

Introduced by

Senators Mathern, Cook, Robinson

Representatives Carlson, Holman

1 A BILL for an Act to amend and reenact section 57-38-35.2, subsection 1 of section 57-38-45,  
2 and section 57-38-62 of the North Dakota Century Code, relating to income tax penalties,  
3 interest, and underpayment of estimated taxes; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38-35.2 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **57-38-35.2. Interest payments.**

8 1. Interest at the rate of one-half of one percent per month or fraction of a month must be  
9 allowed and paid upon overpayments of tax as follows:

10 a. Interest on refunds arising from excess income tax withholding or overpayment of  
11 estimated tax accrues for payment forty-five days after the due date of the return  
12 or after the date the return was filed, whichever comes later.

13 b. Interest on refunds arising from amended returns or claims made for credit or  
14 refund accrues for payment from the due date of the return to the date of  
15 payment of the refund excepting the month in which the return was required to be  
16 filed.

17 c. Interest on refunds arising from net operating loss carrybacks, capital loss  
18 carrybacks, or tax credit carrybacks accrues for payment from the due date of the  
19 return for the year, determined without regard to extensions of the time for filing,  
20 giving rise to the loss carryback, to the date of payment of the refund, except that  
21 no interest accrues if the refund payment is made within forty-five days of the  
22 date the amended return or claim is filed to claim the refund attributable to the  
23 carryback.

1           2.   No interest may be paid on refunds arising from amended returns or other claims filed  
2                   for taxable years beginning before January 1, 1979.

3           **SECTION 2. AMENDMENT.** Subsection 1 of section 57-38-45 of the North Dakota Century  
4 Code is amended and reenacted as follows:

5           1.   In addition to other increases to tax and penalty prescribed in this chapter, a taxpayer  
6                   is subject to interest as follows:

7                   a.   Any taxpayer who requests and is granted an extension of time for filing a return  
8                           shall pay, with the tax, interest on the tax at the rate of ~~twelve~~six percent  
9                           per annum from the date the tax would have been due if the extension had not  
10                           been granted to the date the tax is paid.

11                   b.   If any amount of tax imposed by this chapter, including tax withheld by an  
12                           employer, is not paid on or before the due date or extended due date for the  
13                           payment, there must be added to the tax interest at the rate of one-half of one  
14                           percent per month or fraction of a month during which the tax remains unpaid,  
15                           computed from the due date of the return to the date paid excepting the month in  
16                           which the return was required to be filed or the tax became due.

17                   c.   If upon audit an additional tax is found to be due, there must be added to the  
18                           additional tax due interest at the rate of one-half of one percent of the additional  
19                           tax for each month or fraction of a month during which the tax remains unpaid,  
20                           computed from the due date of the return to the date paid, excepting the month in  
21                           which the return was required to be filed or the tax became due.

22                   d.   If the mathematical verification of a taxpayer's return results in additional tax due,  
23                           there must be added to the additional tax interest at the rate of one-half of one  
24                           percent of the additional tax due for each month or fraction of a month during  
25                           which the tax remains unpaid, computed from the due date of the return to the  
26                           date paid, excepting the month in which the return was required to be filed or the  
27                           tax became due.

28                   e.   If a deficiency is determined for a tax period for which there was an overpayment  
29                           that was applied to the following tax period's estimated tax under subsection 6 of  
30                           section 57-38-62, interest accrues with respect to the amount of the deficiency

1                   that is equal to or less than the amount of the overpayment applied from the  
2                   estimated tax payment date to which the overpayment was applied.

3                   f. If a deficiency is determined for a tax period for which there was an overpayment  
4                   of estimated tax that was refunded, interest accrues, with respect to the amount  
5                   of the deficiency which is equal to or less than the amount of the overpayment of  
6                   estimated tax refunded, from the date of payment of the refund.

7                   **SECTION 3. AMENDMENT.** Section 57-38-62 of the North Dakota Century Code is  
8                   amended and reenacted as follows:

9                   **57-38-62. Payment of estimated income tax.**

- 10                  1. An individual, estate, or trust that is subject to section 6654 of the Internal Revenue  
11                  Code relating to a failure to pay federal estimated income tax shall, at the time  
12                  prescribed in this chapter, pay estimated tax for the current taxable year.  
13                  Notwithstanding any other provision of this section, an individual, estate, or trust  
14                  whose net tax liability for the preceding taxable year was less than ~~five hundred one~~  
15                  thousand dollars is not required to pay estimated tax for the current taxable year.  
16                  Married individuals who file a joint federal income tax return and are subject to section  
17                  6654 of the Internal Revenue Code must each be deemed to be subject to the federal  
18                  provision. If payment of estimated tax is required, the individual, estate, or trust shall,  
19                  at the time prescribed in this chapter, pay the lesser of the following:
- 20                  a. An amount which, when added to the taxpayer's withholding, equals ninety  
21                  percent of the taxpayer's current taxable year's net tax liability.
- 22                  b. An amount which, when added to the taxpayer's withholding, equals one hundred  
23                  percent of the taxpayer's net tax liability for the immediately preceding taxable  
24                  year.
- 25                  (1) This subdivision does not apply to any taxpayer who was not required by  
26                  this chapter to file a return for the immediately preceding taxable year, to an  
27                  individual who moved into this state during the immediately preceding  
28                  taxable year, or to an estate or trust that was not in existence for the entire  
29                  immediately preceding taxable year. The amount under this subdivision  
30                  must be deemed to be equal to the amount in subdivision a if this part  
31                  applies.

- 1                   (2) In order to satisfy the requirements of this subdivision, married individuals  
2                   who are required to file separate state returns for the current taxable year  
3                   but who were required to file a joint state return for the immediately  
4                   preceding taxable year must each be required to pay estimated tax in an  
5                   amount which, when added to the individual's withholding, equals the net  
6                   tax liability which would have been computed for the immediately preceding  
7                   taxable year if separate state returns had been required to be filed.
- 8                   (3) In order to satisfy the requirements of this subdivision, married individuals  
9                   who are required to file a joint state return for the current taxable year but  
10                  were required to file separate state returns for the immediately preceding  
11                  taxable year must be required to pay estimated tax in an amount which,  
12                  when added to their withholding, equals the sum of their separate net tax  
13                  liabilities for the immediately preceding taxable year.
- 14                  2. A corporation shall, at the time prescribed in this chapter, pay estimated tax for the  
15                  current taxable year if the corporation's estimated tax can reasonably be expected to  
16                  exceed five thousand dollars and if the corporation's net tax liability for the  
17                  immediately preceding taxable year exceeded five thousand dollars. If payment of  
18                  estimated tax is required, the corporation shall, at the time prescribed in this chapter,  
19                  pay the lesser of the following:
- 20                  a. Ninety percent of the corporation's current taxable year's net tax liability.  
21                  b. One hundred percent of the corporation's net tax liability for the immediately  
22                  preceding taxable year.
- 23                  3. The provisions of section 57-38-45, except those provisions relating to the imposition  
24                  of a penalty, apply in case of nonpayment, late payment, or underpayment of  
25                  estimated tax. For purposes of applying the interest provisions of section 57-38-45,  
26                  interest accrues on a per annum basis from the due date of an installment to the  
27                  fifteenth day of the fourth month following the end of the current taxable year or, with  
28                  respect to any portion of the estimated tax required to be paid, the date on which the  
29                  portion thereof is paid, whichever date is earlier. Notwithstanding the other provisions  
30                  of this section, no interest is due if the estimated tax paid on or before each due date  
31                  under section 57-38-63 by a corporation is based on the annualized or adjusted

1 seasonal method under section 6655 of the Internal Revenue Code. Notwithstanding  
2 the other provisions of this section, no interest is due if the estimated tax of an  
3 individual, estate, or trust is less than ~~five hundred~~ one thousand dollars per income tax  
4 return filed.

5 4. For purposes of this section, "estimated tax" means the amount that a taxpayer  
6 estimates to be income tax under this chapter for the current taxable year less the  
7 amount of any credits allowable, including tax withheld.

8 5. For purposes of this section, "net tax liability" means the amount of income tax  
9 computed for the taxable year as shown on the return less the amount of any credits  
10 allowable except tax withheld and estimated tax paid.

11 6. An individual or corporation may apply a tax overpayment from a preceding taxable  
12 year as an estimated tax payment on the individual's or corporation's behalf for the  
13 taxable year succeeding the overpayment. The individual or corporation may elect to  
14 apply the overpayment to specific estimated tax installments. If the individual or  
15 corporation does not specify the installment period toward which the overpayment is to  
16 be applied, the individual or corporation must be considered to have elected to apply  
17 the overpayment toward the first required estimated tax installment for the succeeding  
18 taxable year.

19 **SECTION 4. EFFECTIVE DATE.** Sections 1 and 2 of this Act are effective for interest and  
20 penalties accruing after July 31, 2013. Section 3 of this Act is effective for taxable years  
21 beginning after December 31, 2012.