

HOUSE BILL NO. 1118

Introduced by

Representatives Heinert, Bosch, Dockter, Headland, Louser, Meier, Porter, Stemen

Senator Dever

1 A BILL for an Act to create and enact a new section to chapter 57-38 ~~and a new subdivision to~~
2 ~~subsection 7 of section 57-38-30.3~~ of the North Dakota Century Code, relating to an individual
3 income tax credit; to amend and reenact sections 57-38-30.3 and 57-38-75 of the North Dakota
4 Century Code, relating to the imposition of a flat income tax rate of one and ninety-nine
5 hundredths percent for individuals, estates, and trusts and rounding rules; to repeal section
6 57-38-01.28 of the North Dakota Century Code, relating to the marriage penalty credit; and to
7 provide an effective date; ~~and to provide an expiration date.~~

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

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

11 **Individual income tax credit.**

- 12 1. A resident of this state is entitled to a nonrefundable credit against the resident's
13 income tax liability as determined under section 57-38-30.3 for the taxable year.
- 14 2. ~~The~~ Based on an individual's filing status used for federal income tax purposes, the
15 maximum credit that may be claimed is equal to:
- 16 a. For single, married filing separately, and head of household taxpayers, seven-
17 hundred fifty filing status, eight hundred dollars.
- 18 b. For married taxpayers filing jointly, one thousand five hundred and surviving
19 spouse filing status, one thousand six hundred dollars.
- 20 3. The amount claimed may not exceed the amount of the resident's income tax liability
21 as determined under this chapter for the taxable year. Any credit amount exceeding a
22 resident's income tax liability for the taxable year may not be claimed as a carryback
23 or carryforward.

~~SECTION 2. A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:~~

~~Individual income tax credit under section 1 of this Act.~~

SECTION 2. AMENDMENT. Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30.3. Individual, estate, and trust income tax.

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals, estates, and trusts is equal to one and ninety-nine hundredths percent of North Dakota taxable income ~~multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.~~

~~a. Single, other than head of household or surviving spouse.~~

~~If North Dakota taxable income is:~~

Over	Not over	The tax is equal to	Of amount over
\$0	\$37,450	1.10%	\$0
\$37,450	\$90,750	\$411.95 + 2.04%	\$37,450
\$90,750	\$189,300	\$1,499.27 + 2.27%	\$90,750
\$189,300	\$411,500	\$3,736.36 + 2.64%	\$189,300
\$411,500		\$9,602.44 + 2.90%	\$411,500

~~b. Married filing jointly and surviving spouse.~~

~~If North Dakota taxable income is:~~

Over	Not over	The tax is equal to	Of amount over
\$0	\$62,600	1.10%	\$0

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1	\$62,600	\$151,200	\$688.60 + 2.04%	\$62,600
2	\$151,200	\$230,450	\$2,496.04 + 2.27%	\$151,200
3	\$230,450	\$411,500	\$4,295.02 + 2.64%	\$230,450
4	\$411,500		\$9,074.74 + 2.90%	\$411,500
5	c. Married filing separately.			
6	If North Dakota taxable income is:			
7	Over	Not over	The tax is equal to	Of amount over
8	\$0	\$31,300	1.10%	\$0
9	\$31,300	\$75,600	\$344.30 + 2.04%	\$31,300
10	\$75,600	\$115,225	\$1,248.02 + 2.27%	\$75,600
11	\$115,225	\$205,750	\$2,147.51 + 2.64%	\$115,225
12	\$205,750		\$4,537.37 + 2.90%	\$205,750
13	d. Head of household.			
14	If North Dakota taxable income is:			
15	Over	Not over	The tax is equal to	Of amount over
16	\$0	\$50,200	1.10%	\$0
17	\$50,200	\$129,600	\$552.20 + 2.04%	\$50,200
18	\$129,600	\$209,850	\$2,171.96 + 2.27%	\$129,600
19	\$209,850	\$411,500	\$3,993.64 + 2.64%	\$209,850
20	\$411,500		\$9,317.20 + 2.90%	\$411,500
21	e. Estates and trusts.			
22	If North Dakota taxable income is:			
23	Over	Not over	The tax is equal to	Of amount over
24	\$0	\$2,500	1.10%	\$0
25	\$2,500	\$5,900	\$27.50 + 2.04%	\$2,500
26	\$5,900	\$9,050	\$96.86 + 2.27%	\$5,900
27	\$9,050	\$12,300	\$168.37 + 2.64%	\$9,050
28	\$12,300		\$254.17 + 2.90%	\$12,300
29	f.a. For an individual who is not a resident of this state for the entire year, or for a			
30	nonresident estate or trust, the tax is equal to the tax otherwise computed under			
31	this subsection multiplied by a fraction in which:			

- 1 (1) The numerator is the federal adjusted gross income allocable and
2 apportionable to this state; and
3 (2) The denominator is the federal adjusted gross income from all sources
4 reduced by the net income from the amounts specified in subdivisions a and
5 b of subsection 2.

6 In the case of married individuals filing a joint return, if one spouse is a resident
7 of this state for the entire year and the other spouse is a nonresident for part or
8 all of the tax year, the tax on the joint return must be computed under this
9 subdivision.

10 ~~g. The tax commissioner shall prescribe new rate schedules that apply in lieu of the~~
11 ~~schedules set forth in subdivisions a through e. The new schedules must be~~
12 ~~determined by increasing the minimum and maximum dollar amounts for each~~
13 ~~income bracket for which a tax is imposed by the cost-of-living adjustment for the~~
14 ~~taxable year as determined by the secretary of the United States treasury for~~
15 ~~purposes of section 1(f) of the United States Internal Revenue Code of 1954, as~~
16 ~~amended. For this purpose, the rate applicable to each income bracket may not~~
17 ~~be changed, and the manner of applying the cost-of-living adjustment must be~~
18 ~~the same as that used for adjusting the income brackets for federal income tax~~
19 ~~purposes.~~

20 ~~h.b.~~ The tax commissioner shall prescribe an optional simplified method of computing
21 tax under this section that may be used by an individual taxpayer who is not
22 entitled to claim an adjustment under subsection 2 or credit against income tax
23 liability under subsection 7.

24 2. For purposes of this section, "North Dakota taxable income" means the federal taxable
25 income of an individual, estate, or trust as computed under the Internal Revenue Code
26 of 1986, as amended, adjusted as follows:

27 a. Reduced by interest income from obligations of the United States and income
28 exempt from state income tax under federal statute or United States or North
29 Dakota constitutional provisions.

30 b. Reduced by the portion of a distribution from a qualified investment fund
31 described in section 57-38-01 which is attributable to investments by the qualified

1 investment fund in obligations of the United States, obligations of North Dakota or
2 its political subdivisions, and any other obligation the interest from which is
3 exempt from state income tax under federal statute or United States or North
4 Dakota constitutional provisions.

5 c. Reduced by the amount equal to the earnings that are passed through to a
6 taxpayer in connection with an allocation and apportionment to North Dakota
7 under section 57-38-01.35.

8 d. Reduced by forty percent of:

9 (1) The excess of the taxpayer's net long-term capital gain for the taxable year
10 over the net short-term capital loss for that year, as computed for purposes
11 of the Internal Revenue Code of 1986, as amended. The adjustment
12 provided by this subdivision is allowed only to the extent the net long-term
13 capital gain is allocated to this state.

14 (2) Qualified dividends as defined under Internal Revenue Code section 1(h)
15 (11), added by section 302(a) of the Jobs and Growth Tax Relief
16 Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963
17 et seq.], but only if taxed at a federal income tax rate that is lower than the
18 regular federal income tax rates applicable to ordinary income. If, for any
19 taxable year, qualified dividends are taxed at the regular federal income tax
20 rates applicable to ordinary income, the reduction allowed under this
21 subdivision is equal to thirty percent of all dividends included in federal
22 taxable income. The adjustment provided by this subdivision is allowed only
23 to the extent the qualified dividend income is allocated to this state.

24 e. Increased by the amount of a lump sum distribution for which income averaging
25 was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C.
26 402], as amended. This adjustment does not apply if the taxpayer received the
27 lump sum distribution while a nonresident of this state and the distribution is
28 exempt from taxation by this state under federal law.

29 f. Increased by an amount equal to the losses that are passed through to a
30 taxpayer in connection with an allocation and apportionment to North Dakota
31 under section 57-38-01.35.

1 g. Reduced by the amount received by the taxpayer as payment for services
2 performed when mobilized under title 10 United States Code federal service as a
3 member of the national guard or reserve member of the armed forces of the
4 United States. This subdivision does not apply to federal service while attending
5 annual training, basic military training, or professional military education.

6 h. Reduced by income from a new and expanding business exempt from state
7 income tax under section 40-57.1-04.

8 i. ~~Reduced by interest and income from bonds issued under chapter 11-37.~~

9 ~~j.~~ Reduced by up to ten thousand dollars of qualified expenses that are related to a
10 donation by a taxpayer or a taxpayer's dependent, while living, of one or more
11 human organs to another human being for human organ transplantation. A
12 taxpayer may claim the reduction in this subdivision only once for each instance
13 of organ donation during the taxable year in which the human organ donation and
14 the human organ transplantation occurs but if qualified expenses are incurred in
15 more than one taxable year, the reduction for those expenses must be claimed in
16 the year in which the expenses are incurred. For purposes of this subdivision:

17 (1) "Human organ transplantation" means the medical procedure by which
18 transfer of a human organ is made from the body of one person to the body
19 of another person.

20 (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine,
21 lung, or bone marrow.

22 (3) "Qualified expenses" means lost wages not compensated by sick pay and
23 unreimbursed medical expenses as defined for federal income tax
24 purposes, to the extent not deducted in computing federal taxable income,
25 whether or not the taxpayer itemizes federal income tax deductions.

26 ~~k-j.~~ Increased by the amount of the contribution upon which the credit under section
27 57-38-01.21 is computed, but only to the extent that the contribution reduced
28 federal taxable income.

29 ~~h-k.~~ Reduced by the amount of any payment received by a veteran or beneficiary of a
30 veteran under section 37-28-03 or 37-28-04.

- 1 | ~~m.l.~~ Reduced by the amount received by a taxpayer that was paid by an employer
2 | under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire
3 | the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the
4 | extent the amount received by the taxpayer is included in federal taxable income.
5 | The reduction applies only if the employer is entitled to the credit under section
6 | 57-38-01.25. The taxpayer must attach a statement from the employer in which
7 | the employer certifies that the employer is entitled to the credit under section
8 | 57-38-01.25 and which specifically identified the type of payment and the amount
9 | of the exemption under this section.
- 10 | ~~n.m.~~ Reduced by the amount up to a maximum of five thousand dollars, or ten
11 | thousand dollars if a joint return is filed, for contributions made under a higher
12 | education savings plan administered by the Bank of North Dakota, pursuant to
13 | section 6-09-38.
- 14 | ~~o.n.~~ Reduced by the amount of income of a taxpayer, who resides anywhere within
15 | the exterior boundaries of a reservation situated in this state or situated both in
16 | this state and in an adjoining state and who is an enrolled member of a federally
17 | recognized Indian tribe, from activities or sources anywhere within the exterior
18 | boundaries of a reservation situated in this state or both situated in this state and
19 | in an adjoining state.
- 20 | ~~p.o.~~ For married individuals filing jointly, reduced by an amount equal to the excess of
21 | the recomputed itemized deductions or standard deduction over the amount of
22 | the itemized deductions or standard deduction deducted in computing federal
23 | taxable income. For purposes of this subdivision, "itemized deductions or
24 | standard deduction" means the amount under section 63 of the Internal Revenue
25 | Code that the married individuals deducted in computing their federal taxable
26 | income and "recomputed itemized deductions or standard deduction" means an
27 | amount determined by computing the itemized deductions or standard deduction
28 | in a manner that replaces the basic standard deduction under section 63(c)(2) of
29 | the Internal Revenue Code for married individuals filing jointly with an amount
30 | equal to double the amount of the basic standard deduction under section 63(c)
31 | (2) of the Internal Revenue Code for a single individual other than a head of

1 household and surviving spouse. If the married individuals elected under
2 section 63(e) of the Internal Revenue Code to deduct itemized deductions in
3 computing their federal taxable income even though the amount of the allowable
4 standard deduction is greater, the reduction under this subdivision is not allowed.
5 Married individuals filing jointly shall compute the available reduction under this
6 subdivision in a manner prescribed by the tax commissioner.

7 ~~e.p.~~ Reduced by an amount equal to four thousand one hundred fifty dollars for
8 taxable year 2018, for each birth resulting in stillbirth, as defined in section
9 23-02.1-01, for which a fetal death certificate has been filed under section
10 23-02.1-20. For taxable years beginning after December 31, 2018, the deduction
11 amount must be adjusted annually on January first of each year by the
12 cost-of-living adjustment. For purposes of this subdivision, "cost-of-living
13 adjustment" means the percentage increase in the consumer price index for all
14 urban consumers in the midwest region as determined by the United States
15 department of labor, bureau of labor statistics, for the most recent year ending
16 December thirty-first. The exemption may only be claimed in the taxable year in
17 which the stillbirth occurred.

18 ~~f.g.~~ Reduced by the amount of expenses incurred by an employee which are directly
19 related to the attainment of higher education or career and technical education
20 which are reimbursed by the employee's employer, but only to the extent the
21 amount of reimbursement is reported as federal taxable income.

22 ~~s.r.~~ Reduced by the amount received by a taxpayer as retired military personnel
23 benefits, including retired military personnel benefits paid to the surviving spouse
24 of a deceased retired member of the armed forces of the United States, a reserve
25 component of the armed forces of the United States, or the national guard, but
26 only to the extent the amount was included in federal taxable income.

27 ~~t.s.~~ Reduced by the amount of social security benefits included in a taxpayer's
28 federal adjusted gross income under section 86 of the Internal Revenue Code.

29 3. The same filing status used when filing federal income tax returns must be used when
30 filing state income tax returns.

- 1 4. a. A resident individual, estate, or trust is entitled to a credit against the tax imposed
2 under this section for the amount of income tax paid by the taxpayer for the
3 taxable year by another state or territory of the United States or the District of
4 Columbia on income derived from sources in those jurisdictions that is also
5 subject to tax under this section.
- 6 b. For an individual, estate, or trust that is a resident of this state for the entire
7 taxable year, the credit allowed under this subsection may not exceed an amount
8 equal to the tax imposed under this section multiplied by a ratio equal to federal
9 adjusted gross income derived from sources in the other jurisdiction divided by
10 federal adjusted gross income less the amounts under subdivisions a and b of
11 subsection 2.
- 12 c. For an individual, estate, or trust that is a resident of this state for only part of the
13 taxable year, the credit allowed under this subsection may not exceed the lesser
14 of the following:
- 15 (1) The tax imposed under this chapter multiplied by a ratio equal to federal
16 adjusted gross income derived from sources in the other jurisdiction
17 received while a resident of this state divided by federal adjusted gross
18 income derived from North Dakota sources less the amounts under
19 subdivisions a and b of subsection 2.
- 20 (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal
21 adjusted gross income derived from sources in the other jurisdiction
22 received while a resident of this state divided by federal adjusted gross
23 income derived from sources in the other states.
- 24 d. The tax commissioner may require written proof of the tax paid to another state.
25 The required proof must be provided in a form and manner as determined by the
26 tax commissioner.
- 27 5. Individuals, estates, or trusts that file an amended federal income tax return changing
28 their federal taxable income figure for a year for which an election to file state income
29 tax returns has been made under this section shall file an amended state income tax
30 return to reflect the changes on the federal income tax return.

- 1 6. The tax commissioner may prescribe procedures and guidelines to prevent requiring
2 income that had been previously taxed under this chapter from becoming taxed again
3 because of the provisions of this section and may prescribe procedures and guidelines
4 to prevent any income from becoming exempt from taxation because of the provisions
5 of this section if it would otherwise have been subject to taxation under the provisions
6 of this chapter.
- 7 7. A taxpayer filing a return under this section is entitled to the following tax credits:
 - 8 a. Family care tax credit under section 57-38-01.20.
 - 9 b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
 - 10 c. Agricultural business investment tax credit under section 57-38.6-03.
 - 11 d. Seed capital investment tax credit under section 57-38.5-03.
 - 12 e. Planned gift tax credit under section 57-38-01.21.
 - 13 f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and
14 57-38-01.23.
 - 15 g. Internship employment tax credit under section 57-38-01.24.
 - 16 h. Workforce recruitment credit under section 57-38-01.25.
 - 17 i. ~~Marriage penalty credit under section 57-38-01.28.~~
 - 18 j. Research and experimental expenditures under section 57-38-30.5.
 - 19 k.j. Geothermal energy device installation credit under section 57-38-01.8.
 - 20 l.k. Long-term care partnership plan premiums income tax credit under section
21 57-38-29.3.
 - 22 m.l. Employer tax credit for salary and related retirement plan contributions of
23 mobilized employees under section 57-38-01.31.
 - 24 n.m. Income tax credit for passthrough entity contributions to private education
25 institutions under section 57-38-01.7.
 - 26 o.n. Angel investor tax credit under section 57-38-01.26.
 - 27 p.o. Twenty-first century manufacturing workforce incentive under section
28 57-38-01.36 (effective for the first four taxable years beginning after
29 December 31, 2018).
 - 30 q.p. Income tax credit for employment of individuals with developmental disabilities or
31 severe mental illness under section 57-38-01.16.

~~r. Individual income tax credit under section 57-38-01.37 (effective for the first two taxable years beginning after December 31, 2020).~~

q. Individual income tax credit under section 1 of this Act.

8. A taxpayer filing a return under this section is entitled to ~~the any~~ exemption ~~provided for~~ which the taxpayer qualifies under section 40-63-04.

9. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:

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

(2) The increase in tax imposed by subsection 1 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. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. 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 of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.

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.

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

3 ~~10. The tax commissioner may prescribe tax tables, to be used in computing the tax~~
4 ~~according to subsection 1, if the amounts of the tax tables are based on the tax rates~~
5 ~~set forth in subsection 1. If prescribed by the tax commissioner, the tables must be~~
6 ~~followed by every individual, estate, or trust determining a tax under this section.~~

7 **SECTION 3. AMENDMENT.** Section 57-38-75 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-38-75. Rounding.**

10 With respect to any amount required to be shown on any return, form, statement, or other
11 document required to be filed with the tax commissioner and for purposes of amounts in tax
12 tables prescribed under ~~subsection 12 of section 57-38-30.3 and~~ subsection 3 of section
13 57-38-59, the amount may be rounded to the nearest dollar. The cents must be disregarded if
14 the cents amount to less than one-half dollar. If the cents amount to one-half dollar or more, the
15 amount must be increased to the next whole dollar.

16 **SECTION 4. REPEAL.** Section 57-38-01.28 of the North Dakota Century Code is repealed.

17 **SECTION 5. EFFECTIVE DATE** ~~—EXPIRATION DATE~~. This Act is effective for ~~the first two~~
18 taxable years beginning after December 31, 2022, ~~and is thereafter ineffective.~~