

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 1. 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 hundredone
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 2. 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~~This Act is effective for taxable years
21 beginning after December 31, 2012.