

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1082
(Representative Dockter)

AN ACT to create and enact a new subsection to section 57-38-42 of the North Dakota Century Code, relating to electronic filing and payment of information returns; to amend and reenact section 57-38-60 of the North Dakota Century Code, relating to electronic filing and payment of income tax withholding returns; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

1. Every employer shall, on or before the last day of April, July, October, and January, pay over to the tax commissioner the amount required to be deducted and withheld from wages paid to all employees during the preceding calendar quarter under section 57-38-59. If the amount required to be deducted and withheld from wages paid to all of an employer's employees during the previous calendar year was less than ~~five hundred one thousand~~ dollars, the employer may file an annual return. The tax commissioner may alter the time or period for making reports and payment when in the tax commissioner's opinion, the tax is in jeopardy, or may prescribe the use of any other time or period as will facilitate the collection and payment of the tax by the employer.
2. Every employer shall file a return on forms prescribed by the tax commissioner with each payment made to the tax commissioner under this section which shows the amount of tax imposed under this chapter which was deducted and withheld during the period covered by the return, and such other information as the tax commissioner may require. If the amount required to be deducted and withheld from wages paid to all an employer's employees during the previous calendar year is one thousand dollars or more, the employer shall file the return and pay any tax due by electronic data interchange or other electronic media as determined by the tax commissioner. The tax commissioner may waive, upon a showing of good cause, the requirement to pay the tax due electronically.
3. Every employer required to withhold state income tax shall make an annual return to the tax commissioner on forms provided and approved by the tax commissioner, summarizing the total compensation paid, the federal income tax deducted and withheld, and the state income tax deducted and withheld during the calendar year. The annual return must be accompanied by a statement of the compensation paid, the federal income tax deducted and withheld, and the state income tax deducted and withheld for each employee. The annual return and accompanying statements must be filed with the tax commissioner on or before the due date for filing similar returns with the internal revenue service.

4. Every employer not required to withhold state income tax shall provide to the tax commissioner a statement of the compensation paid and the federal income tax deducted and withheld for each employee. The statement must be filed on or before the due date for filing similar returns with the internal revenue service.
5. In case of failure to timely file an information statement as required by subsections 3 and 4, and after thirty days' notice to file is given by the tax commissioner, the tax commissioner may assess a penalty of ten dollars for each failure to file, not to exceed two thousand dollars.
6. Every employer shall also, in accordance with rules adopted by the tax commissioner, provide each employee from whom state income tax has been withheld, with a statement of the amounts of total compensation paid and the amounts deducted and withheld for the employee during the preceding calendar year in accordance with section 57-38-59. The statement must be made available to the employee on or before January thirty-first of the year following that for which the report is made.
7. The employer shall be liable to the tax commissioner for the payment of the tax required to be deducted and withheld under section 57-38-59, and the employee shall not thereafter be liable for the amount of any such payment, nor shall the employer be liable to any person or to any employee for the amount of any such payment. For the purpose of making penalty provisions of this chapter applicable, any amount deducted or required to be deducted and remitted to the tax commissioner under this section shall be considered to be the tax of the employer and with respect to such amounts the employer is considered the taxpayer.
8. Every employer who deducts and withholds any amounts under section 57-38-59 shall hold the same in trust for the state of North Dakota for payment thereof to the tax commissioner in the manner and at the time provided for in this section, and the state of North Dakota shall have a lien on the property of the employer to secure the payment of any amounts withheld and not remitted as provided herein, which lien shall attach at the time prescribed and to the property described in section 57-38-48 and shall be subject to the provisions of sections 57-38-49, 57-38-50, and 57-38-51.
9. An employer, at the discretion of the tax commissioner, may be required to either make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state in an amount reasonably calculated to ensure the payment to the state of taxes deducted and withheld from wages.
10. An employer is not subject to this section or section 57-38-59 for wages paid to any employee solely for agricultural labor, as defined in section 3121(g) of the Internal Revenue Code [26 U.S.C. 3121(g)].
11. A payroll service provider authorized under the provisions of this chapter to file and remit withholding taxes on behalf of an employer shall file the return required by subsection 2 and pay any tax due, by electronic data interchange or other electronic media as determined by the tax commissioner. As used in this subsection, a "payroll service provider" means a person that, for federal tax purposes, electronically processes and transmits an employer's withholding returns and taxes, including wage information returns. The tax commissioner may waive, upon a showing of good cause, the requirement to file a return or pay the tax electronically.
12. Any person required to file ~~ten or more~~ an information returns return under ~~subsection 3 of section 57-38-42, or subsection 3 or 4 of this section;~~ shall file the returns return by electronic data interchange or other electronic media as determined by the tax commissioner. The tax commissioner may waive, upon a showing of good cause, the requirement to file the returns return electronically.

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1082.

House Vote: Yeas 79 Nays 11 Absent 4

Senate Vote: Yeas 39 Nays 7 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State