

September 2004

Introduced by

1 A BILL for an Act to amend and reenact section 57-38-31.1 of the North Dakota Century Code,  
2 relating to filing of composite income tax returns by passthrough entities; and to provide an  
3 effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38-31.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **57-38-31.1. Composite returns.** ~~Partnerships and subchapter S corporations may file~~  
8 ~~a composite return on behalf of nonresident individual partners or shareholders in the manner~~  
9 ~~prescribed by the tax commissioner. Any amount of tax paid by the partnership or~~  
10 ~~subchapter S corporation on the composite return on behalf of a nonresident partner or~~  
11 ~~shareholder constitutes a credit on the North Dakota return of the nonresident individual on~~  
12 ~~whose behalf the tax was paid by the partnership or subchapter S corporation. Any return filed~~  
13 ~~by a partnership or subchapter S corporation under this section is considered as the return of~~  
14 ~~the nonresident individual partner or shareholder on whose behalf the return is filed. The tax~~  
15 ~~under this section must be computed by multiplying the aggregate of the shares of North~~  
16 ~~Dakota income reportable to North Dakota by the partners or shareholders included in the~~  
17 ~~composite return by five and fifty four hundredths percent.~~

18 1. Definitions. For purposes of this section, unless the context otherwise requires:

19 a. "Member" means an individual who is a shareholder of an S corporation; a  
20 partner in a general partnership, a limited partnership, or a limited liability  
21 partnership; a member of a limited liability company; or a beneficiary of a  
22 trust.

23 b. "Nonresident" means an individual who is not a resident of or domiciled in the  
24 state or a trust not organized in the state.

- 1           c. "Passthrough entity" means an entity that for the applicable tax year is treated  
2           as an S corporation under this chapter or a general partnership, limited  
3           partnership, limited liability partnership, trust, or limited liability company that  
4           for the applicable tax year is not taxed as a corporation under this chapter.
- 5           2. Composite return authorized.
- 6           a. A passthrough entity may file a composite income tax return on behalf of  
7           electing nonresident members reporting and paying income tax, at the highest  
8           marginal rate provided in section 57-38-30.3 for individuals, on the members'  
9           pro rata or distributive shares of income of the passthrough entity from doing  
10           business in, or deriving income from sources within, this state.
- 11           b. A nonresident member whose only source of income within the state is from  
12           one or more passthrough entities may elect to be included in a composite  
13           return filed under this section.
- 14           c. A nonresident member that has been included in a composite return may file  
15           an individual income tax return and shall receive credit for tax paid on the  
16           member's behalf by the passthrough entity.
- 17           3. Withholding required.
- 18           a. A passthrough entity shall withhold income tax, at the highest tax rate  
19           provided in section 57-38-30.3 for individuals, on the share of income of the  
20           entity distributed to each nonresident member and pay the withheld amount in  
21           the manner prescribed by the tax commissioner. The passthrough entity is  
22           liable to the state for the payment of the tax required to be withheld under this  
23           section and is not liable to any member for the amount withheld and paid over  
24           in compliance with this section. A member of a passthrough entity that is itself  
25           a passthrough entity (a lower-tier passthrough entity) is subject to this same  
26           requirement to withhold and pay over income tax on the share of income  
27           distributed by the lower-tier passthrough entity to each of its nonresident  
28           members. The tax commissioner shall apply tax withheld and paid over by a  
29           passthrough entity on distributions to a lower-tier passthrough entity to the  
30           withholding required of that lower-tier passthrough entity.

- 1            b. At the time of a payment made under this section, a passthrough entity shall  
2            deliver to the tax commissioner a return upon a form prescribed by the tax  
3            commissioner showing the total amounts paid or credited to its nonresident  
4            members, the amount withheld in accordance with this section, and any other  
5            information the tax commissioner may require. A passthrough entity shall  
6            furnish to its nonresident member annually, but not later than the fifteenth day  
7            of the third month after the end of its taxable year, a record of the amount of  
8            tax withheld on behalf of such member on a form prescribed by the tax  
9            commissioner.
- 10           c. Notwithstanding subdivision a, a passthrough entity is not required to withhold  
11           tax for a nonresident member if:
- 12           (1) The member has a pro rata or distributive share of income of the  
13           passthrough entity from doing business in, or deriving income from  
14           sources within, this state of less than one thousand dollars per annual  
15           accounting period;
- 16           (2) The tax commissioner has determined by rule, ruling, or instruction that  
17           the member's income is not subject to withholding;
- 18           (3) The member elects to have the tax due paid as part of a composite  
19           return filed by the passthrough entity under subsection 2; or
- 20           (4) The entity is a publicly traded partnership as defined by section 7704(b)  
21           of the Internal Revenue Code which is treated as a partnership for the  
22           purposes of the Internal Revenue Code and which has agreed to file an  
23           annual information return reporting the name, address, taxpayer  
24           identification number, and other information requested by the tax  
25           commissioner of each unitholder with an income in the state in excess  
26           of five hundred dollars.

27           **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
28           December 31, 2004.