

PROPOSED AMENDMENTS TO SENATE BILL NO. 2292

Page 1, line 2, after "reenact" insert "subsection 5 of section 57-38-04 and"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1 but only according to the apportionment method provided under subsection 1 of section 57-38.1-09, providing for allocation and apportionment of income of corporations doing business within and without this state."

Page 1, line 10, overstrike "All" and insert immediately thereafter "Except as permitted under subsections 2 through 4, all"

Page 1, line 13, replace "A taxpayer" with "For the first two taxable years beginning after December 31, 2014, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

- a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
3. For the first two taxable years beginning after December 31, 2016, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus six times the sales factor, and the denominator of which is eight.
  - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.

- b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsection 4 for the taxable years that subsection applies.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
4. For taxable years beginning after December 31, 2018, a taxpayer that is not a passthrough entity"

Page 2, line 2, replace "can" with "may"

Renumber accordingly