

HOUSE BILL NO. 1182

Introduced by

Representatives Louser, Porter

Senators Armstrong, Carlisle

1 A BILL for an Act to amend and reenact section 57-38-30.3 of the North Dakota Century Code,
2 relating to suspension of the income tax for individuals, estates, and trusts; to provide an
3 effective date; and to provide an expiration date.

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

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

7 **57-38-30.3. (~~Effective for the first two taxable years beginning after December 31,~~**
8 **~~2010) Individual, estate, and trust income tax.~~**

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

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

22	If North Dakota taxable income is:	The tax is equal to:
23	Not over \$34,500	1.51%
24	Over \$34,500	\$520.95 plus 2.82%

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1	but not over \$83,600	of amount over \$34,500
2	Over \$83,600	\$1,905.57 plus 3.13%
3	but not over \$174,400	of amount over \$83,600
4	Over \$174,400	\$4,747.61 plus 3.63%
5	but not over \$379,150	of amount over \$174,400
6	Over \$379,150	\$12,180.04 plus 3.99%
7		of amount over \$379,150
8	b. Married filing jointly and surviving spouse.	
9	If North Dakota taxable income is:	The tax is equal to:
10	Not over \$57,700	1.51%
11	Over \$57,700	\$871.27 plus 2.82%
12	but not over \$139,350	of amount over \$57,700
13	Over \$139,350	\$3,173.80 plus 3.13%
14	but not over \$212,300	of amount over \$139,350
15	Over \$212,300	\$5,457.14 plus 3.63%
16	but not over \$379,150	of amount over \$212,300
17	Over \$379,150	\$11,513.79 plus 3.99%
18		of amount over \$379,150
19	e. Married filing separately.	
20	If North Dakota taxable income is:	The tax is equal to:
21	Not over \$28,850	1.51%
22	Over \$28,850	\$435.64 plus 2.82%
23	but not over \$69,675	of amount over \$28,850
24	Over \$69,675	\$1,586.90 plus 3.13%
25	but not over \$106,150	of amount over \$69,675
26	Over \$106,150	\$2,728.57 plus 3.63%
27	but not over \$189,575	of amount over \$106,150
28	Over \$189,575	\$5,756.90 plus 3.99%
29		of amount over \$189,575
30	d. Head of household.	
31	If North Dakota taxable income is:	The tax is equal to:

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1	Not over \$46,250	1.51%
2	Over \$46,250	\$698.38 plus 2.82%
3	but not over \$119,400	of amount over \$46,250
4	Over \$119,400	\$2,761.21 plus 3.13%
5	but not over \$193,350	of amount over \$119,400
6	Over \$193,350	\$5,075.84 plus 3.63%
7	but not over \$379,150	of amount over \$193,350
8	Over \$379,150	\$11,820.38 plus 3.99%
9		of amount over \$379,150
10	e. Estates and trusts:	
11	If North Dakota taxable income is:	The tax is equal to:
12	Not over \$2,300	1.51%
13	Over \$2,300	\$34.73 plus 2.82%
14	but not over \$5,450	of amount over \$2,300
15	Over \$5,450	\$123.56 plus 3.13%
16	but not over \$8,300	of amount over \$5,450
17	Over \$8,300	\$212.77 plus 3.63%
18	but not over \$11,350	of amount over \$8,300
19	Over \$11,350	\$323.48 plus 3.99%
20		of amount over \$11,350
21	f. For an individual who is not a resident of this state for the entire year, or for a	
22	nonresident estate or trust, the tax is equal to the tax otherwise computed under	
23	this subsection multiplied by a fraction in which:	
24	(1) The numerator is the federal adjusted gross income allocable and	
25	apportionable to this state; and	
26	(2) The denominator is the federal adjusted gross income from all sources	
27	reduced by the net income from the amounts specified in subdivisions a and	
28	b of subsection 2.	
29	In the case of married individuals filing a joint return, if one spouse is a resident	
30	of this state for the entire year and the other spouse is a nonresident for part or	

1 all of the tax year, the tax on the joint return must be computed under this
2 subdivision:

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

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

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

20 a. ~~Reduced by interest income from obligations of the United States and income~~
21 ~~exempt from state income tax under federal statute or United States or North~~
22 ~~Dakota constitutional provisions.~~

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

29 c. ~~Reduced by the amount equal to the earnings that are passed through to a~~
30 ~~taxpayer in connection with an allocation and apportionment to North Dakota~~
31 ~~under chapter 57-35.3.~~

- 1 d. Reduced by thirty percent of:
- 2 (1) ~~The excess of the taxpayer's net long-term capital gain for the taxable year~~
3 ~~over the net short-term capital loss for that year, as computed for purposes~~
4 ~~of the Internal Revenue Code of 1986, as amended. The adjustment~~
5 ~~provided by this subdivision is allowed only to the extent the net long-term~~
6 ~~capital gain is allocated to this state.~~
- 7 (2) ~~The qualified dividend income that is taxed at the same rate as long-term~~
8 ~~capital gain for federal income tax purposes under Internal Revenue Code~~
9 ~~provisions in effect on December 31, 2008. The adjustment provided by this~~
10 ~~subdivision is allowed only to the extent the qualified dividend income is~~
11 ~~allocated to this state.~~
- 12 e. Increased by the amount of a lump sum distribution for which income averaging
13 ~~was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C.~~
14 ~~402], as amended. This adjustment does not apply if the taxpayer received the~~
15 ~~lump sum distribution while a nonresident of this state and the distribution is~~
16 ~~exempt from taxation by this state under federal law.~~
- 17 f. Increased by an amount equal to the losses that are passed through to a
18 ~~taxpayer in connection with an allocation and apportionment to North Dakota~~
19 ~~under chapter 57-35.3.~~
- 20 g. Reduced by the amount received by the taxpayer as payment for services
21 ~~performed when mobilized under title 10 United States Code federal service as a~~
22 ~~member of the national guard or reserve member of the armed forces of the~~
23 ~~United States. This subdivision does not apply to federal service while attending~~
24 ~~annual training, basic military training, or professional military education.~~
- 25 h. Reduced by income from a new and expanding business exempt from state
26 ~~income tax under section 40-57.1-04.~~
- 27 i. Reduced by interest and income from bonds issued under chapter 11-37.
- 28 j. Reduced by up to ten thousand dollars of qualified expenses that are related to a
29 ~~donation by a taxpayer or a taxpayer's dependent, while living, of one or more~~
30 ~~human organs to another human being for human organ transplantation. A~~
31 ~~taxpayer may claim the reduction in this subdivision only once for each instance~~

1 of organ donation during the taxable year in which the human organ donation and
2 the human organ transplantation occurs but if qualified expenses are incurred in
3 more than one taxable year, the reduction for those expenses must be claimed in
4 the year in which the expenses are incurred. For purposes of this subdivision:

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

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

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

14 k. Increased by the amount of the contribution upon which the credit under section
15 57-38-01.21 is computed, but only to the extent that the contribution reduced
16 federal taxable income.

17 l. Reduced by the amount of any payment received by a veteran or beneficiary of a
18 veteran under section 37-28-03 or 37-28-04.

19 m. Reduced by the amount received by a taxpayer that was paid by an employer
20 under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire
21 the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the
22 extent the amount received by the taxpayer is included in federal taxable income.

23 The reduction applies only if the employer is entitled to the credit under section
24 57-38-01.25. The taxpayer must attach a statement from the employer in which
25 the employer certifies that the employer is entitled to the credit under section
26 57-38-01.25 and which specifically identified the type of payment and the amount
27 of the exemption under this section.

28 n. Reduced by the amount up to a maximum of five thousand dollars, or ten
29 thousand dollars if a joint return is filed, for contributions made under a higher-
30 education savings plan administered by the Bank of North Dakota, pursuant to
31 section 6-09-38.

1 e. ~~Reduced by the amount of income of a taxpayer, who resides anywhere within~~
2 ~~the exterior boundaries of a reservation situated in this state or situated both in~~
3 ~~this state and in an adjoining state and who is an enrolled member of a federally~~
4 ~~recognized Indian tribe, from activities or sources anywhere within the exterior~~
5 ~~boundaries of a reservation situated in this state or both situated in this state and~~
6 ~~in an adjoining state.~~

7 p. ~~For married individuals filing jointly, reduced by an amount equal to the excess of~~
8 ~~the recomputed itemized deductions or standard deduction over the amount of~~
9 ~~the itemized deductions or standard deduction deducted in computing federal~~
10 ~~taxable income. For purposes of this subdivision, "itemized deductions or~~
11 ~~standard deduction" means the amount under section 63 of the Internal Revenue~~
12 ~~Code that the married individuals deducted in computing their federal taxable~~
13 ~~income and "recomputed itemized deductions or standard deduction" means an~~
14 ~~amount determined by computing the itemized deductions or standard deduction~~
15 ~~in a manner that replaces the basic standard deduction under section 63(c)(2) of~~
16 ~~the Internal Revenue Code for married individuals filing jointly with an amount~~
17 ~~equal to double the amount of the basic standard deduction under section 63(c)~~
18 ~~(2) of the Internal Revenue Code for a single individual other than a head of~~
19 ~~household and surviving spouse. If the married individuals elected under~~
20 ~~section 63(e) of the Internal Revenue Code to deduct itemized deductions in~~
21 ~~computing their federal taxable income even though the amount of the allowable~~
22 ~~standard deduction is greater, the reduction under this subdivision is not allowed.~~
23 ~~Married individuals filing jointly shall compute the available reduction under this~~
24 ~~subdivision in a manner prescribed by the tax commissioner.~~

25 3. ~~The same filing status used when filing federal income tax returns must be used when~~
26 ~~filing state income tax returns.~~

27 4. a. ~~A resident individual, estate, or trust is entitled to a credit against the tax imposed~~
28 ~~under this section for the amount of income tax paid by the taxpayer for the~~
29 ~~taxable year by another state or territory of the United States or the District of~~
30 ~~Columbia on income derived from sources in those jurisdictions that is also~~
31 ~~subject to tax under this section.~~

- 1 b. ~~For an individual, estate, or trust that is a resident of this state for the entire~~
2 ~~taxable year, the credit allowed under this subsection may not exceed an amount~~
3 ~~equal to the tax imposed under this section multiplied by a ratio equal to federal~~
4 ~~adjusted gross income derived from sources in the other jurisdiction divided by~~
5 ~~federal adjusted gross income less the amounts under subdivisions a and b of~~
6 ~~subsection 2.~~
- 7 e. ~~For an individual, estate, or trust that is a resident of this state for only part of the~~
8 ~~taxable year, the credit allowed under this subsection may not exceed the lesser~~
9 ~~of the following:~~
- 10 (1) ~~The tax imposed under this chapter multiplied by a ratio equal to federal~~
11 ~~adjusted gross income derived from sources in the other jurisdiction~~
12 ~~received while a resident of this state divided by federal adjusted gross~~
13 ~~income derived from North Dakota sources less the amounts under~~
14 ~~subdivisions a and b of subsection 2.~~
- 15 (2) ~~The tax paid to the other jurisdiction 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 sources in the other states.~~
- 19 d. ~~The tax commissioner may require written proof of the tax paid to another state.~~
20 ~~The required proof must be provided in a form and manner as determined by the~~
21 ~~tax commissioner.~~
- 22 5. ~~Individuals, estates, or trusts that file an amended federal income tax return changing~~
23 ~~their federal taxable income figure for a year for which an election to file state income~~
24 ~~tax returns has been made under this section shall file an amended state income tax~~
25 ~~return to reflect the changes on the federal income tax return.~~
- 26 6. ~~The tax commissioner may prescribe procedures and guidelines to prevent requiring~~
27 ~~income that had been previously taxed under this chapter from becoming taxed again~~
28 ~~because of the provisions of this section and may prescribe procedures and guidelines~~
29 ~~to prevent any income from becoming exempt from taxation because of the provisions~~
30 ~~of this section if it would otherwise have been subject to taxation under the provisions~~
31 ~~of this chapter.~~

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- 1 7. A taxpayer filing a return under this section is entitled to the following tax credits:
- 2 a. Family care tax credit under section ~~57-38-01.20~~.
- 3 b. Renaissance zone tax credits under sections ~~40-63-04, 40-63-06, and 40-63-07~~.
- 4 c. Agricultural business investment tax credit under section ~~57-38.6-03~~.
- 5 d. Seed capital investment tax credit under section ~~57-38.5-03~~.
- 6 e. Planned gift tax credit under section ~~57-38-01.21~~.
- 7 f. Biodiesel fuel or green diesel fuel tax credits under sections ~~57-38-01.22 and~~
- 8 ~~57-38-01.23~~.
- 9 g. Internship employment tax credit under section ~~57-38-01.24~~.
- 10 h. Workforce recruitment credit under section ~~57-38-01.25~~.
- 11 i. Angel fund investment tax credit under section ~~57-38-01.26~~.
- 12 j. Microbusiness tax credit under section ~~57-38-01.27~~.
- 13 k. Marriage penalty credit under section ~~57-38-01.28~~.
- 14 l. Homestead income tax credit under section ~~57-38-01.29~~.
- 15 m. Commercial property income tax credit under section ~~57-38-01.30~~.
- 16 n. Research and experimental expenditures under section ~~57-38-30.5~~.
- 17 o. Geothermal energy device installation credit under section ~~57-38-01.8~~.
- 18 p. Long-term care partnership plan premiums income tax credit under section
- 19 ~~57-38-29.3~~.
- 20 q. Employer tax credit for salary and related retirement plan contributions of
- 21 mobilized employees under section ~~57-38-01.31~~.
- 22 r. Housing incentive fund tax credit under section ~~57-38-01.32~~.
- 23 s. Automating manufacturing processes tax credit under section ~~57-38-01.33~~
- 24 (effective for the first three taxable years beginning after December 31, 2012).
- 25 8. A taxpayer filing a return under this section is entitled to the exemption provided under
- 26 section ~~40-63-04~~.
- 27 9. a. If an individual taxpayer engaged in a farming business elects to average farm
- 28 income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the
- 29 taxpayer may elect to compute tax under this subsection. If an election to
- 30 compute tax under this subsection is made, the tax imposed by subsection 1 for
- 31 the taxable year must be equal to the sum of the following:

- 1 (1) ~~The tax computed under subsection 1 on North Dakota taxable income~~
2 ~~reduced by elected farm income.~~
- 3 (2) ~~The increase in tax imposed by subsection 1 which would result if North~~
4 ~~Dakota taxable income for each of the three prior taxable years were~~
5 ~~increased by an amount equal to one third of the elected farm income.~~
6 ~~However, if other provisions of this chapter other than this section were~~
7 ~~used to compute the tax for any of the three prior years, the same~~
8 ~~provisions in effect for that prior tax year must be used to compute the~~
9 ~~increase in tax under this paragraph. For purposes of applying this~~
10 ~~paragraph to taxable years beginning before January 1, 2001, the increase~~
11 ~~in tax must be determined by recomputing the tax in the manner prescribed~~
12 ~~by the tax commissioner.~~
- 13 b. ~~For purposes of this subsection, "elected farm income" means that portion of~~
14 ~~North Dakota taxable income for the taxable year which is elected farm income~~
15 ~~as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C.~~
16 ~~1301], as amended, reduced by the portion of an exclusion claimed under~~
17 ~~subdivision d of subsection 2 that is attributable to a net long-term capital gain~~
18 ~~included in elected farm income.~~
- 19 c. ~~The reduction in North Dakota taxable income under this subsection must be~~
20 ~~taken into account for purposes of making an election under this subsection for~~
21 ~~any subsequent taxable year.~~
- 22 d. ~~The tax commissioner may prescribe rules, procedures, or guidelines necessary~~
23 ~~to administer this subsection.~~
- 24 10. ~~The tax commissioner may prescribe tax tables, to be used in computing the tax~~
25 ~~according to subsection 1, if the amounts of the tax tables are based on the tax rates~~
26 ~~set forth in subsection 1. If prescribed by the tax commissioner, the tables must be~~
27 ~~followed by every individual, estate, or trust determining a tax under this section.~~

28 **(Effective after for the first two taxable years beginning after December 31, 20102012)**

29 **Individual, estate, and trust income tax.**

- 30 1. ~~A~~The tax is hereby imposed under this chapter for each taxable year upon income
31 earned or received in that taxable year by every resident and nonresident individual,

1 estate, and trust is suspended for the first two taxable years beginning after
2 December 31, 2012. A taxpayer computing the tax under this section is only eligible for
3 those adjustments or credits that are specifically provided for in this section. Provided,
4 that for purposes of this section, any person required to file a state income tax return
5 under this chapter, but who has not computed a federal taxable income figure, shall
6 compute a federal taxable income figure using a pro forma return in order to determine
7 a federal taxable income figure to be used as a starting point in computing state
8 income tax under this section. The tax for individuals is equal to North Dakota taxable
9 income multiplied by the rates in the applicable rate schedule in subdivisions a through
10 d corresponding to an individual's filing status used for federal income tax purposes.
11 For an estate or trust, the schedule in subdivision e must be used for purposes of this
12 subsection.

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

If North Dakota taxable income is:	The tax is equal to:
Not over \$34,500	1.51%
Over \$34,500	\$520.95 plus 2.82%
but not over \$83,600	of amount over \$34,500
Over \$83,600	\$1,905.57 plus 3.13%
but not over \$174,400	of amount over \$83,600
Over \$174,400	\$4,747.61 plus 3.63%
but not over \$379,150	of amount over \$174,400
Over \$379,150	\$12,180.04 plus 3.99%
	of amount over \$379,150

24 b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$57,700	1.51%
Over \$57,700	\$871.27 plus 2.82%
but not over \$139,350	of amount over \$57,700
Over \$139,350	\$3,173.80 plus 3.13%
but not over \$212,300	of amount over \$139,350
Over \$212,300	\$5,457.14 plus 3.63%

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1	but not over \$379,150	of amount over \$212,300
2	Over \$379,150	\$11,513.79 plus 3.99%
3		of amount over \$379,150
4	c. Married filing separately.	
5	If North Dakota taxable income is:	The tax is equal to:
6	Not over \$28,850	1.51%
7	Over \$28,850	\$435.64 plus 2.82%
8	but not over \$69,675	of amount over \$28,850
9	Over \$69,675	\$1,586.90 plus 3.13%
10	but not over \$106,150	of amount over \$69,675
11	Over \$106,150	\$2,728.57 plus 3.63%
12	but not over \$189,575	of amount over \$106,150
13	Over \$189,575	\$5,756.90 plus 3.99%
14		of amount over \$189,575
15	d. Head of household.	
16	If North Dakota taxable income is:	The tax is equal to:
17	Not over \$46,250	1.51%
18	Over \$46,250	\$698.38 plus 2.82%
19	but not over \$119,400	of amount over \$46,250
20	Over \$119,400	\$2,761.21 plus 3.13%
21	but not over \$193,350	of amount over \$119,400
22	Over \$193,350	\$5,075.84 plus 3.63%
23	but not over \$379,150	of amount over \$193,350
24	Over \$379,150	\$11,820.38 plus 3.99%
25		of amount over \$379,150
26	e. Estates and trusts.	
27	If North Dakota taxable income is:	The tax is equal to:
28	Not over \$2,300	1.51%
29	Over \$2,300	\$34.73 plus 2.82%
30	but not over \$5,450	of amount over \$2,300
31	Over \$5,450	\$123.56 plus 3.13%

1 but not over \$8,300 of amount over \$5,450

2 Over \$8,300 \$212.77 plus 3.63%

3 but not over \$11,350 of amount over \$8,300

4 Over \$11,350 \$323.48 plus 3.99%

5 of amount over \$11,350

6 f. For an individual who is not a resident of this state for the entire year, or for a
7 nonresident estate or trust, the tax is equal to the tax otherwise computed under
8 this subsection multiplied by a fraction in which:

9 (1) The numerator is the federal adjusted gross income allocable and
10 apportionable to this state; and

11 (2) The denominator is the federal adjusted gross income from all sources
12 reduced by the net income from the amounts specified in subdivisions a and
13 b of subsection 2.

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

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

28 h. The tax commissioner shall prescribe an optional simplified method of computing
29 tax under this section that may be used by an individual taxpayer who is not
30 entitled to claim an adjustment under subsection 2 or credit against income tax
31 liability under subsection 7.

- 1 2. For purposes of this section, "North Dakota taxable income" means the federal taxable
2 income of an individual, estate, or trust as computed under the Internal Revenue Code
3 of 1986, as amended, adjusted as follows:
- 4 a. Reduced by interest income from obligations of the United States and income
5 exempt from state income tax under federal statute or United States or North
6 Dakota constitutional provisions.
- 7 b. Reduced by the portion of a distribution from a qualified investment fund
8 described in section 57-38-01 which is attributable to investments by the qualified
9 investment fund in obligations of the United States, obligations of North Dakota or
10 its political subdivisions, and any other obligation the interest from which is
11 exempt from state income tax under federal statute or United States or North
12 Dakota constitutional provisions.
- 13 c. Reduced by the amount equal to the earnings that are passed through to a
14 taxpayer in connection with an allocation and apportionment to North Dakota
15 under chapter 57-35.3.
- 16 d. Reduced by thirty percent of:
- 17 (1) The excess of the taxpayer's net long-term capital gain for the taxable year
18 over the net short-term capital loss for that year, as computed for purposes
19 of the Internal Revenue Code of 1986, as amended. The adjustment
20 provided by this subdivision is allowed only to the extent the net long-term
21 capital gain is allocated to this state.
- 22 (2) The qualified dividend income that is taxed at the same rate as long-term
23 capital gain for federal income tax purposes under Internal Revenue Code
24 provisions in effect on December 31, 2008. The adjustment provided by this
25 subdivision is allowed only to the extent the qualified dividend income is
26 allocated to this state.
- 27 e. Increased by the amount of a lump sum distribution for which income averaging
28 was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C.
29 402], as amended. This adjustment does not apply if the taxpayer received the
30 lump sum distribution while a nonresident of this state and the distribution is
31 exempt from taxation by this state under federal law.

- 1 f. Increased by an amount equal to the losses that are passed through to a
2 taxpayer in connection with an allocation and apportionment to North Dakota
3 under chapter 57-35.3.
- 4 g. Reduced by the amount received by the taxpayer as payment for services
5 performed when mobilized under title 10 United States Code federal service as a
6 member of the national guard or reserve member of the armed forces of the
7 United States. This subdivision does not apply to federal service while attending
8 annual training, basic military training, or professional military education.
- 9 h. Reduced by income from a new and expanding business exempt from state
10 income tax under section 40-57.1-04.
- 11 i. Reduced by interest and income from bonds issued under chapter 11-37.
- 12 j. Reduced by up to ten thousand dollars of qualified expenses that are related to a
13 donation by a taxpayer or a taxpayer's dependent, while living, of one or more
14 human organs to another human being for human organ transplantation. A
15 taxpayer may claim the reduction in this subdivision only once for each instance
16 of organ donation during the taxable year in which the human organ donation and
17 the human organ transplantation occurs but if qualified expenses are incurred in
18 more than one taxable year, the reduction for those expenses must be claimed in
19 the year in which the expenses are incurred. For purposes of this subdivision:
- 20 (1) "Human organ transplantation" means the medical procedure by which
21 transfer of a human organ is made from the body of one person to the body
22 of another person.
- 23 (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine,
24 lung, or bone marrow.
- 25 (3) "Qualified expenses" means lost wages not compensated by sick pay and
26 unreimbursed medical expenses as defined for federal income tax
27 purposes, to the extent not deducted in computing federal taxable income,
28 whether or not the taxpayer itemizes federal income tax deductions.
- 29 k. Increased by the amount of the contribution upon which the credit under section
30 57-38-01.21 is computed, but only to the extent that the contribution reduced
31 federal taxable income.

- 1 l. Reduced by the amount of any payment received by a veteran or beneficiary of a
2 veteran under section 37-28-03 or 37-28-04.
- 3 m. Reduced by the amount received by a taxpayer that was paid by an employer
4 under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire
5 the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the
6 extent the amount received by the taxpayer is included in federal taxable income.
7 The reduction applies only if the employer is entitled to the credit under section
8 57-38-01.25. The taxpayer must attach a statement from the employer in which
9 the employer certifies that the employer is entitled to the credit under section
10 57-38-01.25 and which specifically identified the type of payment and the amount
11 of the exemption under this section.
- 12 n. Reduced by the amount up to a maximum of five thousand dollars, or ten
13 thousand dollars if a joint return is filed, for contributions made under a higher
14 education savings plan administered by the Bank of North Dakota, pursuant to
15 section 6-09-38.
- 16 o. Reduced by the amount of income of a taxpayer, who resides anywhere within
17 the exterior boundaries of a reservation situated in this state or situated both in
18 this state and in an adjoining state and who is an enrolled member of a federally
19 recognized Indian tribe, from activities or sources anywhere within the exterior
20 boundaries of a reservation situated in this state or both situated in this state and
21 in an adjoining state.
- 22 p. For married individuals filing jointly, reduced by an amount equal to the excess of
23 the recomputed itemized deductions or standard deduction over the amount of
24 the itemized deductions or standard deduction deducted in computing federal
25 taxable income. For purposes of this subdivision, "itemized deductions or
26 standard deduction" means the amount under section 63 of the Internal Revenue
27 Code that the married individuals deducted in computing their federal taxable
28 income and "recomputed itemized deductions or standard deduction" means an
29 amount determined by computing the itemized deductions or standard deduction
30 in a manner that replaces the basic standard deduction under section 63(c)(2) of
31 the Internal Revenue Code for married individuals filing jointly with an amount

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

9 3. The same filing status used when filing federal income tax returns must be used when
10 filing state income tax returns.

11 4. a. A resident individual, estate, or trust is entitled to a credit against the tax imposed
12 under this section for the amount of income tax paid by the taxpayer for the
13 taxable year by another state or territory of the United States or the District of
14 Columbia on income derived from sources in those jurisdictions that is also
15 subject to tax under this section.

16 b. For an individual, estate, or trust that is a resident of this state for the entire
17 taxable year, the credit allowed under this subsection may not exceed an amount
18 equal to the tax imposed under this section multiplied by a ratio equal to federal
19 adjusted gross income derived from sources in the other jurisdiction divided by
20 federal adjusted gross income less the amounts under subdivisions a and b of
21 subsection 2.

22 c. For an individual, estate, or trust that is a resident of this state for only part of the
23 taxable year, the credit allowed under this subsection may not exceed the lesser
24 of the following:

25 (1) The tax imposed under this chapter multiplied by a ratio equal to federal
26 adjusted gross income derived from sources in the other jurisdiction
27 received while a resident of this state divided by federal adjusted gross
28 income derived from North Dakota sources less the amounts under
29 subdivisions a and b of subsection 2.

30 (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal
31 adjusted gross income derived from sources in the other jurisdiction

1 received while a resident of this state divided by federal adjusted gross
2 income derived from sources in the other states.

3 d. The tax commissioner may require written proof of the tax paid to another state.
4 The required proof must be provided in a form and manner as determined by the
5 tax commissioner.

6 5. Individuals, estates, or trusts that file an amended federal income tax return changing
7 their federal taxable income figure for a year for which an election to file state income
8 tax returns has been made under this section shall file an amended state income tax
9 return to reflect the changes on the federal income tax return.

10 6. The tax commissioner may prescribe procedures and guidelines to prevent requiring
11 income that had been previously taxed under this chapter from becoming taxed again
12 because of the provisions of this section and may prescribe procedures and guidelines
13 to prevent any income from becoming exempt from taxation because of the provisions
14 of this section if it would otherwise have been subject to taxation under the provisions
15 of this chapter.

16 7. A taxpayer filing a return under this section is entitled to the following tax credits:

17 a. Family care tax credit under section 57-38-01.20.

18 b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.

19 c. Agricultural business investment tax credit under section 57-38.6-03.

20 d. Seed capital investment tax credit under section 57-38.5-03.

21 e. Planned gift tax credit under section 57-38-01.21.

22 f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and
23 57-38-01.23.

24 g. Internship employment tax credit under section 57-38-01.24.

25 h. Workforce recruitment credit under section 57-38-01.25.

26 i. Angel fund investment tax credit under section 57-38-01.26.

27 j. Microbusiness tax credit under section 57-38-01.27.

28 k. Marriage penalty credit under section 57-38-01.28.

29 l. Homestead income tax credit under section 57-38-01.29.

30 m. Commercial property income tax credit under section 57-38-01.30.

31 n. Research and experimental expenditures under section 57-38-30.5.

- 1 o. Geothermal energy device installation credit under section 57-38-01.8.
- 2 p. Long-term care partnership plan premiums income tax credit under section
- 3 57-38-29.3.
- 4 q. Employer tax credit for salary and related retirement plan contributions of
- 5 mobilized employees under section 57-38-01.31.
- 6 r. Automating manufacturing processes tax credit under section 57-38-01.33
- 7 (effective for the first three taxable years beginning after December 31, 2012).
- 8 8. A taxpayer filing a return under this section is entitled to the exemption provided under
- 9 section 40-63-04.
- 10 9. a. If an individual taxpayer engaged in a farming business elects to average farm
- 11 income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the
- 12 taxpayer may elect to compute tax under this subsection. If an election to
- 13 compute tax under this subsection is made, the tax imposed by subsection 1 for
- 14 the taxable year must be equal to the sum of the following:
- 15 (1) The tax computed under subsection 1 on North Dakota taxable income
- 16 reduced by elected farm income.
- 17 (2) The increase in tax imposed by subsection 1 which would result if North
- 18 Dakota taxable income for each of the three prior taxable years were
- 19 increased by an amount equal to one-third of the elected farm income.
- 20 However, if other provisions of this chapter other than this section were
- 21 used to compute the tax for any of the three prior years, the same
- 22 provisions in effect for that prior tax year must be used to compute the
- 23 increase in tax under this paragraph. For purposes of applying this
- 24 paragraph to taxable years beginning before January 1, 2001, the increase
- 25 in tax must be determined by recomputing the tax in the manner prescribed
- 26 by the tax commissioner.
- 27 b. For purposes of this subsection, "elected farm income" means that portion of
- 28 North Dakota taxable income for the taxable year which is elected farm income
- 29 as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C.
- 30 1301], as amended, reduced by the portion of an exclusion claimed under

1 subdivision d of subsection 2 that is attributable to a net long-term capital gain
2 included in elected farm income.

3 c. The reduction in North Dakota taxable income under this subsection must be
4 taken into account for purposes of making an election under this subsection for
5 any subsequent taxable year.

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

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

12 11. The tax commissioner may prescribe procedures and guidelines to allow individuals,
13 estates, and trusts that have paid in withheld or estimated taxes for any income during
14 any part of the first two taxable years after December 31, 2012, to apply for and obtain
15 a refund of those taxes.

16 12. The carryforward period of a credit or deduction to which a taxpayer was entitled
17 during the time the tax under this section was suspended is extended by two years.

18 **SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for the first two
19 taxable years beginning after December 31, 2012, and is thereafter ineffective.