

**HOUSE BILL NO. 1440**

Introduced by

Representatives Carlson, Warner

Senators T. Mathern, G. Nelson

1 A BILL for an Act to amend and reenact section 57-38-30.3 of the North Dakota Century Code,  
2 relating to individual income tax determination under the simplified optional method of  
3 computing state income taxes; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38-30.3 of the 1997 Supplement to the North  
6 Dakota Century Code is amended and reenacted as follows:

7 **57-38-30.3. Simplified optional method of computing tax.**

8 1. Notwithstanding the other provisions of this chapter, an individual, estate, or trust  
9 may elect to determine ~~state an~~ income tax liability ~~by applying the provisions of~~  
10 under this section. ~~Any taxpayer~~ An individual, estate, or trust electing to  
11 determine ~~his an~~ income tax liability ~~pursuant to~~ under this section is ~~only~~ eligible  
12 for only those adjustments or credits ~~which that~~ are specifically provided ~~for~~ in this  
13 section. ~~Provided, that for purposes of this section, any person~~ If a nonresident  
14 individual otherwise required to file a state income tax return ~~pursuant to the~~  
15 ~~provisions of~~ under this chapter, ~~but who has not computed a federal taxable~~  
16 ~~income or federal income tax liability figure shall compute such a~~ is not required to  
17 file a federal income tax return or is allowed to exclude income in computing  
18 federal taxable income because of an income tax treaty between the United States  
19 and a foreign country, the individual shall compute, or recompute, federal taxable  
20 income figure using a pro forma return pursuant to the provisions of this section in  
21 order to determine a federal income tax liability figure in the manner prescribed by  
22 the tax commissioner to be used as a starting point in computing ~~state income~~ the  
23 tax under subsection 3, the purpose of which is to prevent income otherwise

1           taxable under this chapter from becoming exempt because of the treaty, if the  
2           treaty does not specifically preempt state taxation of the income.

3           2. A tax is hereby imposed for each taxable year upon all income earned or received  
4           in that taxable year by every a resident and nonresident individual, estate, and or  
5           trust, or on the income derived from sources in this state by a nonresident  
6           individual, estate, or trust, electing to determine an income tax under this section.  
7           ~~This tax is fourteen percent of the individual's, estate's, or trust's adjusted federal~~  
8           ~~income tax liability for the taxable year. The tax is equal to the amount determined~~  
9           ~~under subsection 3.~~

10          3. ~~The adjusted federal income tax liability for a resident individual, estate, and trust~~  
11          ~~must be determined by multiplying the federal income tax liability by a fraction, the~~  
12          ~~numerator of which is the adjusted gross income taxable to this state and the~~  
13          ~~denominator of which is the total adjusted gross income as reported on the federal~~  
14          ~~income tax return. To the extent they are included in the taxpayer's federal~~  
15          ~~adjusted gross income, the following amounts must be excluded from the~~  
16          ~~numerator:~~

17          a. ~~Interest income from obligations of the United States and income exempt from~~  
18          ~~state income tax under federal statute or United States or North Dakota~~  
19          ~~constitutional provisions.~~

20          b. ~~The portion of a distribution from a qualified investment fund described in~~  
21          ~~subsection 4.2 of section 57-38-01 which is attributable to investments by the~~  
22          ~~qualified investment fund in obligations of the United States, obligations of~~  
23          ~~North Dakota or its political subdivisions, and any other obligation the interest~~  
24          ~~from which is exempt from state income tax under federal statute or United~~  
25          ~~States or North Dakota constitutional provisions.~~

26          e. ~~An amount equal to the earnings that are passed through to a taxpayer in~~  
27          ~~connection with an allocation and apportionment to North Dakota under~~  
28          ~~chapter 57-35.3.~~

29          The tax under this section applies to taxable income as defined under this  
30          subsection. For purposes of this subsection, "taxable income" means federal  
31          taxable income computed under the United States Internal Revenue Code of 1954,

1           as amended, plus the adjustments provided under subsection 4. The tax is equal  
2           to the amount determined in accordance with the applicable table in subdivisions a  
3           through d corresponding to an individual's filing status used for federal income tax  
4           purposes multiplied by the fraction determined under subsection 5. For an estate  
5           or trust, the table in subdivision e must be used for purposes of this subsection.

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

<u>If taxable income is:</u>	<u>The tax is equal to:</u>
7 <u>Not over \$25,750</u>	<u>2.10 %</u>
8 <u>Over \$25,750 but not over \$62,450</u>	<u>\$540.75 plus 3.92% of amount over \$25,750</u>
9 <u>Over \$62,450 but not over \$130,250</u>	<u>\$1,979.39 plus 4.34% of amount over \$62,450</u>
10 <u>Over \$130,250 but not over \$283,150</u>	<u>\$4,921.91 plus 5.04% of amount over \$130,250</u>
11 <u>Over \$283,150</u>	<u>\$12,628.07 plus 5.54% of amount over \$283,150</u>

12           b.   Married filing jointly and surviving spouse.

<u>If taxable income is:</u>	<u>The tax is equal to:</u>
13 <u>Not over \$43,050</u>	<u>2.10 %</u>
14 <u>Over \$43,050 but not over \$104,050</u>	<u>\$904.05 plus 3.92% of amount over \$43,050</u>
15 <u>Over \$104,050 but not over \$158,550</u>	<u>\$3,295.25 plus 4.34% of amount over \$104,050</u>
16 <u>Over \$158,550 but not over \$283,150</u>	<u>\$5,660.55 plus 5.04% of amount over \$158,550</u>
17 <u>Over \$283,150</u>	<u>\$11,940.39 plus 5.54% of amount over \$283,150</u>

18           c.   Married filing separately.

<u>If taxable income is:</u>	<u>The tax is equal to:</u>
19 <u>Not over \$21,525</u>	<u>2.10 %</u>
20 <u>Over \$21,525 but not over \$52,025</u>	<u>\$452.03 plus 3.92% of amount over \$21,525</u>
21 <u>Over \$52,025 but not over \$79,275</u>	<u>\$1,647.63 plus 4.34% of amount over \$52,025</u>
22 <u>Over \$79,275 but not over \$141,575</u>	<u>\$2,830.28 plus 5.04% of amount over \$79,275</u>
23 <u>Over \$141,575</u>	<u>\$5,970.20 plus 5.54% of amount over \$141,575</u>

24           d.   Head of household.

<u>If taxable income is:</u>	<u>The tax is equal to:</u>
25 <u>Not over \$34,550</u>	<u>2.10 %</u>
26 <u>Over \$34,550 but not over \$89,150</u>	<u>\$725.55 plus 3.92% of amount over \$34,550</u>
27 <u>Over \$89,150 but not over \$144,400</u>	<u>\$2,865.87 plus 4.34% of amount over \$89,150</u>

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1	<u>Over \$144,400 but not over \$283,150</u>	<u>\$5,263.72 plus 5.04% of amount over \$144,400</u>
2	<u>Over \$283,150</u>	<u>\$12,256.72 plus 5.54% of amount over \$283,150</u>
3	e. <u>Estates and trusts.</u>	
4	<u>If taxable income is:</u>	<u>The tax is equal to:</u>
5	<u>Not over \$1,750</u>	<u>2.10 %</u>
6	<u>Over \$1,750 but not over \$4,050</u>	<u>\$36.75 plus 3.92% of amount over \$1,750</u>
7	<u>Over \$4,050 but not over \$6,200</u>	<u>\$126.91 plus 4.34% of amount over \$4,050</u>
8	<u>Over \$6,200 but not over \$8,450</u>	<u>\$220.22 plus 5.04% of amount over \$6,200</u>
9	<u>Over \$8,450</u>	<u>\$333.62 plus 5.54% of amount over \$8,450</u>

10 f. The tax commissioner shall publish the tax tables under this subsection in the  
11 instructions accompanying the individual income tax return in the manner  
12 deemed appropriate by the tax commissioner.

13 g. If married persons who file a joint federal income tax return are required to file  
14 separate state income tax returns under subsection 6, the tax under this  
15 subsection for each spouse must be determined by applying the rates under  
16 subdivision b to the spouses' total federal taxable income and prorating the  
17 result between the spouses based on their respective shares of the total  
18 federal adjusted gross income.

19 h. For taxable years beginning after December 31, 1999, the tax commissioner  
20 shall prescribe new tables that apply in lieu of the tables set forth in  
21 subdivisions a through e. The new tables must be determined by increasing  
22 the minimum and maximum dollar amounts, for each income bracket for  
23 which a tax is imposed, by the cost-of-living adjustment for the taxable year as  
24 determined by the secretary of the United States treasury for purposes of  
25 section 1(f) of the United States Internal Revenue Code of 1954, as amended.  
26 For this purpose, the rate applicable to each income bracket may not be  
27 changed, and the manner of applying the cost-of-living adjustment must be  
28 the same as that used for adjusting the income brackets for federal income  
29 tax purposes.

30 4. ~~The adjusted federal income tax liability of a nonresident individual, estate, and~~  
31 ~~trust must be determined by multiplying the federal income tax liability by a fraction,~~

1           ~~the numerator of which is the adjusted gross income derived from sources within~~  
2           ~~this state and the denominator of which is the total adjusted gross income as~~  
3           ~~reported on the federal income tax return. To the extent they are included in the~~  
4           ~~taxpayer's federal adjusted gross income, the following amounts must be excluded~~  
5           ~~from the numerator:~~

- 6           ~~a. Interest income from obligations of the United States and income exempt from~~  
7           ~~state income tax under federal statute or United States or North Dakota~~  
8           ~~constitutional provisions.~~
- 9           ~~b. The portion of a distribution from a qualified investment fund described in~~  
10           ~~subsection 4.2 of section 57-38-01 which is attributable to investments by the~~  
11           ~~qualified investment fund in obligations of the United States, obligations of~~  
12           ~~North Dakota or its political subdivisions, and any other obligation the interest~~  
13           ~~from which is exempt from state income tax under federal statute or United~~  
14           ~~States or North Dakota constitutional provisions.~~
- 15           ~~e. An amount equal to the earnings that are passed through to a taxpayer in~~  
16           ~~connection with an allocation and apportionment to North Dakota under~~  
17           ~~chapter 57-35.3.~~

18           For purposes of subsection 3, federal taxable income must be increased by the  
19           following:

- 20           a. The amount of a lump sum distribution allowed as a deduction from federal  
21           gross income under section 402(d)(3) of the United States Internal Revenue  
22           Code of 1954, as amended; and
- 23           b. Except for obligations of the state of North Dakota or its political subdivisions,  
24           the amount of interest from obligations of states and their political  
25           subdivisions.
- 26           5. ~~For the purposes of this section, the term "federal income tax liability" means the~~  
27           ~~individual's, estate's, or trust's federal income tax liability as computed for federal~~  
28           ~~income tax purposes using tax tables, tax rate schedules, or form 8615, plus~~  
29           ~~additional taxes due on federal income tax schedules or forms 4970, 4972, section~~  
30           ~~72(m)(5) penalty tax, 5329, 6251, and 8656, less any credit for prior year minimum~~  
31           ~~tax (form 8801), and before credit for the elderly or the disabled (schedule R),~~

1 ~~credit for child and dependent care expenses (form 2441), investment credit (form~~  
2 ~~3468), foreign tax credit (form 1116), general business credit (form 3800), jobs~~  
3 ~~credit (form 5884), credit for alcohol used as fuel (form 6478), credit for increasing~~  
4 ~~research activities (form 6765), low income housing credit (form 8586) and~~  
5 ~~nonconventional fuel credit, and before reduction for federal income tax withheld,~~  
6 ~~estimated payments, earned income credit, amount paid with form 4868, excess~~  
7 ~~social security tax, and the federal Railroad Retirement Tax Act, tax withheld, credit~~  
8 ~~for federal tax on gasoline and special fuels (form 4136), and regulated investment~~  
9 ~~company credits (form 2439). The term does not include amounts due for~~  
10 ~~self-employment tax or social security tax and railroad retirement tax on tips. For~~  
11 ~~purposes of this subsection, additional taxes due on federal income tax form 6251~~  
12 ~~or form 8656 must be reduced, but not below zero, by the amount of any~~  
13 ~~investment credit used to reduce the federal tax liability before calculation of the~~  
14 ~~additional tax due on form 6251 or form 8656.~~

15 For purposes of subsection 3, the fraction is equal to North Dakota adjusted gross  
16 income divided by federal adjusted gross income. For this purpose, "North Dakota  
17 adjusted gross income" means federal adjusted gross income reduced by:

- 18 a. Interest income from obligations of the United States;
- 19 b. Income exempt from state income tax under federal statute, the Constitution  
20 of the United States, or the Constitution of North Dakota;
- 21 c. The portion of a distribution from a qualified investment fund as defined under  
22 subsection 4.2 of section 57-38-01 which is attributable to investments by the  
23 qualified investment fund in obligations of the United States, obligations of  
24 North Dakota or its political subdivisions, and any other obligation the interest  
25 from which is exempt from state income tax under federal statute, the  
26 Constitution of the United States, or the Constitution of North Dakota; and
- 27 d. For a nonresident individual, estate, or trust, the portion of federal adjusted  
28 gross income not allocable or apportionable to this state under this chapter.

- 29 6. ~~A husband and wife filing a joint federal income tax return shall file a joint state~~  
30 ~~income tax return if the return is filed under this section. The same filing status~~  
31 ~~used by the taxpayer to file the federal income tax return must be used when filing~~

1           the return under this chapter. However, in the case of married persons filing a joint  
2           federal income tax return, separate state income tax returns must be filed if one  
3           spouse is a resident and the other spouse is a nonresident. If separate federal  
4           income tax returns are filed by married persons, or if separate state income tax  
5           returns are required to be filed under this subsection, one spouse's state income  
6           tax return may be filed under this section and the other spouse's state income tax  
7           return may be filed under the other provisions of this chapter.

8           7. a. A resident individual, estate, or trust must be allowed a credit against the tax  
9           otherwise due under this section for the amount of any income tax imposed  
10           on the taxpayer for the taxable year by another state or territory of the United  
11           States or the District of Columbia on income derived from sources therein and  
12           which is also subject to tax under this section.

13           b. The credit provided under this subsection may not exceed the proportion of  
14           the tax otherwise due under this section that the amount of the taxpayer's  
15           adjusted gross income derived from sources in the other taxing jurisdiction  
16           bears to the taxpayer's entire adjusted gross income as reported on the  
17           taxpayer's federal income tax return.

18           8. a. ~~Individuals, estates, or trusts receiving a refund of federal income tax for a~~  
19           ~~year for which an election to file state income tax returns has been made~~  
20           ~~under this section shall file amended state income tax returns reducing the~~  
21           ~~federal income tax liability for the year for which the federal income tax refund~~  
22           ~~is granted and may not report the federal income tax refund in the year~~  
23           ~~received.~~

24           b. ~~Individuals, estates, or trusts assessed additional federal income tax for a~~  
25           ~~year for which an election to file state income tax returns has been made~~  
26           ~~under this section shall file amended state income tax returns increasing the~~  
27           ~~federal income tax liability for the year for which the additional federal income~~  
28           ~~tax is assessed and may not report increased federal income tax liability in the~~  
29           ~~year in which the additional federal income tax is paid.~~

30           9. The tax commissioner may ~~prescribe procedures and guidelines~~ adopt rules to  
31           prevent requiring income that had been previously taxed under this chapter from

1                    becoming taxed again because of the provisions of this section and may ~~prescribe~~  
2                    ~~procedures and guidelines~~ adopt rules to prevent any income from becoming  
3                    exempt from taxation because of the provisions of this section if it would otherwise  
4                    have been subject to taxation under the provisions of this chapter.

5        40: 9. A taxpayer filing a return under this section is entitled to the credit provided under  
6                    section 57-38-01.20.

7                    **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
8        December 31, 1998.