

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.

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 5. Whenever ~~a trade or~~ business activity is carried on partly within and partly without
19 this state by a nonresident of this state, as a sole proprietorship, or through a
20 partnership, subchapter S corporation, or other passthrough entity, the entire
21 income therefrom must be allocated to this state and to other states, according to
22 the provisions of chapter 57-38.1, providing for allocation and apportionment of
23 income of corporations doing business within and without this state.

- 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 activity carried on 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 **SECTION 2. AMENDMENT.** Section 57-38-08 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **57-38-08. Partnerships not subject to tax.** Partnerships are not subject to tax under
27 this chapter. Persons 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.

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 1. A partnership that carries on its business activity entirely within this state shall
6 report all of its income or loss to this state. A partnership that carries on its
7 business activity within and without this state shall allocate and apportion its
8 income or loss to this state in the same manner as the income or loss of a
9 corporation is allocated and apportioned to the state under chapter 57-38.1.
- 10 2. Resident partners, limited to individuals, estates, and trusts, must report their entire
11 distributive share to this state as provided in subdivision b of subsection 6 of
12 section 57-38-04, and may claim a credit for taxes paid to another state on that
13 portion 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 3. a. In determining the gross income of a nonresident partner, limited to
16 individuals, 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 of items of partnership income, gain, loss and deduction, or item thereof,
19 entering into the federal taxable income of the partner, as determined under
20 section 57-38-04. Guaranteed payments paid to nonresident partners of a
21 partnership that has business activity in this state are treated as a distributive
22 share of partnership income for state tax purposes.
- 23 b. In determining the sources of a nonresident partner's income, no effect shall
24 be given to a provision in the partnership agreement which:
- 25 (1) 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 (2) 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 c. Any modification to federal taxable income described in this chapter that
7 relates to an item of partnership income, gain, loss, or deduction, or item
8 thereof, must be made in accordance with the partner's distributive share, for
9 federal income tax purposes, of the item to which the modification relates, but
10 limited to the partner's portion of the item derived from or connected with
11 sources in this state.

12 d. On application, the commissioner may authorize the use of other methods of
13 determining a nonresident partner's portion of partnership items derived from
14 or connected with sources in this state, and the related modifications, as may
15 be appropriate and equitable, on the terms and conditions as it may require.

16 **SECTION 4. REPEAL.** 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.