

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2045
(Legislative Council)
(Taxation Committee)

AN ACT to amend and reenact section 57-38-31.1 of the North Dakota Century Code, relating to filing of composite income tax returns by 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. ~~Partnerships and subchapter S corporations may file a composite return on behalf of nonresident individual partners or shareholders in the manner prescribed by the tax commissioner. Any amount of tax paid by the partnership or subchapter S corporation on the composite return on behalf of a nonresident partner or shareholder constitutes a credit on the North Dakota return of the nonresident individual on whose behalf the tax was paid by the partnership or subchapter S corporation. Any return filed by a partnership or subchapter S corporation under this section is considered as the return of the nonresident individual partner or shareholder on whose behalf the return is filed. The tax under this section must be computed by multiplying the aggregate of the shares of North Dakota income reportable to North Dakota by the partners or shareholders included in the composite return by five and fifty four hundredths percent.~~

1. For purposes of this section, unless the context otherwise requires:
 - a. "Member" means an individual who 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; 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.
 - 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.
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 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 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.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004.

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 Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2045.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 90 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,
at _____ o'clock _____ M.

Secretary of State