

**HOUSE BILL NO. 1082**

Introduced by

Representative Dockter

1 A BILL for an Act to create and enact a new subsection to section 57-38-42 of the North Dakota  
2 Century Code, relating to electronic filing and payment of information returns; to amend and  
3 reenact section 57-38-60 of the North Dakota Century Code, relating to electronic filing and  
4 payment of income tax withholding returns; and to provide an effective date.

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

6 **SECTION 1.** A new subsection to section 57-38-42 of the North Dakota Century Code is  
7 created and enacted as follows:

8 Any person required to file an information return under subsection 1, and any  
9 passthrough entity with ten or more partners, shareholders, members, or owners shall  
10 file the return by electronic data interchange or other electronic media as determined  
11 by the tax commissioner. The tax commissioner may waive, upon a showing of good  
12 cause, the requirement to file the return or pay the tax due electronically.

13 **SECTION 2. AMENDMENT.** Section 57-38-60 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **57-38-60. Employer's returns and remittances.**

16 1. Every employer shall, on or before the last day of April, July, October, and January,  
17 pay over to the tax commissioner the amount required to be deducted and withheld  
18 from wages paid to all employees during the preceding calendar quarter under section  
19 57-38-59. If the amount required to be deducted and withheld from wages paid to all of  
20 an employer's employees during the previous calendar year was less than ~~five-~~  
21 ~~hundred~~ one thousand dollars, the employer may file an annual return. The tax  
22 commissioner may alter the time or period for making reports and payment when in  
23 the tax commissioner's opinion, the tax is in jeopardy, or may prescribe the use of any

1 other time or period as will facilitate the collection and payment of the tax by the  
2 employer.

3 2. Every employer shall file a return on forms prescribed by the tax commissioner with  
4 each payment made to the tax commissioner under this section which shows the  
5 amount of tax imposed under this chapter which was deducted and withheld during the  
6 period covered by the return, and such other information as the tax commissioner may  
7 require. If the amount required to be deducted and withheld from wages paid to all an  
8 employer's employees during the previous calendar year is one thousand dollars or  
9 more, the employer shall file the return and pay any tax due by electronic data  
10 interchange or other electronic media as determined by the tax commissioner. The tax  
11 commissioner may waive, upon a showing of good cause, the requirement to pay the  
12 tax due electronically.

13 3. Every employer required to withhold state income tax shall make an annual return to  
14 the tax commissioner on forms provided and approved by the tax commissioner,  
15 summarizing the total compensation paid, the federal income tax deducted and  
16 withheld, and the state income tax deducted and withheld during the calendar year.  
17 The annual return must be accompanied by a statement of the compensation paid, the  
18 federal income tax deducted and withheld, and the state income tax deducted and  
19 withheld for each employee. The annual return and accompanying statements must be  
20 filed with the tax commissioner on or before the due date for filing similar returns with  
21 the internal revenue service.

22 4. Every employer not required to withhold state income tax shall provide to the tax  
23 commissioner a statement of the compensation paid and the federal income tax  
24 deducted and withheld for each employee. The statement must be filed on or before  
25 the due date for filing similar returns with the internal revenue service.

26 5. In case of failure to timely file an information statement as required by subsections 3  
27 and 4, and after thirty days' notice to file is given by the tax commissioner, the tax  
28 commissioner may assess a penalty of ten dollars for each failure to file, not to exceed  
29 two thousand dollars.

30 6. Every employer shall also, in accordance with rules adopted by the tax commissioner,  
31 provide each employee from whom state income tax has been withheld, with a

1 statement of the amounts of total compensation paid and the amounts deducted and  
2 withheld for the employee during the preceding calendar year in accordance with  
3 section 57-38-59. The statement must be made available to the employee on or before  
4 January thirty-first of the year following that for which the report is made.

5 7. The employer shall be liable to the tax commissioner for the payment of the tax  
6 required to be deducted and withheld under section 57-38-59, and the employee shall  
7 not thereafter be liable for the amount of any such payment, nor shall the employer be  
8 liable to any person or to any employee for the amount of any such payment. For the  
9 purpose of making penalty provisions of this chapter applicable, any amount deducted  
10 or required to be deducted and remitted to the tax commissioner under this section  
11 shall be considered to be the tax of the employer and with respect to such amounts  
12 the employer is considered the taxpayer.

13 8. Every employer who deducts and withholds any amounts under section 57-38-59 shall  
14 hold the same in trust for the state of North Dakota for payment thereof to the tax  
15 commissioner in the manner and at the time provided for in this section, and the state  
16 of North Dakota shall have a lien on the property of the employer to secure the  
17 payment of any amounts withheld and not remitted as provided herein, which lien shall  
18 attach at the time prescribed and to the property described in section 57-38-48 and  
19 shall be subject to the provisions of sections 57-38-49, 57-38-50, and 57-38-51.

20 9. An employer, at the discretion of the tax commissioner, may be required to either  
21 make a cash deposit or post with the tax commissioner a bond or undertaking  
22 executed by a surety company authorized to do business in this state in an amount  
23 reasonably calculated to ensure the payment to the state of taxes deducted and  
24 withheld from wages.

25 10. An employer is not subject to this section or section 57-38-59 for wages paid to any  
26 employee solely for agricultural labor, as defined in section 3121(g) of the Internal  
27 Revenue Code [26 U.S.C. 3121(g)].

28 11. A payroll service provider authorized under the provisions of this chapter to file and  
29 remit withholding taxes on behalf of an employer shall file the return required by  
30 subsection 2 and pay any tax due, by electronic data interchange or other electronic  
31 media as determined by the tax commissioner. As used in this subsection, a "payroll

1 service provider" means a person that, for federal tax purposes, electronically  
2 processes and transmits an employer's withholding returns and taxes, including wage  
3 information returns. The tax commissioner may waive, upon a showing of good cause,  
4 the requirement to file a return or pay the tax electronically.

5 12. Any person required to file ~~ten or more~~an information ~~returns~~return under ~~subsection 3-~~  
6 ~~of section 57-38-42, or subsection 3 or 4 of this section;~~ shall file the ~~returns~~return by  
7 electronic data interchange or other electronic media as determined by the tax  
8 commissioner. The tax commissioner may waive, upon a showing of good cause, the  
9 requirement to file the ~~returns~~return electronically.

10 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
11 December 31, 2021.