

**SENATE BILL NO. 2246**

Introduced by

Senators G. Nelson, Mathern, Tomac

Representatives Boucher, Glassheim, Maragos

1 A BILL for an Act to amend and reenact section 57-38-30.3 of the North Dakota Century Code,  
2 relating to individual income tax determination under the simplified optional method of  
3 computing tax; and to provide an effective 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. Simplified optional method of computing tax.**

- 8 1. Notwithstanding the other provisions of this chapter, an individual, estate, or trust  
9 may elect to determine state income tax liability ~~by applying the provisions of~~ under  
10 this section. Any taxpayer electing to determine his income tax liability ~~pursuant to~~  
11 under this section is only eligible for those adjustments or credits ~~which~~ that are  
12 specifically provided ~~for~~ in this section. ~~Provided, that for purposes of this section,~~  
13 ~~any~~ Any person required to file a state income tax return ~~pursuant to the provisions~~  
14 ~~of~~ under this chapter, but who has not computed a federal taxable income ~~or~~  
15 ~~federal income tax liability~~ figure, shall compute ~~such~~ a federal taxable income  
16 figure using a pro forma return ~~pursuant to the provisions of this section in order to~~  
17 ~~determine a federal income tax liability figure~~ prescribed by the tax commissioner  
18 to be used as a starting point in computing state income tax.
- 19 2. A tax is hereby imposed for each taxable year upon income earned or received in  
20 that taxable year by every resident and nonresident individual, estate, and trust.  
21 ~~This tax is fourteen percent of the individual's, estate's, or trust's adjusted federal~~  
22 ~~income tax liability for the taxable year.~~ For an individual, the tax under this  
23 section applies to adjusted federal taxable income and is calculated using the  
24 applicable table in subdivisions a through d corresponding to the individual's filing

- 1           status used for federal income tax purposes. For an estate or trust, the tax under  
2           this section applies to adjusted federal taxable income and is calculated using the  
3           table in subdivision e.
- 4           a.   Single, other than head of household or surviving spouse.
- 5                Not over \$24,650 .....2.10 %  
6                Over \$24,650 but not over \$59,750 .....\$517.65 plus 3.92% of amount over \$24,650  
7                Over \$59,750 but not over \$124,650 ...\$1,893.57 plus 4.34% of amount over \$59,750  
8                Over \$124,650 but not over \$271,050 . \$4,710.23 plus 5.04% of amount over \$124,650  
9                Over \$271,050 .....\$12,088.79 plus 5.54% of amount over \$271,050
- 10           b.   Married filing jointly and surviving spouse.
- 11                Not over \$41,200 .....2.10 %  
12                Over \$41,200 but not over \$99,600 .....\$865.20 plus 3.92% of amount over \$41,200  
13                Over \$99,600 but not over \$151,750 ...\$3,154.48 plus 4.34% of amount over \$99,600  
14                Over \$151,750 but not over \$271,050 . \$5,417.79 plus 5.04% of amount over \$151,750  
15                Over \$271,050 .....\$11,430.51 plus 5.54% of amount over \$271,050
- 16           c.   Married filing separately.
- 17                Not over \$20,600 .....2.10 %  
18                Over \$20,600 but not over \$49,800 .....\$432.60 plus 3.92% of amount over \$20,600  
19                Over \$49,800 but not over \$75,875 .....\$1,577.24 plus 4.34% of amount over \$49,800  
20                Over \$75,875 but not over \$135,525 ...\$2,708.90 plus 5.04% of amount over \$75,875  
21                Over \$135,525 .....\$5,715.26 plus 5.54% of amount over \$135,525
- 22           d.   Head of household.
- 23                Not over \$33,050 .....2.10 %  
24                Over \$33,050 but not over \$85,350 .....\$694.05 plus 3.92% of amount over \$33,050  
25                Over \$85,350 but not over \$138,200 ...\$2,744.21 plus 4.34% of amount over \$85,350  
26                Over \$138,200 but not over \$271,050 . \$5,037.90 plus 5.04% of amount over \$138,200  
27                Over \$271,050 .....\$11,733.54 plus 5.54% of amount over \$271,050
- 28           e.   Estates and trusts.
- 29                Not over \$1,650 .....2.10 %  
30                Over \$1,650 but not over \$3,900 .....\$34.65 plus 3.92% of amount over \$1,650  
31                Over \$3,900 but not over \$5,950 .....\$122.85 plus 4.34% of amount over \$3,900

1                    Over \$5,950 but not over \$8,100 .....\$211.82 plus 5.04% of amount over \$5,950  
2                    Over \$8,100 .....\$320.18 plus 5.54% of amount over \$8,100

3                    f. The commissioner shall publish the tax tables under this subsection in the  
4                    instructions accompanying return forms.

5                    3. The adjusted federal taxable income ~~tax liability~~ for a resident individual, estate,  
6                    and trust must be determined by multiplying the federal taxable income ~~tax liability~~  
7                    by a fraction, the numerator of which is the adjusted gross income taxable to this  
8                    state and the denominator of which is the total adjusted gross income as reported  
9                    on the federal income tax return. To the extent they are included in the taxpayer's  
10                    federal adjusted gross income, the following amounts must be excluded from the  
11                    numerator:

12                    a. Interest income from obligations of the United States and income exempt from  
13                    state income tax under federal statute or United States or North Dakota  
14                    constitutional provisions.

15                    b. The portion of a distribution from a qualified investment fund described in  
16                    subsection 4.2 of section 57-38-01 which is attributable to investments by the  
17                    qualified investment fund in obligations of the United States, obligations of  
18                    North Dakota or its political subdivisions, and any other obligation the interest  
19                    from which is exempt from state income tax under federal statute or United  
20                    States or North Dakota constitutional provisions.

21                    4. The adjusted federal taxable income ~~tax liability~~ of a nonresident individual, estate,  
22                    and trust must be determined by multiplying the federal taxable income ~~tax liability~~  
23                    by a fraction, the numerator of which is the adjusted gross income derived from  
24                    sources within this state and the denominator of which is the total adjusted gross  
25                    income as reported on the federal income tax return. To the extent they are  
26                    included in the taxpayer's federal adjusted gross income, the following amounts  
27                    must be excluded from the numerator:

28                    a. Interest income from obligations of the United States and income exempt from  
29                    state income tax under federal statute or United States or North Dakota  
30                    constitutional provisions.

- 1           b. The portion of a distribution from a qualified investment fund described in  
2           subsection 4.2 of section 57-38-01 which is attributable to investments by the  
3           qualified investment fund in obligations of the United States, obligations of  
4           North Dakota or its political subdivisions, and any other obligation the interest  
5           from which is exempt from state income tax under federal statute or United  
6           States or North Dakota constitutional provisions.
- 7           5. ~~For the purposes of this section, the term "federal income tax liability" means the~~  
8           ~~individual's, estate's, or trust's federal income tax liability as computed for federal~~  
9           ~~income tax purposes using tax tables, tax rate schedules, or form 8615, plus~~  
10           ~~additional taxes due on federal income tax schedules or forms 4970, 4972, section~~  
11           ~~72(m)(5) penalty tax, 5329, 6251, and 8656, less any credit for prior year minimum~~  
12           ~~tax (form 8801), and before credit for the elderly or the disabled (schedule R),~~  
13           ~~credit for child and dependent care expenses (form 2441), investment credit (form~~  
14           ~~3468), foreign tax credit (form 1116), general business credit (form 3800), jobs~~  
15           ~~credit (form 5884), credit for alcohol used as fuel (form 6478), credit for increasing~~  
16           ~~research activities (form 6765), low income housing credit (form 8586) and~~  
17           ~~nonconventional fuel credit, and before reduction for federal income tax withheld,~~  
18           ~~estimated payments, earned income credit, amount paid with form 4868, excess~~  
19           ~~social security tax, and the federal Railroad Retirement Tax Act, tax withheld, credit~~  
20           ~~for federal tax on gasoline and special fuels (form 4136), and regulated investment~~  
21           ~~company credits (form 2439). The term does not include amounts due for~~  
22           ~~self-employment tax or social security tax and railroad retirement tax on tips. For~~  
23           ~~purposes of this subsection, additional taxes due on federal income tax form 6251~~  
24           ~~or form 8656 must be reduced, but not below zero, by the amount of any~~  
25           ~~investment credit used to reduce the federal tax liability before calculation of the~~  
26           ~~additional tax due on form 6251 or form 8656.~~
- 27           6. A husband and wife filing a joint federal income tax return shall file a joint state  
28           ~~income tax return if the return is filed under this section. The same filing status~~  
29           ~~used by the taxpayer to file the federal income tax return must be used when filing~~  
30           ~~the return under this chapter. However, in the case of married persons filing a joint~~  
31           ~~federal income tax return, separate state income tax returns must be filed if one~~

1            spouse is a resident and the other spouse is a nonresident, and the tax determined  
2            under subdivision b of subsection 2 must be ratably apportioned between the  
3            spouses based on their respective shares of their joint adjusted gross income on  
4            their joint federal income tax return. If separate federal income tax returns are filed  
5            by married persons, one spouse's state income tax return may be filed under this  
6            section and the other spouse's income tax return may be filed under the other  
7            provisions of this chapter.

8            ~~7.~~ 6. a. A resident individual, estate, or trust must be allowed a credit against the tax  
9            otherwise due under this section for the amount of any income tax imposed  
10           on the taxpayer for the taxable year by another state or territory of the United  
11           States or the District of Columbia on income derived from sources therein and  
12           which is also subject to tax under this section.

13           b. The credit provided under this subsection may not exceed the proportion of  
14           the tax otherwise due under this section that the amount of the taxpayer's  
15           adjusted gross income derived from sources in the other taxing jurisdiction  
16           bears to the taxpayer's entire adjusted gross income as reported on the  
17           taxpayer's federal income tax return.

18           ~~8.~~ ~~a.~~ ~~Individuals, estates, or trusts receiving a refund of federal income tax for a~~  
19           ~~year for which an election to file state income tax returns has been made~~  
20           ~~under this section shall file amended state income tax returns reducing the~~  
21           ~~federal income tax liability for the year for which the federal income tax refund~~  
22           ~~is granted and may not report the federal income tax refund in the year~~  
23           ~~received.~~

24           ~~b.~~ ~~Individuals, estates, or trusts assessed additional federal income tax for a~~  
25           ~~year for which an election to file state income tax returns has been made~~  
26           ~~under this section shall file amended state income tax returns increasing the~~  
27           ~~federal income tax liability for the year for which the additional federal income~~  
28           ~~tax is assessed and may not report increased federal income tax liability in the~~  
29           ~~year in which the additional federal income tax is paid.~~

30           ~~9.~~ 7. The tax commissioner may ~~prescribe procedures and guidelines~~ adopt rules to  
31           prevent requiring income that had been previously taxed under this chapter from

1                    becoming taxed again because of the provisions of this section and may ~~prescribe~~  
2                    ~~procedures and guidelines~~ adopt rules to prevent any income from becoming  
3                    exempt from taxation because of the provisions of this section if it would otherwise  
4                    have been subject to taxation under the provisions of this chapter.

5                    **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
6                    December 31, 1996.