

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1440

Introduced by

Representatives Carlson, Warner

Senators T. Mathern, G. Nelson

1 A BILL for an Act to amend and reenact section 57-38-30.3 of the North Dakota Century Code,
2 relating to individual income tax determination under the simplified optional method of
3 computing state income taxes; 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 1997 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **57-38-30.3. Simplified optional method of computing tax.**

8 1. Notwithstanding the other provisions of this chapter, an individual, estate, or trust
9 may elect to determine ~~state an~~ income tax liability ~~by applying the provisions of~~
10 ~~under~~ this section. ~~Any taxpayer~~ An individual, estate, or trust electing to
11 determine ~~his an~~ income tax liability pursuant to ~~under~~ this section is ~~only~~ eligible
12 for ~~only~~ those adjustments or credits ~~which that~~ are specifically provided ~~for~~ in this
13 section. ~~Provided, that for purposes of this section, any person~~ If a nonresident
14 ~~individual otherwise~~ required to file a state income tax return pursuant to the
15 ~~provisions of under~~ this chapter, ~~but who has not computed a federal taxable~~
16 ~~income or federal income tax liability figure shall compute such a~~ is not required to
17 ~~file a federal income tax return or is allowed to exclude income in computing~~
18 ~~federal taxable income because of an income tax treaty between the United States~~
19 ~~and a foreign country, the individual shall compute, or recompute, federal taxable~~
20 ~~income figure using a pro forma return pursuant to the provisions of this section in~~
21 ~~order to determine a federal income tax liability figure in the manner prescribed by~~
22 ~~the tax commissioner~~ to be used as a starting point in computing ~~state income~~ the
23 tax under subsection 3, the purpose of which is to prevent income otherwise

1 taxable under this chapter from becoming exempt because of the treaty, if the
2 treaty does not specifically preempt state taxation of the income.

- 3 2. A tax is hereby imposed for each taxable year upon all income earned or received
4 in that taxable year by ~~every~~ a resident ~~and nonresident~~ individual, estate, ~~and or~~
5 trust, or on the income derived from sources in this state by a nonresident
6 individual, estate, or trust, electing to determine an income tax under this section.
7 ~~This tax is fourteen percent of the individual's, estate's, or trust's adjusted federal~~
8 ~~income tax liability for the taxable year. The tax is equal to the amount determined~~
9 ~~under subsection 3, plus the tax determined under subsection 4, and minus the~~
10 ~~amount determined under subsection 5.~~

- 11 3. ~~The adjusted federal income tax liability for a resident individual, estate, and trust~~
12 ~~must be determined by multiplying the federal income tax liability by a fraction, the~~
13 ~~numerator of which is the adjusted gross income taxable to this state and the~~
14 ~~denominator of which is the total adjusted gross income as reported on the federal~~
15 ~~income tax return. To the extent they are included in the taxpayer's federal~~
16 ~~adjusted gross income, the following amounts must be excluded from the~~
17 ~~numerator:~~

- 18 a. ~~Interest income from obligations of the United States and income exempt~~
19 ~~from state income tax under federal statute or United States or North Dakota~~
20 ~~constitutional provisions.~~
21 b. ~~The portion of a distribution from a qualified investment fund described in~~
22 ~~subsection 4.2 of section 57-38-01 which is attributable to investments by the~~
23 ~~qualified investment fund in obligations of the United States, obligations of~~
24 ~~North Dakota or its political subdivisions, and any other obligation the interest~~
25 ~~from which is exempt from state income tax under federal statute or United~~
26 ~~States or North Dakota constitutional provisions.~~
27 c. ~~An amount equal to the earnings that are passed through to a taxpayer in~~
28 ~~connection with an allocation and apportionment to North Dakota under~~
29 ~~chapter 57-35.3.~~

30 The tax under this section applies to taxable income as defined under this
31 subsection. For purposes of this subsection, "taxable income" means federal

taxable income computed under the United States Internal Revenue Code of 1954,
as amended. The tax is equal to the amount determined in accordance with the
applicable table in subdivisions a through d corresponding to an individual's filing
status used for federal income tax purposes multiplied by the fraction determined
under subsection 6. For an estate or trust, the table in subdivision e must be used
for purposes of this subsection.

a. Single, other than head of household or surviving spouse.

<u>If taxable income is:</u>	<u>The tax is equal to:</u>
<u>Not over \$25,750</u>	<u>2.10 %</u>
<u>Over \$25,750 but not over \$62,450</u>	<u>\$540.75 plus 3.92% of amount over \$25,750</u>
<u>Over \$62,450 but not over \$130,250</u>	<u>\$1,979.39 plus 4.34% of amount over \$62,450</u>
<u>Over \$130,250 but not over \$283,150</u>	<u>\$4,921.91 plus 5.04% of amount over \$130,250</u>
<u>Over \$283,150</u>	<u>\$12,628.07 plus 5.54% of amount over \$283,150</u>

b. Married filing jointly and surviving spouse.

<u>If taxable income is:</u>	<u>The tax is equal to:</u>
<u>Not over \$43,050</u>	<u>2.10 %</u>
<u>Over \$43,050 but not over \$104,050</u>	<u>\$904.05 plus 3.92% of amount over \$43,050</u>
<u>Over \$104,050 but not over \$158,550</u>	<u>\$3,295.25 plus 4.34% of amount over \$104,050</u>
<u>Over \$158,550 but not over \$283,150</u>	<u>\$5,660.55 plus 5.04% of amount over \$158,550</u>
<u>Over \$283,150</u>	<u>\$11,940.39 plus 5.54% of amount over \$283,150</u>

c. Married filing separately.

<u>If taxable income is:</u>	<u>The tax is equal to:</u>
<u>Not over \$21,525</u>	<u>2.10 %</u>
<u>Over \$21,525 but not over \$52,025</u>	<u>\$452.03 plus 3.92% of amount over \$21,525</u>
<u>Over \$52,025 but not over \$79,275</u>	<u>\$1,647.63 plus 4.34% of amount over \$52,025</u>
<u>Over \$79,275 but not over \$141,575</u>	<u>\$2,830.28 plus 5.04% of amount over \$79,275</u>
<u>Over \$141,575</u>	<u>\$5,970.20 plus 5.54% of amount over \$141,575</u>

d. Head of household.

<u>If taxable income is:</u>	<u>The tax is equal to:</u>
<u>Not over \$34,550</u>	<u>2.10 %</u>
<u>Over \$34,550 but not over \$89,150</u>	<u>\$725.55 plus 3.92% of amount over \$34,550</u>

1	<u>Over \$89,150 but not over \$144,400</u>	<u>\$2,865.87 plus 4.34% of amount over \$89,150</u>
2	<u>Over \$144,400 but not over \$283,150</u>	<u>\$5,263.72 plus 5.04% of amount over \$144,400</u>
3	<u>Over \$283,150</u>	<u>\$12,256.72 plus 5.54% of amount over \$283,150</u>

4 e. Estates and trusts.

5 If taxable income is: The tax is equal to:

6 Not over \$1,750 2.10 %

7 Over \$1,750 but not over \$4,050 \$36.75 plus 3.92% of amount over \$1,750

8 Over \$4,050 but not over \$6,200 \$126.91 plus 4.34% of amount over \$4,050

9 Over \$6,200 but not over \$8,450 \$220.22 plus 5.04% of amount over \$6,200

10 Over \$8,450 \$333.62 plus 5.54% of amount over \$8,450

11 f. The tax commissioner shall publish the tax tables under this subsection in the
12 instructions accompanying the individual income tax return in the manner
13 deemed appropriate by the tax commissioner.

14 g. If married persons who file a joint federal income tax return are required to file
15 separate state income tax returns under subsection 7, the tax under this
16 subsection for each spouse must be determined by applying the rates under
17 subdivision b to the spouses' total federal taxable income and prorating the
18 result between the spouses based on their respective shares of the total
19 federal adjusted gross income.

20 h. For taxable years beginning after December 31, 1999, the tax commissioner
21 shall prescribe new tables that apply in lieu of the tables set forth in
22 subdivisions a through e. The new tables must be determined by increasing
23 the minimum and maximum dollar amounts, for each income bracket for
24 which a tax is imposed, by the cost-of-living adjustment for the taxable year
25 as determined by the secretary of the United States treasury for purposes of
26 section 1(f) of the United States Internal Revenue Code of 1954, as
27 amended. For this purpose, the rate applicable to each income bracket may
28 not be changed, and the manner of applying the cost-of-living adjustment
29 must be the same as that used for adjusting the income brackets for federal
30 income tax purposes.

1 i. If an individual, estate, or trust is subject to the provisions of section 1(h) of
2 the Internal Revenue Code of 1954, as amended, relating to computation of
3 the federal income tax when federal taxable income includes a net long-term
4 capital gain, the tax under this subsection may not exceed the lesser of the
5 amount otherwise determined under this subsection or fourteen percent of the
6 federal income tax determined under section 1(h) of the Internal Revenue
7 Code of 1954, as amended.

8 j. If an individual, estate, or trust is subject to the provisions of section 1301 of
9 the Internal Revenue Code of 1954, as amended, relating to income
10 averaging for farmers, the tax under this subsection may not exceed the
11 lesser of the amount otherwise determined under this subsection or fourteen
12 percent of the federal income tax determined under section 1301 of the
13 Internal Revenue Code of 1954, as amended.

14 k. If an individual is subject to the provisions of section 1(g) of the Internal
15 Revenue Code of 1954, as amended, relating to computation of the federal
16 income tax for a child under age fourteen who has investment income, the tax
17 under this subsection may not exceed the lesser of the amount otherwise
18 determined under this subsection or fourteen percent of the federal income
19 tax determined under section 1(g) of the Internal Revenue Code of 1954, as
20 amended.

21 4. ~~The adjusted federal income tax liability of a nonresident individual, estate, and~~
22 ~~trust must be determined by multiplying the federal income tax liability by a~~
23 ~~fraction, the numerator of which is the adjusted gross income derived from sources~~
24 ~~within this state and the denominator of which is the total adjusted gross income as~~
25 ~~reported on the federal income tax return. To the extent they are included in the~~
26 ~~taxpayer's federal adjusted gross income, the following amounts must be excluded~~
27 ~~from the numerator:~~

28 a. ~~Interest income from obligations of the United States and income exempt~~
29 ~~from state income tax under federal statute or United States or North Dakota~~
30 ~~constitutional provisions.~~

- 1 ~~b. The portion of a distribution from a qualified investment fund described in~~
2 ~~subsection 4.2 of section 57-38-01 which is attributable to investments by the~~
3 ~~qualified investment fund in obligations of the United States, obligations of~~
4 ~~North Dakota or its political subdivisions, and any other obligation the interest~~
5 ~~from which is exempt from state income tax under federal statute or United~~
6 ~~States or North Dakota constitutional provisions.~~
- 7 ~~e. An amount equal to the earnings that are passed through to a taxpayer in~~
8 ~~connection with an allocation and apportionment to North Dakota under~~
9 ~~chapter 57-35.3.~~

10 The tax under this subsection is determined by multiplying the total of the
11 additional federal taxes set forth in subdivision a by fourteen percent and then
12 multiplying the result by the fraction determined under subsection 6.

- 13 a. For purposes of this subsection, additional federal taxes are:
- 14 (1) Federal alternative minimum tax computed on federal form 6251;
15 (2) Federal tax on a lump sum distribution computed on federal form 4972;
16 (3) Federal tax on an accumulation distribution of a trust computed on
17 federal form 4970;
18 (4) Federal tax on early distributions, excess contributions, excess
19 accumulations, and excess distributions with respect to qualified
20 retirement plans, individual retirement accounts, annuities, and
21 modified endowment contracts computed on federal form 5329;
22 (5) Federal excess benefits tax under section 72(m)(5) of the Internal
23 Revenue Code of 1954, as amended; and
24 (6) Federal tax computed on federal form 8814.
- 25 b. For a nonresident individual, estate, or trust, the federal taxes under
26 paragraphs 2 through 6 of subdivision a are included only to the extent the
27 related income is allocated or apportioned to this state under this chapter.

- 28 5. ~~For the purposes of this section, the term "federal income tax liability" means the~~
29 ~~individual's, estate's, or trust's federal income tax liability as computed for federal~~
30 ~~income tax purposes using tax tables, tax rate schedules, or form 8615, plus~~
31 ~~additional taxes due on federal income tax schedules or forms 4970, 4972, section~~

~~72(m)(5) penalty tax, 5329, 6251, and 8656, less any credit for prior year minimum tax (form 8801), and before credit for the elderly or the disabled (schedule R), credit for child and dependent care expenses (form 2441), investment credit (form 3468), foreign tax credit (form 1116), general business credit (form 3800), jobs credit (form 5884), credit for alcohol used as fuel (form 6478), credit for increasing research activities (form 6765), low income housing credit (form 8586) and nonconventional fuel credit, and before reduction for federal income tax withheld, estimated payments, earned income credit, amount paid with form 4868, excess social security tax, and the federal Railroad Retirement Tax Act, tax withheld, credit for federal tax on gasoline and special fuels (form 4136), and regulated investment company credits (form 2439). The term does not include amounts due for self-employment tax or social security tax and railroad retirement tax on tips. For purposes of this subsection, additional taxes due on federal income tax form 6251 or form 8656 must be reduced, but not below zero, by the amount of any investment credit used to reduce the federal tax liability before calculation of the additional tax due on form 6251 or form 8656.~~

The amount under this subsection is determined by multiplying the federal credit for prior year minimum tax computed on federal form 8801 by fourteen percent and then multiplying the result by the fraction determined under subsection 6.

6. For purposes of subsections 3 through 5, the fraction is equal to North Dakota adjusted gross income divided by federal adjusted gross income. For this purpose, "North Dakota adjusted gross income" means federal adjusted gross income reduced by:

- a. Interest income from obligations of the United States;
- b. Income exempt from state income tax under federal statute, the Constitution of the United States, or the Constitution of North Dakota;
- c. The portion of a distribution from a qualified investment fund as defined under subsection 4.2 of 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

1 from which is exempt from state income tax under federal statute, the
2 Constitution of the United States, or the Constitution of North Dakota; and

3 d. For a nonresident individual, estate, or trust, the portion of federal adjusted
4 gross income not allocable or apportionable to this state under this chapter.

5 6- 7. ~~A husband and wife filing a joint federal income tax return shall file a joint state~~
6 ~~income tax return if the return is filed under this section. The same filing status~~
7 ~~used by the taxpayer to file the federal income tax return must be used when filing~~
8 ~~the return under this chapter. However, in the case of married persons filing a joint~~
9 ~~federal income tax return, separate state income tax returns must be filed if one~~
10 ~~spouse is a resident and the other spouse is a nonresident. If separate federal~~
11 ~~income tax returns are filed by married persons, or if separate state income tax~~
12 ~~returns are required to be filed under this subsection, one spouse's state income~~
13 ~~tax return may be filed under this section and the other spouse's state income tax~~
14 ~~return may be filed under the other provisions of this chapter.~~

15 7- 8. a. A resident individual, estate, or trust must be allowed a credit against the tax
16 otherwise due under this section for the amount of any income tax imposed
17 on the taxpayer for the taxable year by another state or territory of the United
18 States or the District of Columbia on income derived from sources therein and
19 which is also subject to tax under this section.

20 b. The credit provided under this subsection may not exceed the proportion of
21 the tax otherwise due under this section that the amount of the taxpayer's
22 adjusted gross income derived from sources in the other taxing jurisdiction
23 bears to the taxpayer's entire adjusted gross income as reported on the
24 taxpayer's federal income tax return.

25 8. —a. ~~Individuals, estates, or trusts receiving a refund of federal income tax for a~~
26 ~~year for which an election to file state income tax returns has been made~~
27 ~~under this section shall file amended state income tax returns reducing the~~
28 ~~federal income tax liability for the year for which the federal income tax refund~~
29 ~~is granted and may not report the federal income tax refund in the year~~
30 ~~received.~~

b. ~~Individuals, estates, or trusts assessed additional federal income tax for a year for which an election to file state income tax returns has been made under this section shall file amended state income tax returns increasing the federal income tax liability for the year for which the additional federal income tax is assessed and may not report increased federal income tax liability in the year in which the additional federal income tax is paid.~~

9. The ~~tax~~ commissioner may ~~prescribe procedures and guidelines~~ adopt rules to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may ~~prescribe procedures and guidelines~~ adopt rules to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.

10. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.20.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after

December 31, 1998.