax tables are based on the tax rates~~
24 ~~set forth in subsection 1. If prescribed by the tax commissioner, the tables must be~~
25 ~~followed by every individual, estate, or trust determining a tax under this section.~~

26 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
27 December 31, 2018.