

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED HOUSE BILL NO. 1399**

Introduced by

Representatives Carlson, Kasper, Koppelman, Wald

Senators Christmann, G. Nelson

1 A BILL for an Act to create and enact a new subsection to section 57-38-31 of the North Dakota
2 Century Code, relating to space on income tax returns to report and remit use taxes; to amend
3 and reenact sections 57-38-30.3 and 57-38-31.1 of the North Dakota Century Code, relating to
4 determination of income tax liability on the short-form state income tax return and the filing of
5 composite returns; to repeal section 57-38-34.1 of the North Dakota Century Code, relating to
6 an optional card income tax return; and to provide an effective date.

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

8 **SECTION 1. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **57-38-30.3. Simplified optional method of computing tax.**

- 11 1. Notwithstanding the other provisions of this chapter, an individual, estate, or trust
12 may elect to determine state income tax liability by applying the provisions of this
13 section. Any taxpayer electing to determine the taxpayer's income tax liability
14 pursuant to this section is only eligible for those adjustments or credits which are
15 specifically provided for in this section. Provided, that for purposes of this section,
16 any person required to file a state income tax return pursuant to the provisions of
17 this chapter, but who has not computed a federal taxable income ~~or federal income~~
18 ~~tax liability~~ figure shall compute such a federal taxable income figure using a
19 pro forma return pursuant to the provisions of this section in order to determine a
20 federal taxable income ~~tax liability~~ figure to be used as a starting point in
21 computing state income tax.
- 22 2. A tax is hereby imposed for each taxable year upon income earned or received in
23 that taxable year by every resident and nonresident individual, estate, and trust.

~~This tax is fourteen percent of the individual's, estate's, or trust's adjusted federal income tax liability for the taxable year~~

a. The tax for an individual, estate, or trust is computed at the following rates:

(1) On North Dakota taxable income not in excess of forty thousand dollars, a tax of two and eight-tenths percent.

(2) On North Dakota taxable income in excess of forty thousand dollars, a tax of four and nine-tenths percent.

b. The tax for married individuals filing a joint return is computed at the following rates:

(1) On North Dakota taxable income not in excess of eighty thousand dollars, a tax of two and eight-tenths percent.

(2) On North Dakota taxable income in excess of eighty thousand dollars, a tax of four and nine-tenths percent.

c. For a nonresident individual, estate or trust, the tax determined under subdivision a or b, whichever applies, must be multiplied by a fraction in which:

(1) The numerator is the individual's federal adjusted gross income derived from North Dakota sources, increased by the addition in subdivision e of subsection 3; and

(2) The denominator is the individual's federal adjusted gross income from all sources, increased by the addition in subdivision e of subsection 3, and reduced by the net income from the amounts specified in subdivisions a and b of subsection 3.

3. ~~The adjusted federal income tax liability for a resident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income taxable to this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator~~ 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. ~~Interest~~ 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. ~~The~~ 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. ~~An~~ 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 chapter 57-35.3.
- d. Reduced by thirty percent of 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.
- e. Increased by the amount of any income exempt from federal income tax which consists of interest and dividends from foreign securities or interest from securities of states and political subdivisions that are purchased after June 30, 2001, except that interest upon obligations of the state of North Dakota or any of its political subdivisions may not be included.
- f. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer receives the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
- g. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.

- 1 4. ~~The adjusted federal income tax liability of a nonresident individual, estate, and~~
2 ~~trust must be determined by multiplying the federal income tax liability by a~~
3 ~~fraction, the numerator of which is the adjusted gross income derived from sources~~
4 ~~within this state and the denominator of which is the total adjusted gross income as~~
5 ~~reported on the federal income tax return. To the extent they are included in the~~
6 ~~taxpayer's federal adjusted gross income, the following amounts must be excluded~~
7 ~~from the numerator:~~
- 8 a. ~~Interest income from obligations of the United States and income exempt~~
9 ~~from state income tax under federal statute or United States or North Dakota~~
10 ~~constitutional provisions.~~
- 11 b. ~~The portion of a distribution from a qualified investment fund described in~~
12 ~~section 57-38-01 which is attributable to investments by the qualified~~
13 ~~investment fund in obligations of the United States, obligations of North~~
14 ~~Dakota or its political subdivisions, and any other obligation the interest from~~
15 ~~which is exempt from state income tax under federal statute or United States~~
16 ~~or North Dakota constitutional provisions.~~
- 17 c. ~~An amount equal to the earnings that are passed through to a taxpayer in~~
18 ~~connection with an allocation and apportionment to North Dakota under~~
19 ~~chapter 57-35.3.~~
- 20 5. ~~For purposes of this section, "federal income tax liability" means the individual's,~~
21 ~~estate's, or trust's federal income tax computed for the taxable year under Internal~~
22 ~~Revenue Code sections 1 and 3, relating to the computation of the regular federal~~
23 ~~income tax before credits, including calculation and tax rate modifications~~
24 ~~prescribed under other provisions of the Internal Revenue Code, adjusted as~~
25 ~~follows:~~
- 26 a. ~~Add the alternative minimum tax computed under Internal Revenue Code~~
27 ~~section 55;~~
- 28 b. ~~Add the tax on a lump sum distribution computed under Internal Revenue~~
29 ~~Code section 402; however, this adjustment does not apply if the lump sum~~
30 ~~distribution is received while a nonresident of this state and is exempt from~~
31 ~~taxation by this state under federal law;~~

- 1 e. ~~Add the tax on an accumulation distribution of a trust computed under Internal~~
2 ~~Revenue Code section 667;~~
3 d. ~~Add the tax computed under Internal Revenue Code section 72(m)(5) on~~
4 ~~excess benefits received from a qualified plan under Internal Revenue Code~~
5 ~~section 401(a) or a qualified annuity under Internal Revenue Code section~~
6 ~~403(a);~~
7 e. ~~Add the tax computed under Internal Revenue Code section 72(q)(1) on an~~
8 ~~early distribution from an annuity contract;~~
9 f. ~~Add the tax computed under Internal Revenue Code section 72(t)(1) on an~~
10 ~~early distribution from a qualified retirement plan;~~
11 g. ~~Add the tax computed under Internal Revenue Code section 4973(a) on~~
12 ~~excess contributions to an individual retirement account, medical savings~~
13 ~~account, and certain Internal Revenue Code section 403(b) and annuity~~
14 ~~contracts; however, this adjustment does not apply if the individual, estate, or~~
15 ~~trust is a nonresident of this state;~~
16 h. ~~Add the tax computed under Internal Revenue Code section 4974(a) on~~
17 ~~excess accumulations in a qualified retirement plan; however, this adjustment~~
18 ~~does not apply if the individual, estate, or trust is a nonresident of this state;~~
19 i. ~~Add the tax computed under Internal Revenue Code section 4980A on~~
20 ~~excess distributions from a qualified retirement plan; and~~
21 j. ~~Subtract the credit for prior year minimum tax computed under Internal~~
22 ~~Revenue Code section 53.~~

23 ~~Unless specifically provided for in this subsection, no federal income tax credit may~~
24 ~~be subtracted in determining the federal income tax liability for purposes of this~~
25 ~~section. Each adjustment in subsection 3, except under subdivision h, may be~~
26 ~~allowed only to the extent the adjustment is attributable to income allocated and~~
27 ~~apportioned to this state.~~

- 28 6- 5. ~~A husband and wife~~ Married individuals filing a joint federal income tax return shall
29 file a joint state income tax return if the return is filed under this section. If
30 separate federal income tax returns are filed, one spouse's state income tax return

may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.

~~7.~~ 6. a. A resident individual, estate, or trust must be allowed a credit against the tax otherwise due under this section for the amount of any income tax imposed on the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources therein and which is also subject to tax under this section.

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

~~8.~~ 7. ~~a.~~ Individuals, estates, or trusts ~~receiving a refund of that file an amended~~ federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax ~~returns reducing the federal income tax liability for the year for which the federal income tax refund is granted and may not report~~ return to reflect the changes on the federal income tax ~~refund in the year received~~ return.

~~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.~~ 8. The tax commissioner may prescribe procedures and guidelines 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 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.~~ 9. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.20.

~~11.~~ 10. A taxpayer filing a return under this section is entitled to the exemptions or credits provided under sections 40-63-04, 40-63-06, and 40-63-07.

11. A qualifying taxpayer is entitled to a tax credit of up to twenty-five percent of the tax liability computed under subsection 2, not to exceed two hundred thirty dollars for any return filed under this section. The credit for married individuals filing separate state income tax returns is limited to one hundred fifteen dollars for each spouse, unless separate returns are required under subsection 2 of section 57-38-31 and one of the spouses is not required to file a return under this chapter. For purposes of this subsection, a "qualifying taxpayer" means a taxpayer who, during the taxable year:

- a. Paid property taxes under chapter 57-02 on property in this state;
- b. Leased and paid rent for real property in this state;
- c. Paid mobile home tax under chapter 57-55 or lot rent for a mobile home in this state; or
- d. Occupied housing in this state as a primary residence, which was provided by the taxpayer's employer as part of the employment relationship.

12. a. A taxpayer is entitled to a credit against the tax imposed by this section for any unused federal credit for prior year minimum tax. "Unused federal credit for prior year minimum tax" means the amount of the federal credit for prior year minimum tax attributable to federal alternative minimum tax included in the taxpayer's federal income tax liability for purposes of this section for taxable years beginning before January 1, 2001, reduced by the total amount of the federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return for all taxable years beginning after December 31, 2000.

- b. The credit under this subsection is equal to fourteen percent of the portion of the unused federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return and may not exceed the taxpayer's tax liability under this section for the taxable year. For a nonresident taxpayer, the credit

determined under this subsection must be multiplied by the percentage that the nonresident taxpayer's North Dakota adjusted gross income is of the nonresident's federal adjusted gross income.

c. The credit under this subsection is not allowed for taxable years beginning after December 31, 2004.

13. a. At the election of an individual taxpayer engaged in a farming business, the tax imposed by subsection 2 for the taxable year must be equal to the sum of the following:

(1) The tax computed under subsection 2 on North Dakota taxable income reduced by elected farm income.

(2) The increase in tax imposed by subsection 2 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code [26 U.S.C. 1301].

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

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

14. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 2, if the amounts of the tax tables are based on the tax rates set forth in subsection 2. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust electing to determine a tax under this section.

1 **SECTION 2.** A new subsection to section 57-38-31 of the North Dakota Century Code
2 is created and enacted as follows:

3 The tax commissioner shall include on each individual income tax return a space
4 for reporting use taxes on purchases by the taxpayer from out-of-state retailers
5 during the taxable year. The commissioner shall include in the instructions with
6 individual income tax returns instructions for reporting, computing, and remitting
7 use tax liability under chapter 57-40.2. The commissioner shall keep separate
8 records of use tax collections under this section and those collections must be
9 allocated as provided in chapter 57-39.2. The provisions of chapter 57-39.2
10 govern the administration of this subsection.

11 **SECTION 3. AMENDMENT.** Section 57-38-31.1 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **57-38-31.1. Composite returns.** Partnerships and subchapter S corporations may file
14 a composite return on behalf of nonresidential individual partners or shareholders in the
15 manner prescribed by the tax commissioner. Any amount of tax paid by the partnership or
16 subchapter S corporation on the composite return on behalf of a nonresident partner or
17 shareholder constitutes a credit on the North Dakota return of the nonresident individual on
18 whose behalf the tax was paid by the partnership or subchapter S corporation. Any return filed
19 by a partnership or subchapter S corporation under this section is considered as the return of
20 the nonresident individual partner or shareholder on whose behalf the return is filed. The tax
21 under this section must be computed by multiplying the aggregate of the shares of North
22 Dakota taxable income reportable to North Dakota by the partners or shareholders included in
23 the composite return by the highest federal tax rate for individuals times the tax rate imposed
24 under section 57-38-30.3 four and nine-tenths percent.

25 **SECTION 4. REPEAL.** Section 57-38-34.1 of the North Dakota Century Code is
26 repealed.

27 **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
28 December 31, 2000.