

July 2004

Introduced by

1 A BILL for an Act to amend and reenact section 57-38-31.1 of the North Dakota Century Code  
2 relating to filing of composite returns by pass-through entities for entities for income tax  
3 purposes; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38-31.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **57-38-31.1. Composite returns.** ~~Partnerships and subchapter S corporations may file~~  
8 ~~a composite return on behalf of nonresident individual partners or shareholders in the manner~~  
9 ~~prescribed by the tax commissioner. Any amount of tax paid by the partnership or~~  
10 ~~subchapter S corporation on the composite return on behalf of a nonresident partner or~~  
11 ~~shareholder constitutes a credit on the North Dakota return of the nonresident individual on~~  
12 ~~whose behalf the tax was paid by the partnership or subchapter S corporation. Any return filed~~  
13 ~~by a partnership or subchapter S corporation under this section is considered as the return of~~  
14 ~~the nonresident individual partner or shareholder on whose behalf the return is filed. The tax~~  
15 ~~under this section must be computed by multiplying the aggregate of the shares of North~~  
16 ~~Dakota income reportable to North Dakota by the partners or shareholders included in the~~  
17 ~~composite return by five and fifty four hundredths percent.~~

18 **1. Definitions.**

19 a. "Member" means a shareholder of an S corporation; a partner in a general  
20 partnership, a limited partnership, or a limited liability partnership; a member  
21 of a limited liability company; or a beneficiary of a trust;

- 1           b. "Nonresident" means an individual who is not a resident of or domiciled in the  
2           state, a business entity that does not have its commercial domicile in the  
3           state, or a trust not organized in the state.
- 4           c. "Pass-through entity" means a corporation that for the applicable tax year is  
5           treated as an S Corporation under this chapters or a general partnership,  
6           limited partnership, limited liability partnership, trust, or limited liability  
7           company that for the applicable tax year is not taxed as a corporation under  
8           this chapter;

9           **2. Composite Return Authorized.**

- 10          a. A pass-through entity may file a composite income tax return on behalf of  
11          electing nonresident members reporting and paying income tax at the highest  
12          marginal rate provided in section 57-38-29 or 57-38-30.3 for individuals or  
13          section 57-38-30 for corporations on the members' pro rata or distributive  
14          shares of income of the pass through entity from doing business in, or  
15          deriving income from sources within, this state.
- 16          b. A nonresident member whose only source of income within a state is from  
17          one or more pass-through entities may elect to be included in a composite  
18          return filed pursuant to this section.
- 19          c. A nonresident member that has been included in a composite return may file  
20          an individual income tax return and shall receive credit for tax paid on the  
21          member's behalf by the pass-through entity.

22          **3. Withholding Required.**

- 23          a. A pass-through entity shall withhold income tax at the highest tax rate  
24          provided in section 57-38-29 or 57-38-30.3 for individuals or section 57-38-30  
25          for corporations on the share of income of the entity distributed to each non  
26          resident member and pay the withheld amount in the manner prescribed by  
27          the tax commission. The pass-through entity is liable to the state for the  
28          payment of the tax required to be withheld under this section and is not liable  
29          to such member for the amount withheld and paid over in compliance with this  
30          section. A member of a pass-through entity that is itself a pass-through entity  
31          (a "lower-tier pass-through entity") shall be subject to this same requirement

1                   to withhold and pay over income tax on the share of income distributed by the  
2                   lower-tier pass-through entity to each of its nonresident members. The tax  
3                   commission shall apply tax withheld and paid over by a pass-through entity on  
4                   distributions to a lower-tier pass-through entity to the withholding required of  
5                   that lower-tier pass-through entity.

6                   b. At the time of a payment make pursuant to this section, a pass-through entity  
7                   shall deliver to the tax commissioner a return upon a form prescribed by the  
8                   tax commissioner showing the total amounts paid or credited to its  
9                   nonresident members, the amount withheld in accordance with this section,  
10                   and any other information the tax commissioner may require. A pass-through  
11                   entity shall furnish to its nonresident member annually, but not later than the  
12                   fifteenth day of the third month after the end of its taxable year, a record of the  
13                   amount of tax withheld on behalf of such member on a form prescribed by the  
14                   tax commissioner.

15                   c. Notwithstanding subdivision a, a pass-through entity is not required to  
16                   withhold tax for a nonresident member if:

- 17                   (1) The member has a pro rata or distributive share of income of the  
18                   pass-through entity from doing business in, or deriving income from  
19                   sources within, this state of less than one-thousand dollars per annual  
20                   accounting period;
- 21                   (2) The tax commissioner has determined by rule, ruling, or instruction that  
22                   the member's income is not subject to withholding;
- 23                   (3) The member elects to have the tax due paid as part of a composite  
24                   return filed by the pass-through entity under subsection 2; or
- 25                   (4) The entity is a publicly traded partnership as defined by section 7704(b)  
26                   of the Internal Revenue Code that is treated as a partnership for the  
27                   purposes of the Internal Revenue Code and that has agreed to file an  
28                   annual information return reporting the name, address, taxpayer  
29                   identification number, and other information requested by the tax  
30                   commissioner of each unitholder with an income in the state in excess  
31                   of five-hundred dollars.

1           **SECTION 2. EFFECTIVE DATE.** This act is effective for taxable years beginning after  
2   December 31, 2004.