CHAPTER 81-03-02.1
INCOME TAX ON INDIVIDUALS, ESTATES, TRUSTS, AND FIDUCIARIES

Section

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81-03-02.1-01. Credit for taxes paid to another state.

1. A resident who pays income tax to another state or territory of the United States or the District of Columbia on income which is also taxed by this state, is entitled to a tax credit. The tax credit may be deducted from the North Dakota income tax liability. A copy of the income tax return filed with another jurisdiction must be filed with the North Dakota income tax return and the tax commissioner may require the taxpayer to have the copy certified by the other jurisdiction.

2. If a North Dakota resident is paying income tax to more than one jurisdiction other than North Dakota, on income which is also taxed by this state, a separate computation must be made to determine the amount of the tax credit available from each jurisdiction. These separate tax credits must be added together to determine the total tax credit which may be reported on the taxpayer's North Dakota tax return.

3. A taxpayer who is a part-year resident of North Dakota may claim a credit for taxes paid to another state only if the income taxed by North Dakota and the other state was earned or received during the time the taxpayer was a North Dakota resident. A copy of the income tax return filed with the other state must be filed with the North Dakota income tax return. The tax commissioner may require a certified copy of the other state's return.

4. If married taxpayers file a joint federal income tax return and each spouse had different states of residence during the tax year, the credit is available to the spouse who is required to file a North Dakota income tax return.

5. Subsections 3 and 4 are effective for tax years beginning after December 31, 2000.

History: Effective July 1, 1985; amended effective July 1, 1989; June 1, 2002.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-04, 57-38-30.3

81-03-02.1-02. Deduction for federal income tax liability - Limitation.

The federal alternative minimum tax may not be deducted in computing North Dakota taxable income.

History: Effective July 1, 1985; amended effective May 1, 1991.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-01.2

81-03-02.1-03. Moving expenses - Adjustment.

1. An individual who moves out of this state and who claims moving expenses as a deduction on that individual's federal income tax return for the year in which the move was made may not deduct those expenses for purposes of computing North Dakota taxable income on individual income tax form ND-2 or form 37.

2. An individual who moves into this state and who claims moving expenses as a deduction on that individual's federal income tax return for the year in which the move was made may deduct those expenses for the purpose of computing North Dakota taxable income on individual income tax form ND-2 or form 37.

History: Effective July 1, 1985; amended effective June 1, 2002.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-01.1

81-03-02.1-04. Reporting - Resident trusts or estates.

1. Every fiduciary for a resident trust or estate must file an income tax return with the tax commissioner.

2. A trust or estate is a resident trust or estate when it has a relationship to the state sufficient to create nexus. This includes, but is not limited to, the following contacts:

   a. A beneficiary of the trust or estate is a domiciliary or resident of this state.

   b. The trustee or executor is a domiciliary or resident of this state.

   c. Assets making up any part of the trust or estate have situs in this state.

   d. Any or all of the administration or income production of the trust or estate takes place within this state.

   e. The laws of this state are specifically made applicable to the trust or estate or to the opposite parties with respect to their fiduciary relationship.

   f. The trust is a revocable trust, and the grantor is a domiciliary or resident of this state.

3. A trust, or a portion of a trust, is revocable if subject to power by the grantor, at any time, to revest title in the grantor.

4. A nonresident trust or estate is a trust or estate other than a resident trust or estate.

History: Effective July 1, 1985.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-31

81-03-02.1-05. Reporting - Income earned by husband and wife.

Repealed effective July 1, 2016.

81-03-02.1-06. Adjustments for pay received from armed forces.

A portion of the pay received for service in the armed forces by a resident of this state is not subject to income tax imposed by this state. This portion is determined as follows:

1. An amount up to a maximum of one thousand dollars for pay received by an individual for services performed while on active duty for the armed forces of the United States or as payment for attending periodic training meetings for drill and instruction as a member of the national guard or of a reserve unit of the armed forces of the United States may be deducted from income taxable in this state subject to the following:

    a. The deduction may not exceed actual total pay received from such services for the tax year.

    b. The deduction may not be claimed as an adjustment on the North Dakota individual income tax return if the amount received for such services was excluded or deducted from gross income for federal income tax purposes.

2. An amount up to, but not exceeding, three hundred dollars per month for pay received by an individual for services performed while on active duty for the armed forces of the United States outside of the United States or the District of Columbia may be deducted from income taxable in this state subject to the following:

    a. During the time for which the deduction is taken, the individual's rank must have been below major in the United States army, air force, or marines; below lieutenant commander in the United States navy; or below surgeon in the United States public health service.

    b. The individual must have been on active duty stationed outside any state of the United States or the District of Columbia for thirty consecutive days in the year the deduction is claimed. After the initial thirty consecutive days, the person may claim the deduction for any full month or for a fraction of a month.

    c. The individual must have earned three hundred dollars or more per month. If the individual was paid less than three hundred dollars per month, the deduction must be limited to actual pay received for the month.

    d. The three hundred dollar per month deduction is in addition to the one thousand dollar deduction in subsection 1, and the total of the two may not exceed the individual's total pay for such services for the tax year the deduction is claimed.

    e. The deduction may not be claimed as an adjustment on the North Dakota individual income tax return if the amount received for such services was excluded or deducted from gross income for federal income tax purposes.

History: Effective July 1, 1985.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-01.2

81-03-02.1-07. Adjustments for sale or lease of agricultural land to beginning farmer.

Adjustments to determine net taxable income received from the sale or lease of agricultural land and from interest income received on a contract for deed are subject to the conditions and limitations established in North Dakota Century Code chapter 57-38 and as follows:

1. Net rental income up to twenty-five thousand dollars, interest income, capital gains, or ordinary income of an individual selling or leasing agricultural land to a beginning farmer is

deductible, for North Dakota income tax purposes, only in the year that the income is reported on the individual's federal income tax return. Unused deductions may not be carried back or forward to another year.

2. Deductions for rental income may not be claimed by the landowner for lease agreements with more than one beginning farmer on the same tract or parcel of land.

3. A beginning farmer must be eighteen years of age or older at the time of the sale or lease. (See North Dakota Century Code section 14-10-09.)

4. A husband and wife living together who together purchase agricultural land are regarded as one beginning farmer.

History: Effective July 1, 1985.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-01.2, 57-38-67, 57-38-68, 57-38-69, 57-38-70

81-03-02.1-08. Adjustments for sale or lease of revenue-producing enterprise to beginning businessman.

Adjustments to determine net taxable income received from the sale or lease of a revenue-producing enterprise and from interest received on a contract are subject to conditions and limitations established in North Dakota Century Code chapter 57-38 and as follows:

1. Net rental income up to twenty-five thousand dollars, interest income, capital gains in the year of the sale, or ordinary income, of a businessman selling or leasing a revenue-producing enterprise is deductible for North Dakota income tax purposes, only in the year that the income is reported on the businessman's federal income tax return. Unused deductions may not be carried back or forward to another year.

2. Deductions for rental income cannot be claimed by the businessman for lease agreements with more than one beginning businessman on the same revenue-producing enterprise.

3. A beginning businessman must be eighteen years of age or older at the time of sale or lease. (See North Dakota Century Code section 14-10-09.)

4. A husband and wife living together who together purchase a revenue-producing enterprise are regarded as one beginning businessman.

5. "Year of sale" for purposes of North Dakota Century Code section 57-38-72 means the year during which the revenue-producing enterprise was sold to the beginning businessman. In the case of a contract, it means the year during which the contract was entered into between the seller and the beginning businessman.

History: Effective July 1, 1985.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-01.2, 57-38-71, 57-38-72, 57-38-73, 57-38-74

81-03-02.1-09. Exemptions - Separate filers.

Repealed effective September 1, 1997.

81-03-02.1-10. Limitations on adjustments available on form ND-2 or form 37.

An individual who files North Dakota individual income tax return form ND-2 or form 37 for the current year may make the following adjustments only if form ND-2 or form 37 was filed for the applicable prior year:

1. Refunds of state and local income taxes may only be deducted on form ND-2 or form 37 if they were reported on federal form 1040 for the current year and if form ND-2 or form 37 was filed for the year in which the state and local income taxes were added back.

2. The deduction provided for in subdivision b of subsection 3 of North Dakota Century Code section 57-38-01 for the amount of accelerated cost recovery system depreciation disallowed in a prior year may only be allowed on form ND-2 or form 37 if form ND-2 or form 37 was filed for the prior year when the disallowance of accelerated cost recovery system depreciation occurred.

History: Effective July 1, 1989; amended effective June 1, 2002.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-01(3)(b), 57-38-01.2(1)(f), 57-38-30.3(9)

81-03-02.1-11. Credit for premiums for long-term care insurance coverage.

1. An individual is entitled to a credit for premiums paid for long-term care insurance coverage if the policy complies with the provisions of North Dakota Century Code title 26.1 and all other applicable insurance laws insofar as they do not conflict with North Dakota Century Code title 26.1.

2. "Long-term care insurance" for purposes of this article means an insurance policy as defined by subsection 4 of North Dakota Century Code section 26.1-45-01.

History: Effective August 1, 1994.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-29.2

81-03-02.1-12. Seed capital investment credit - Limitations on credit - Carryover.

1. The provisions in this subsection apply to the calculation and administration of the credit under North Dakota Century Code chapter 57-38.5 for tax years beginning before January 1, 2002:

   a. The credit must first be credited against the taxpayer's income tax liability for the taxpayer's taxable year in which the investment is paid for in full.

   b. For purposes of applying the annual limitation on the total amount of credits allowed for investments in one qualified business under subsection 6 of North Dakota Century Code section 57-38.5-03, the total amount of investments and the total amount of gross receipts from out-of-state sales must be determined on a calendar year basis.

   c. For purposes of applying the annual limitation on the total amount of credits allowed for investments in all qualified businesses under North Dakota Century Code section 57-38.5-05, the total amount of investments and related credits must be determined on a calendar year basis.

   d. For purposes of determining whether a taxpayer has reached the annual minimum or maximum amount of investment for which a credit is allowed under subsection 1 of North Dakota Century Code section 57-38.5-03, the total amount of investments must be determined by aggregating all of the investments made by a taxpayer within the taxpayer's taxable year.

   e. Every qualified business shall file with the tax commissioner a written report showing the total amount of its gross receipts from out-of-state sales on a calendar year basis. The report must be filed by January thirty-first following the end of each calendar year. If a qualified business fails to file a written report, the total amount of the credit attributable to investments made in that qualified business during the calendar year for which the report

was required to be filed must be disallowed until such time as the report is received by the tax commissioner.

f. If a taxpayer elects to determine the taxpayer's state income tax liability under North Dakota Century Code section 57-38-30.3, the credit is not allowed in the taxable year of the election or in any subsequent taxable year to which an unused credit may otherwise be carried.

g. For purposes of applying subsection 3 of North Dakota Century Code section 57-38.5-03, the amount of the credit which may be carried forward from the taxpayer's taxable year in which the related investment was made is the amount of the credit not allowed because of subsection 2 of North Dakota Century Code section 57-38.5-03.

h. If a partnership makes an investment in a qualified business, and if the taxable year of the partnership differs from the taxable year of the partner, the amount of credit allocated to the partner under subsection 4 of North Dakota Century Code section 57-38.5-03 must first be credited in the partner's taxable year in which the partnership's taxable year ends.

i. If a taxpayer makes an investment in a qualified business and then sells the investment back to the qualified business within three years of making the investment, the credit must be disallowed. If a taxpayer makes an investment in a qualified business and then sells the investment to a second taxpayer, the credit attributable to the investment must be allowed to the first taxpayer provided the investment is held by the qualified business for three years, and no credit may be allowed to the second taxpayer.

j. For purposes of subsection 8 of North Dakota Century Code section 57-38.5-03, "controlling interest" means ownership of over fifty percent of the voting stock and over fifty percent of each class of other stock of the corporation.

2. The provisions in this subsection apply to the calculation and administration of the credit under North Dakota Century Code chapter 57-38.5 for taxable years beginning after December 31, 2001:

a. The credit must first be credited against the taxpayer's income tax liability for the taxpayer's taxable year in which the investment is paid for in full.

b. For purposes of applying the annual limitation on the total amount of credits allowed for investments in one qualified business under subsection 6 of North Dakota Century Code section 57-38.5-03, the total amount of investments must be determined on a calendar year basis.

c. For purposes of applying the annual limitation on the total amount of credits allowed for investments in all qualified businesses under North Dakota Century Code section 57-38.5-05, the total amount of investments and related credits must be determined on a calendar year basis.

d. For purposes of determining whether a taxpayer has reached the annual minimum or maximum amount of investment for which a credit is allowed under subsection 1 of North Dakota Century Code section 57-38.5-03, the total amount of investments must be determined by aggregating all of the investments made by a taxpayer within the taxpayer's taxable year.

e. For purposes of applying subsection 3 of North Dakota Century Code section 57-38.5-03, the amount of the credit which may be carried forward from the taxpayer's taxable year in which the related investment was made is the amount of the credit not allowed because of subsection 2 of North Dakota Century Code section 57-38.5-03.

f. If a partnership makes an investment in a qualified business, and if the taxable year of the partnership differs from the taxable year of the partner, the amount of credit allocated to the partner under subsection 4 of North Dakota Century Code section 57-38.5-03 must first be credited in the partner's taxable year in which the partnership's taxable year ends.

g. If a taxpayer makes an investment in a qualified business and then sells the investment back to the qualified business within three years of making the investment, the credit must be disallowed. If a taxpayer makes an investment in a qualified business and then sells the investment to a second taxpayer, the credit attributable to the investment must be allowed to the first taxpayer provided the investment is held by the qualified business for three years, and no credit may be allowed to the second taxpayer.

h. For purposes of subsection 8 of North Dakota Century Code section 57-38.5-03, "controlling interest" means ownership of over fifty percent of the voting stock and over fifty percent of each class of other stock of the corporation.

History: Effective August 1, 1994; amended effective June 1, 2002.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.5

81-03-02.1-12.1. Agricultural commodity processing facility investment credit - Limitations on credit - Carryover.

For the purpose of administering the credit under North Dakota Century Code chapter 57-38.6, the following apply:

1. The credit must first be credited against the taxpayer's income tax liability for the taxpayer's taxable year in which the investment is received by the qualified business. "Received" means that the qualified business has exclusive access to the funds.

2. For purposes of applying the annual limitation on the total amount of credits allowed for investments in all qualified business under North Dakota Century Code section 57-38.6-03, the total amount of investments and related credits must be determined on a calendar year basis.

3. For purposes of applying subsection 3 of North Dakota Century Code section 57-38.6-03, the amount of the credit which may be carried forward from the taxpayer's taxable year in which the related investment was made is the amount of the credit not allowed because of subsection 2 of North Dakota Century Code section 57-38.6-03.

4. If a partnership makes an investment in a qualified business, and if the taxable year of the partnership differs from the taxable year of the partner, the amount of credit allocated to the partner under subsection 4 of North Dakota Century Code section 57-38.6-03 must first be credited in the partner's taxable year in which the partnership's taxable year ends.

5. If a taxpayer makes an investment in a qualified business and then sells the investment back to the qualified business within three years of making the investment, the credit must be disallowed. If a taxpayer makes an investment in a qualified business and then sells the investment to a second taxpayer, the credit attributable to the investment must be allowed to the first taxpayer provided the investment is held by the qualified business for three years, and no credit may be allowed to the second taxpayer.

History: Effective June 1, 2002.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.6