

**HOUSE BILL NO. 1145**

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact subsection 1 of section 57-38-30.3 and subsection 2 of  
2 section 57-38-31 of the North Dakota Century Code, relating to the filing of separate income tax  
3 returns by married individuals; and to provide an effective date.

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

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

7 1. A tax is hereby imposed for each taxable year upon income earned or received in  
8 that taxable year by every resident and nonresident individual, estate, and trust. A  
9 taxpayer computing the tax under this section is only eligible for those adjustments  
10 or credits that are specifically provided for in this section. Provided, that for  
11 purposes of this section, any person required to file a state income tax return under  
12 this chapter, but who has not computed a federal taxable income figure, shall  
13 compute a federal taxable income figure using a pro forma return in order to  
14 determine a federal taxable income figure to be used as a starting point in  
15 computing state income tax under this section. The tax for individuals is equal to  
16 North Dakota taxable income multiplied by the rates in the applicable rate schedule  
17 in subdivisions a through d corresponding to an individual's filing status used for  
18 federal income tax purposes. For an estate or trust, the schedule in subdivision e  
19 must be used for purposes of this subsection. ~~For a nonresident individual, estate,~~  
20 ~~or trust, the tax is equal to the tax determined in accordance with the applicable~~  
21 ~~schedule in subdivisions a through e multiplied by the fraction under subdivision f.~~

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

23 If North Dakota taxable income is: The tax is equal to:

24 Not over \$27,050 2.10%

Fifty-ninth  
Legislative Assembly

1	Over \$27,050 but not over \$65,550	\$568.05 plus 3.92% of amount over \$27,050
2	Over \$65,550 but not over \$136,750	\$2,077.25 plus 4.34% of amount over \$65,550
3	Over \$136,750 but not over \$297,350	\$5,167.33 plus 5.04% of amount over \$136,750
4	Over \$297,350	\$13,261.57 plus 5.54% of amount over \$297,350

5                   b. Married filing jointly and surviving spouse.

6	If North Dakota taxable income is:	The tax is equal to:
7	Not over \$45,200	2.10%
8	Over \$45,200 but not over \$109,250	\$949.20 plus 3.92% of amount over \$45,200
9	Over \$109,250 but not over \$166,500	\$3,459.96 plus 4.34% of amount over \$109,250
10	Over \$166,500 but not over \$297,350	\$5,944.61 plus 5.04% of amount over \$166,500
11	Over \$297,350	\$12,539.45 plus 5.54% of amount over \$297,350

12                   c. Married filing separately.

13	If North Dakota taxable income is:	The tax is equal to:
14	Not over \$22,600	2.10%
15	Over \$22,600 but not over \$54,625	\$474.60 plus 3.92% of amount over \$22,600
16	Over \$54,625 but not over \$83,250	\$1,729.98 plus 4.34% of amount over \$54,625
17	Over \$83,250 but not over \$148,675	\$2,972.31 plus 5.04% of amount over \$83,250
18	Over \$148,675	\$6,269.73 plus 5.54% of amount over \$148,675

19                   d. Head of household.

20	If North Dakota taxable income is:	The tax is equal to:
21	Not over \$36,250	2.10%
22	Over \$36,250 but not over \$93,650	\$761.25 plus 3.92% of amount over \$36,250
23	Over \$93,650 but not over \$151,650	\$3,011.33 plus 4.34% of amount over \$93,650
24	Over \$151,650 but not over \$297,350	\$5,528.53 plus 5.04% of amount over \$151,650
25	Over \$297,350	\$12,871.81 plus 5.54% of amount over \$297,350

26                   e. Estates and trusts.

27	If North Dakota taxable income is:	The tax is equal to:
28	Not over \$1,800	2.10%
29	Over \$1,800 but not over \$4,250	\$37.80 plus 3.92% of amount over \$1,800
30	Over \$4,250 but not over \$6,500	\$133.84 plus 4.34% of amount over \$4,250

1 Over \$6,500 but not over \$8,900 \$231.49 plus 5.04% of amount over \$6,500  
2 Over \$8,900 \$352.45 plus 5.54% of amount over \$8,900

3 f. ~~For a nonresident individual, estate, or trust, the tax determined under the~~  
4 ~~applicable schedule in subdivisions a through e must be~~ For an individual who  
5 is not a resident of this state for the entire year, or for a nonresident estate or  
6 trust, the tax is equal to the tax otherwise computed under this subsection  
7 multiplied by a fraction in which:

- 8 (1) The numerator is the ~~individual's~~ federal adjusted gross income ~~derived~~  
9 ~~from North Dakota sources~~ allocable and apportionable to this state;  
10 and  
11 (2) The denominator is the ~~individual's~~ federal adjusted gross income from  
12 all sources reduced by the net income from the amounts specified in  
13 subdivisions a and b of subsection ~~3~~ 2.

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

18 g. ~~If married individuals who file a joint federal income tax return are required to~~  
19 ~~file separate state income tax returns under any provision of this chapter, the~~  
20 ~~tax under this subsection for each spouse must be determined by applying the~~  
21 ~~rates under subdivision b to the spouses' joint North Dakota taxable income~~  
22 ~~and prorating the result between the spouses based on their separate North~~  
23 ~~Dakota taxable incomes.~~

24 h. For taxable years beginning after December 31, 2001, the tax commissioner  
25 shall prescribe new rate schedules that apply in lieu of the schedules set forth  
26 in subdivisions a through e. The new schedules must be determined by  
27 increasing the minimum and maximum dollar amounts for each income  
28 bracket for which a tax is imposed by the cost-of-living adjustment for the  
29 taxable year as determined by the secretary of the United States treasury for  
30 purposes of section 1(f) of the United States Internal Revenue Code of 1954,  
31 as amended. For this purpose, the rate applicable to each income bracket

1                    may not be changed, and the manner of applying the cost-of-living adjustment  
2                    must be the same as that used for adjusting the income brackets for federal  
3                    income tax purposes.

4                    **SECTION 2. AMENDMENT.** Subsection 2 of section 57-38-31 of the North Dakota  
5 Century Code is amended and reenacted as follows:

6                    2. The same filing status and deduction method used by a husband and wife when  
7                    filing federal income tax returns must be used when filing state income tax returns.  
8                    ~~If either spouse is a resident and the other is a nonresident, separate state income~~  
9                    ~~tax returns must be filed.~~

10                   **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
11 December 31, 2004.