

SENATE BILL NO. 2098

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

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

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

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

9 2. Except as provided in subsection 1:

10 a. Income received from personal or professional services performed by
11 residents of this state, regardless of where such services are performed, and
12 income received by residents of this state from intangible personal property
13 must be assigned to this state. If a tax is paid to another state or territory of
14 the United States or to the District of Columbia on any income assigned to this
15 state under this subsection, a credit for any tax so paid may be deducted from
16 the tax assessed under this chapter ~~if written proof of such payment is~~
17 ~~furnished to the tax commissioner~~; provided, that this credit for such tax may
18 not exceed the proportion of the tax otherwise due under this chapter that the
19 amount of the taxpayer's adjusted gross income derived from sources in the
20 other taxing jurisdiction bears to the taxpayer's adjusted gross income as
21 computed pursuant to the Internal Revenue Code of 1954, as amended. The
22 tax commissioner may require written proof of the tax paid to another state.
23 The required proof must be provided in a form and manner as determined by
24 the tax commissioner.

- 1 b. Notwithstanding any other provision of this chapter, the compensation
2 received from services performed within this state by an individual, who
3 performs services for a common carrier engaged in interstate transportation
4 and who resides and has the individual's place of abode to which the
5 individual customarily returns at least once a month in another state, shall be
6 excluded from income to the extent that such income is subject to an income
7 tax imposed by the state of the individual's residence; provided, that such
8 state allows a similar exclusion of such compensation received by residents of
9 North Dakota for similar services performed therein, or a credit against the tax
10 imposed on the income of residents of this state that is substantially similar in
11 effect. For the purposes of this subdivision, the words "an individual who
12 performs services for a common carrier engaged in interstate transportation"
13 must be limited to an individual who performs such services for a common
14 carrier only during the course of making regular "runs" into North Dakota or
15 from within North Dakota to outside North Dakota, or both, on the
16 transportation system of the common carrier.
- 17 6. a. Income and gains received by a resident of this state from tangible property
18 not employed in the business and from tangible property employed in the
19 business of the taxpayer, if the business consists principally of the holding of
20 the property and the collection of income and gains therefrom, must be
21 assigned to this state without regard to the situs of the property.
- 22 b. Income derived from business activity carried on by residents of this state,
23 whether the business activity is conducted as a sole proprietorship, or through
24 a partnership, subchapter S corporation or other passthrough entity, must be
25 assigned to this state without regard to where the business activity is
26 conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer
27 believes the operation of this subdivision with respect to the taxpayer's
28 income is unjust, the taxpayer may petition the tax commissioner who may
29 allow use of another method of reporting income, including separate
30 accounting.

1 c. If a tax is paid to another state or territory of the United States or to the District
2 of Columbia on any income assigned to this state under this subsection, a
3 credit for any tax so paid may be deducted from the tax assessed under this
4 chapter ~~if written proof of the payment is furnished to the tax commissioner;~~
5 provided, that this credit for the tax may not exceed the proportion of the tax
6 otherwise due under this chapter that the amount of the taxpayer's adjusted
7 gross income derived from sources in the other taxing jurisdiction bears to the
8 taxpayer's adjusted gross income as computed pursuant to the Internal
9 Revenue Code of 1954, as amended. The tax commissioner may require
10 written proof of the tax paid to another state. The required proof shall be
11 provided in a form and manner as determined by the tax commissioner.

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

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

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