

**Sixty-third Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 8, 2013**

SENATE BILL NO. 2104  
(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact section 57-38-31.1 of the North Dakota Century Code, relating to composite withholding returns for nonresident members of passthrough entities; and to provide an effective date.

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

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

**57-38-31.1. Composite returns.**

1. For purposes of this section, unless the context otherwise requires:
  - a. "Member" means an individual ~~who~~ passthrough entity that is a shareholder of an S corporation; a partner in a general partnership, a limited partnership, or a limited liability partnership; a member of a limited liability company; settlor of a grantor trust, or a beneficiary of a trust.
  - b. "Nonresident" means an individual who is not a resident of or domiciled in the state ~~or, a trust not organized in the state, or a passthrough entity that does not have its commercial domicile in the state.~~
  - c. "Passthrough entity" means ~~an entity that for the applicable tax year is treated as an S corporation under this chapter or a general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation under this chapter~~ a corporation that for the applicable tax year is treated as an S corporation under the Internal Revenue Code, a limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes, or a general partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, grantor trust, or similar entity recognized by the laws of this state that is not taxed for federal income tax purposes at the entity level.
2.
  - a. A passthrough entity may file a composite income tax return on behalf of electing nonresident members reporting and paying income tax, at the highest marginal rate provided in section 57-38-30.3 ~~for individuals~~, on the members' pro rata or distributive shares of income of the passthrough entity from doing business in, or deriving income from sources within, this state.
  - b. A nonresident member whose only source of income within the state is from one or more passthrough entities may elect to be included in a composite return filed under this section.
  - c. A nonresident member that has been included in a composite return may file an individual income tax return and shall receive credit for tax paid on the member's behalf by the passthrough entity.
3.
  - a. A passthrough entity shall withhold income tax, at the highest tax rate provided in section 57-38-30.3 ~~for individuals~~, on the share of income of the entity distributed to each nonresident member and pay the withheld amount in the manner prescribed by the tax commissioner. The passthrough entity is liable to the state for the payment of the tax

required to be withheld under this section and is not liable to any member for the amount withheld and paid over in compliance with this section. A member of a passthrough entity that is itself a passthrough entity (a lower-tier passthrough entity) is subject to this same requirement to withhold and pay over income tax on the share of income distributed by the lower-tier passthrough entity to each of its nonresident members. The tax commissioner shall apply tax withheld and paid over by a passthrough entity on distributions to a lower-tier passthrough entity to the withholding required of that lower-tier passthrough entity.

- b. At the time of a payment made under this section, a passthrough entity shall deliver to the tax commissioner a return ~~upon~~ on a form prescribed by the tax commissioner showing the total amounts paid or credited to its nonresident members, the amount withheld in accordance with this section, and any other information the tax commissioner may require. A passthrough entity shall furnish to its nonresident member annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax withheld on behalf of ~~such~~ the member on a form prescribed by the tax commissioner.
- c. Notwithstanding subdivision a, a passthrough entity is not required to withhold tax for a nonresident member if:
  - (1) The member has a pro rata or distributive share of income of the passthrough entity from doing business in, or deriving income from sources within, this state of less than one thousand dollars per annual accounting period;
  - (2) The tax commissioner has determined by rule, ruling, or instruction that the member's income is not subject to withholding;
  - (3) The member elects to have the tax due paid as part of a composite return filed by the passthrough entity under subsection 2; or
  - (4) The entity is a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code which is treated as a partnership for the purposes of the Internal Revenue Code and which has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the tax commissioner of each unitholder with an income in the state in excess of five hundred dollars; or
  - (5) The member is a lower-tier passthrough entity that elects to be exempted from the withholding requirement under this subsection. The election must be made on a form and in a manner prescribed by the tax commissioner. The form must include a statement that the member certifies that the member will file any return and pay any tax required by this chapter on its distributive share of income from the source passthrough entity and that the member is subject to this state's jurisdiction for the collection of that tax and any applicable penalty and interest. The tax commissioner may revoke the exemption under this paragraph if the source passthrough entity or member fails to comply with the requirements of this paragraph. If the exemption is revoked, the source passthrough entity shall begin withholding from the member within sixty days of receiving notification of the revocation from the tax commissioner. The tax commissioner may prescribe any procedures and guidelines necessary to administer this paragraph.
- d. A passthrough entity failing to file a return, or failing to withhold or remit the tax withheld, as required by this section, is subject to the provisions of section 57-38-45.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2013.

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President of the Senate

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2104.

Senate Vote:    Yeas 47            Nays 0            Absent 0

House Vote:    Yeas 92            Nays 0            Absent 2

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2013.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2013.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2013,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State