

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1118

Introduced by

Representatives Heinert, Bosch, Dockter, Headland, Louser, Meier, Porter, Stemen

Senator Dever

1 A BILL for an Act to create and enact a new section to chapter 57-38 of the North Dakota
2 Century Code, relating to an individual income tax credit; to amend and reenact sections
3 57-38-30.3 and 57-38-75 of the North Dakota Century Code, relating to the imposition of a flat
4 income tax rate of one and ninety-nine hundredths percent for individuals, estates, and trusts
5 and rounding rules; to repeal section 57-38-01.28 of the North Dakota Century Code, relating to
6 the marriage penalty credit; and to provide an effective date.

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

8 **SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Individual income tax credit.**

- 11 1. A resident of this state is entitled to a nonrefundable credit against the resident's
12 income tax liability as determined under section 57-38-30.3 for the taxable year.
13 2. Based on an individual's filing status used for federal income tax purposes, the
14 maximum credit that may be claimed is:
15 a. For single, married filing separately, and head of household filing status,
16 eight hundred dollars.
17 b. For married filing jointly and surviving spouse filing status, one thousand
18 six hundred dollars.
19 3. The amount claimed may not exceed the amount of the resident's income tax liability
20 as determined under this chapter for the taxable year. Any credit amount exceeding a
21 resident's income tax liability for the taxable year may not be claimed as a carryback
22 or carryforward.

23 **SECTION 2. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **57-38-30.3. Individual, estate, and trust income tax.**

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

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

16 ~~If North Dakota taxable income is:~~

| 17 | Over | Not over | The tax is equal to | Of amount over |
|----|-----------|-----------|---------------------|----------------|
| 18 | \$0 | \$37,450 | 1.10% | \$0 |
| 19 | \$37,450 | \$90,750 | \$411.95 + 2.04% | \$37,450 |
| 20 | \$90,750 | \$189,300 | \$1,499.27 + 2.27% | \$90,750 |
| 21 | \$189,300 | \$411,500 | \$3,736.36 + 2.64% | \$189,300 |
| 22 | \$411,500 | | \$9,602.44 + 2.90% | \$411,500 |

23 b. ~~Married filing jointly and surviving spouse.~~

24 ~~If North Dakota taxable income is:~~

| 25 | Over | Not over | The tax is equal to | Of amount over |
|----|-----------|-----------|---------------------|----------------|
| 26 | \$0 | \$62,600 | 1.10% | \$0 |
| 27 | \$62,600 | \$151,200 | \$688.60 + 2.04% | \$62,600 |
| 28 | \$151,200 | \$230,450 | \$2,496.04 + 2.27% | \$151,200 |
| 29 | \$230,450 | \$411,500 | \$4,295.02 + 2.64% | \$230,450 |
| 30 | \$411,500 | | \$9,074.74 + 2.90% | \$411,500 |

31 c. ~~Married filing separately.~~

Sixty-eighth
Legislative Assembly

| | | | | | |
|---|------------------------------------|-----------|---------------------|----------------|--|
| 1 | If North Dakota taxable income is: | | | | |
| 2 | Over | Not over | The tax is equal to | Of amount over | |
| 3 | \$0 | \$31,300 | 1.10% | \$0 | |
| 4 | \$31,300 | \$75,600 | \$344.30 + 2.04% | \$31,300 | |
| 5 | \$75,600 | \$115,225 | \$1,248.02 + 2.27% | \$75,600 | |
| 6 | \$115,225 | \$205,750 | \$2,147.51 + 2.64% | \$115,225 | |
| 7 | \$205,750 | | \$4,537.37 + 2.90% | \$205,750 | |

d. ~~Head of household.~~

| | | | | | |
|----|------------------------------------|-----------|---------------------|----------------|--|
| 9 | If North Dakota taxable income is: | | | | |
| 10 | Over | Not over | The tax is equal to | Of amount over | |
| 11 | \$0 | \$50,200 | 1.10% | \$0 | |
| 12 | \$50,200 | \$129,600 | \$552.20 + 2.04% | \$50,200 | |
| 13 | \$129,600 | \$209,850 | \$2,171.96 + 2.27% | \$129,600 | |
| 14 | \$209,850 | \$411,500 | \$3,993.64 + 2.64% | \$209,850 | |
| 15 | \$411,500 | | \$9,317.20 + 2.90% | \$411,500 | |

e. ~~Estates and trusts.~~

| | | | | | |
|----|------------------------------------|----------|---------------------|----------------|--|
| 17 | If North Dakota taxable income is: | | | | |
| 18 | Over | Not over | The tax is equal to | Of amount over | |
| 19 | \$0 | \$2,500 | 1.10% | \$0 | |
| 20 | \$2,500 | \$5,900 | \$27.50 + 2.04% | \$2,500 | |
| 21 | \$5,900 | \$9,050 | \$96.86 + 2.27% | \$5,900 | |
| 22 | \$9,050 | \$12,300 | \$168.37 + 2.64% | \$9,050 | |
| 23 | \$12,300 | | \$254.17 + 2.90% | \$12,300 | |

- f.a. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:
- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
 - (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

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

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

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

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

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

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

- 1 c. Reduced by the amount equal to the earnings that are passed through to a
2 taxpayer in connection with an allocation and apportionment to North Dakota
3 under section 57-38-01.35.
- 4 d. Reduced by forty percent of:
- 5 (1) The excess of the taxpayer's net long-term capital gain for the taxable year
6 over the net short-term capital loss for that year, as computed for purposes
7 of the Internal Revenue Code of 1986, as amended. The adjustment
8 provided by this subdivision is allowed only to the extent the net long-term
9 capital gain is allocated to this state.
- 10 (2) Qualified dividends as defined under Internal Revenue Code section 1(h)
11 (11), added by section 302(a) of the Jobs and Growth Tax Relief
12 Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963
13 et seq.], but only if taxed at a federal income tax rate that is lower than the
14 regular federal income tax rates applicable to ordinary income. If, for any
15 taxable year, qualified dividends are taxed at the regular federal income tax
16 rates applicable to ordinary income, the reduction allowed under this
17 subdivision is equal to thirty percent of all dividends included in federal
18 taxable income. The adjustment provided by this subdivision is allowed only
19 to the extent the qualified dividend income is allocated to this state.
- 20 e. Increased by the amount of a lump sum distribution for which income averaging
21 was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C.
22 402], as amended. This adjustment does not apply if the taxpayer received the
23 lump sum distribution while a nonresident of this state and the distribution is
24 exempt from taxation by this state under federal law.
- 25 f. Increased by an amount equal to the losses that are passed through to a
26 taxpayer in connection with an allocation and apportionment to North Dakota
27 under section 57-38-01.35.
- 28 g. Reduced by the amount received by the taxpayer as payment for services
29 performed when mobilized under title 10 United States Code federal service as a
30 member of the national guard or reserve member of the armed forces of the

- 1 United States. This subdivision does not apply to federal service while attending
2 annual training, basic military training, or professional military education.
- 3 h. Reduced by income from a new and expanding business exempt from state
4 income tax under section 40-57.1-04.
- 5 ~~i. Reduced by interest and income from bonds issued under chapter 11-37.~~
- 6 ~~j.~~ Reduced by up to ten thousand dollars of qualified expenses that are related to a
7 donation by a taxpayer or a taxpayer's dependent, while living, of one or more
8 human organs to another human being for human organ transplantation. A
9 taxpayer may claim the reduction in this subdivision only once for each instance
10 of organ donation during the taxable year in which the human organ donation and
11 the human organ transplantation occurs but if qualified expenses are incurred in
12 more than one taxable year, the reduction for those expenses must be claimed in
13 the year in which the expenses are incurred. For purposes of this subdivision:
- 14 (1) "Human organ transplantation" means the medical procedure by which
15 transfer of a human organ is made from the body of one person to the body
16 of another person.
- 17 (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine,
18 lung, or bone marrow.
- 19 (3) "Qualified expenses" means lost wages not compensated by sick pay and
20 unreimbursed medical expenses as defined for federal income tax
21 purposes, to the extent not deducted in computing federal taxable income,
22 whether or not the taxpayer itemizes federal income tax deductions.
- 23 ~~k.~~j. Increased by the amount of the contribution upon which the credit under section
24 57-38-01.21 is computed, but only to the extent that the contribution reduced
25 federal taxable income.
- 26 ~~l.~~k. Reduced by the amount of any payment received by a veteran or beneficiary of a
27 veteran under section 37-28-03 or 37-28-04.
- 28 ~~m.~~l. Reduced by the amount received by a taxpayer that was paid by an employer
29 under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire
30 the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the
31 extent the amount received by the taxpayer is included in federal taxable income.

1 The reduction applies only if the employer is entitled to the credit under section
2 57-38-01.25. The taxpayer must attach a statement from the employer in which
3 the employer certifies that the employer is entitled to the credit under section
4 57-38-01.25 and which specifically identified the type of payment and the amount
5 of the exemption under this section.

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

10 o.n. Reduced by the amount of income of a taxpayer, who resides anywhere within
11 the exterior boundaries of a reservation situated in this state or situated both in
12 this state and in an adjoining state and who is an enrolled member of a federally
13 recognized Indian tribe, from activities or sources anywhere within the exterior
14 boundaries of a reservation situated in this state or both situated in this state and
15 in an adjoining state.

16 p.o. For married individuals filing jointly, reduced by an amount equal to the excess of
17 the recomputed itemized deductions or standard deduction over the amount of
18 the itemized deductions or standard deduction deducted in computing federal
19 taxable income. For purposes of this subdivision, "itemized deductions or
20 standard deduction" means the amount under section 63 of the Internal Revenue
21 Code that the married individuals deducted in computing their federal taxable
22 income and "recomputed itemized deductions or standard deduction" means an
23 amount determined by computing the itemized deductions or standard deduction
24 in a manner that replaces the basic standard deduction under section 63(c)(2) of
25 the Internal Revenue Code for married individuals filing jointly with an amount
26 equal to double the amount of the basic standard deduction under section 63(c)
27 (2) of the Internal Revenue Code for a single individual other than a head of
28 household and surviving spouse. If the married individuals elected under
29 section 63(e) of the Internal Revenue Code to deduct itemized deductions in
30 computing their federal taxable income even though the amount of the allowable
31 standard deduction is greater, the reduction under this subdivision is not allowed.

1 Married individuals filing jointly shall compute the available reduction under this
2 subdivision in a manner prescribed by the tax commissioner.

3 q.p. Reduced by an amount equal to four thousand one hundred fifty dollars for
4 taxable year 2018, for each birth resulting in stillbirth, as defined in section
5 23-02.1-01, for which a fetal death certificate has been filed under section
6 23-02.1-20. For taxable years beginning after December 31, 2018, the deduction
7 amount must be adjusted annually on January first of each year by the
8 cost-of-living adjustment. For purposes of this subdivision, "cost-of-living
9 adjustment" means the percentage increase in the consumer price index for all
10 urban consumers in the midwest region as determined by the United States
11 department of labor, bureau of labor statistics, for the most recent year ending
12 December thirty-first. The exemption may only be claimed in the taxable year in
13 which the stillbirth occurred.

14 r.q. Reduced by the amount of expenses incurred by an employee which are directly
15 related to the attainment of higher education or career and technical education
16 which are reimbursed by the employee's employer, but only to the extent the
17 amount of reimbursement is reported as federal taxable income.

18 s.r. Reduced by the amount received by a taxpayer as retired military personnel
19 benefits, including retired military personnel benefits paid to the surviving spouse
20 of a deceased retired member of the armed forces of the United States, a reserve
21 component of the armed forces of the United States, or the national guard, but
22 only to the extent the amount was included in federal taxable income.

23 t.s. Reduced by the amount of social security benefits included in a taxpayer's
24 federal adjusted gross income under section 86 of the Internal Revenue Code.

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 c. 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.

- 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. ~~Marriage penalty credit under section 57-38-01.28.~~
- 12 j. Research and experimental expenditures under section 57-38-30.5.
- 13 k-j. Geothermal energy device installation credit under section 57-38-01.8.
- 14 l-k. Long-term care partnership plan premiums income tax credit under section
- 15 57-38-29.3.
- 16 m-l. Employer tax credit for salary and related retirement plan contributions of
- 17 mobilized employees under section 57-38-01.31.
- 18 n-m. Income tax credit for passthrough entity contributions to private education
- 19 institutions under section 57-38-01.7.
- 20 o-n. Angel investor tax credit under section 57-38-01.26.
- 21 p-o. Twenty-first century manufacturing workforce incentive under section
- 22 57-38-01.36 (effective for the first four taxable years beginning after
- 23 December 31, 2018).
- 24 q-p. Income tax credit for employment of individuals with developmental disabilities or
- 25 severe mental illness under section 57-38-01.16.
- 26 r. ~~Individual income tax credit under section 57-38-01.37 (effective for the first two~~
- 27 ~~taxable years beginning after December 31, 2020).~~
- 28 q. Individual income tax credit under section 1 of this Act.
- 29 8. A taxpayer filing a return under this section is entitled to the any exemption provided for
- 30 which the taxpayer qualifies under section 40-63-04.

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

1 ~~set forth in subsection 1. If prescribed by the tax commissioner, the tables must be~~
2 ~~followed by every individual, estate, or trust determining a tax under this section.~~

3 **SECTION 3. AMENDMENT.** Section 57-38-75 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-38-75. Rounding.**

6 With respect to any amount required to be shown on any return, form, statement, or other
7 document required to be filed with the tax commissioner and for purposes of amounts in tax
8 tables prescribed under ~~subsection 12 of section 57-38-30.3~~ and subsection 3 of section
9 57-38-59, the amount may be rounded to the nearest dollar. The cents must be disregarded if
10 the cents amount to less than one-half dollar. If the cents amount to one-half dollar or more, the
11 amount must be increased to the next whole dollar.

12 **SECTION 4. REPEAL.** Section 57-38-01.28 of the North Dakota Century Code is repealed.

13 **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
14 December 31, 2022.