

2023 HOUSE FINANCE AND TAXATION

HB 1118

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Room JW327E, State Capitol

HB 1118
1/11/2023

A bill relating to an individual income tax credit.

Chairman Headland opened the hearing at 10:37am.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Toman, Representative Finley-DeVillie, and Representative Ista. No members absent.

Discussion Topics:

- Income tax rebate
- Fiscal impact

Representative Heinert introduced bill and spoke in support.

Chairman Headland closed the hearing at 10:45am.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Room JW327E, State Capitol

HB 1118
2/15/2023

A bill relating to an individual income tax credit.

Chairman Headland opened the meeting at 10:09AM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Toman, Representative Finley-DeVille, and Representative Ista. No members absent.

Discussion Topics:

- Proposed amendment 23.0399.01001
- Committee vote

Chairman Headland distributed proposed amendment 23.0399.01001 (#20859).

Representative Dockter moved amendment 23.0399.01001.

Representative Bosch seconded the motion.

Representative Dockter withdrew his motion.

Matt Peyerl, Office of the State Tax Commissioner's Office, reviewed and explained the proposed amendment 23.0399.01001. The Tax Commissioner's Office distributed a 2021 Tax Relief Credit Comparison (#20878).

Representative Dockter moved amendment 23.0399.01001.

Representative Bosch seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	N
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y

Representative Zachary Ista	N
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	Y
Representative Vicky Steiner	Y
Representative Nathan Toman	Y

Motion carried 12-2-0

Representative Dockter moved a Do Pass as Amended.

Representative Bosch seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	N
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	N
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	Y
Representative Vicky Steiner	Y
Representative Nathan Toman	Y

Motion carried 12-2-0

Representative Dockter is the bill carrier.

Chairman Headland adjourned at 10:38AM.

Mary Brucker, Committee Clerk

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1118

Page 1, line 1, remove "and a new subdivision to"

Page 1, line 2, remove "subsection 7 of section 57-38-30.3"

Page 1, line 3, after "credit" insert "; to amend and reenact sections 57-38-30.3 and 57-38-75 of the North Dakota Century Code, relating to the imposition of a flat income tax rate of one and ninety-nine hundredths percent for individuals, estates, and trusts and rounding rules; to repeal section 57-38-01.28 of the North Dakota Century Code, relating to the marriage penalty credit"

Page 1, line 3, after the first semicolon insert "and"

Page 1, line 3, remove "; and to provide an expiration date"

Page 1, line 10, replace "The" with "Based on an individual's filing status used for federal income tax purposes, the maximum"

Page 1, line 10, after "credit" insert "that may be claimed"

Page 1, line 10, remove "equal to"

Page 1, line 11, remove "taxpayers, seven"

Page 1, line 12, replace "hundred fifty" with "filing status, eight hundred"

Page 1, line 13, remove "taxpayers"

Page 1, line 13, replace "one thousand five hundred" with "and surviving spouse filing status, one thousand six hundred"

Page 1, replace lines 18 through 20 with:

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

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

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

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

If North Dakota taxable income is:

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

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:

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

c. Married filing separately.

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
\$0	\$31,300	1.10%	\$0
\$31,300	\$75,600	\$344.30 + 2.04%	\$31,300
\$75,600	\$115,225	\$1,248.02 + 2.27%	\$75,600
\$115,225	\$205,750	\$2,147.51 + 2.64%	\$115,225
\$205,750		\$4,537.37 + 2.90%	\$205,750

d. Head of household.

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
\$0	\$50,200	1.10%	\$0
\$50,200	\$129,600	\$552.20 + 2.04%	\$50,200
\$129,600	\$209,850	\$2,171.96 + 2.27%	\$129,600
\$209,850	\$411,500	\$3,993.64 + 2.64%	\$209,850
\$411,500		\$9,317.20 + 2.90%	\$411,500

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e. Estates and trusts.

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
\$0	\$2,500	1.10%	\$0
\$2,500	\$5,900	\$27.50 + 2.04%	\$2,500
\$5,900	\$9,050	\$96.86 + 2.27%	\$5,900
\$9,050	\$12,300	\$168.37 + 2.64%	\$9,050
\$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.

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

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

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

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

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

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- b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
- c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under section 57-38-01.35.
- d. Reduced by forty percent of:
 - (1) The excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.
 - (2) Qualified dividends as defined under Internal Revenue Code section 1(h)(11), added by section 302(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963 et seq.], but only if taxed at a federal income tax rate that is lower than the regular federal income tax rates applicable to ordinary income. If, for any taxable year, qualified dividends are taxed at the regular federal income tax rates applicable to ordinary income, the reduction allowed under this subdivision is equal to thirty percent of all dividends included in federal taxable income. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.
- e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
- f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under section 57-38-01.35.
- g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.

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- i. ~~Reduced by interest and income from bonds issued under chapter 41-37.~~
 - j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
 - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
 - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
 - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
 - ~~k.~~ j. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
 - ~~l.~~ k. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
 - ~~m.~~ l. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.
 - ~~n.~~ m. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.
 - ~~o.~~ n. Reduced by the amount of income of a taxpayer, who resides anywhere within the exterior boundaries of a reservation situated in this state or situated both in this state and in an adjoining state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources anywhere within the exterior boundaries of a

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reservation situated in this state or both situated in this state and in an adjoining state.

- p-o. For married individuals filing jointly, reduced by an amount equal to the excess of the recomputed itemized deductions or standard deduction over the amount of the itemized deductions or standard deduction deducted in computing federal taxable income. For purposes of this subdivision, "itemized deductions or standard deduction" means the amount under section 63 of the Internal Revenue Code that the married individuals deducted in computing their federal taxable income and "recomputed itemized deductions or standard deduction" means an amount determined by computing the itemized deductions or standard deduction in a manner that replaces the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for married individuals filing jointly with an amount equal to double the amount of the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for a single individual other than a head of household and surviving spouse. If the married individuals elected under section 63(e) of the Internal Revenue Code to deduct itemized deductions in computing their federal taxable income even though the amount of the allowable standard deduction is greater, the reduction under this subdivision is not allowed. Married individuals filing jointly shall compute the available reduction under this subdivision in a manner prescribed by the tax commissioner.
- q-p. Reduced by an amount equal to four thousand one hundred fifty dollars for taxable year 2018, for each birth resulting in stillbirth, as defined in section 23-02.1-01, for which a fetal death certificate has been filed under section 23-02.1-20. For taxable years beginning after December 31, 2018, the deduction amount must be adjusted annually on January first of each year by the cost-of-living adjustment. For purposes of this subdivision, "cost-of-living adjustment" means the percentage increase in the consumer price index for all urban consumers in the midwest region as determined by the United States department of labor, bureau of labor statistics, for the most recent year ending December thirty-first. The exemption may only be claimed in the taxable year in which the stillbirth occurred.
- r-q. Reduced by the amount of expenses incurred by an employee which are directly related to the attainment of higher education or career and technical education which are reimbursed by the employee's employer, but only to the extent the amount of reimbursement is reported as federal taxable income.
- s-r. Reduced by the amount received by a taxpayer as retired military personnel benefits, including retired military personnel benefits paid to the surviving spouse of a deceased retired member of the armed forces of the United States, a reserve component of the armed forces of the United States, or the national guard, but only to the extent the amount was included in federal taxable income.
- t-s. Reduced by the amount of social security benefits included in a taxpayer's federal adjusted gross income under section 86 of the Internal Revenue Code.

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3. The same filing status used when filing federal income tax returns must be used when filing state income tax returns.
4.
 - a. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this section for the amount of income tax paid by the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section.
 - b. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subsection may not exceed an amount equal to the tax imposed under this section multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by federal adjusted gross income less the amounts under subdivisions a and b of subsection 2.
 - c. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subsection may not exceed the lesser of the following:
 - (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
 - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
 - d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.
6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.
7. A taxpayer filing a return under this section is entitled to the following tax credits:
 - a. Family care tax credit under section 57-38-01.20.

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- b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
 - c. Agricultural business investment tax credit under section 57-38.6-03.
 - d. Seed capital investment tax credit under section 57-38.5-03.
 - e. Planned gift tax credit under section 57-38-01.21.
 - f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
 - g. Internship employment tax credit under section 57-38-01.24.
 - h. Workforce recruitment credit under section 57-38-01.25.
 - ~~i. Marriage penalty credit under section 57-38-01.28.~~
 - j. Research and experimental expenditures under section 57-38-30.5.
 - ~~k.j.~~ Geothermal energy device installation credit under section 57-38-01.8.
 - ~~h.k.~~ Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
 - ~~m.l.~~ Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
 - ~~n.m.~~ Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.
 - ~~e.n.~~ Angel investor tax credit under section 57-38-01.26.
 - ~~p.o.~~ Twenty-first century manufacturing workforce incentive under section 57-38-01.36 (effective for the first four taxable years beginning after December 31, 2018).
 - ~~q.p.~~ Income tax credit for employment of individuals with developmental disabilities or severe mental illness under section 57-38-01.16.
 - ~~r.~~ Individual income tax credit under section 57-38-01.37 (effective for the first two taxable years beginning after December 31, 2020).
 - q. Individual income tax credit under section 1 of this Act.
8. A taxpayer filing a return under this section is entitled to ~~the~~any exemption ~~provided for which the taxpayer qualifies~~ under section 40-63-04.
9. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
- (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
 - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior

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taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
 - c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
 - d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
40. ~~The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.~~

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

57-38-75. Rounding.

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

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

Page 1, line 21, remove " - EXPIRATION DATE"

Page 1, line 21, remove "the first two"

Page 1, line 22, remove ", and is thereafter ineffective"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1118: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1118 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "and a new subdivision to"

Page 1, line 2, remove "subsection 7 of section 57-38-30.3"

Page 1, line 3, after "credit" insert "; to amend and reenact sections 57-38-30.3 and 57-38-75 of the North Dakota Century Code, relating to the imposition of a flat income tax rate of one and ninety-nine hundredths percent for individuals, estates, and trusts and rounding rules; to repeal section 57-38-01.28 of the North Dakota Century Code, relating to the marriage penalty credit"

Page 1, line 3, after the first semicolon insert "and"

Page 1, line 3, remove "; and to provide an expiration date"

Page 1, line 10, replace "The" with "Based on an individual's filing status used for federal income tax purposes, the maximum"

Page 1, line 10, after "credit" insert "that may be claimed"

Page 1, line 10, remove "equal to"

Page 1, line 11, remove "taxpayers, seven"

Page 1, line 12, replace "hundred fifty" with "filing status, eight hundred"

Page 1, line 13, remove "taxpayers"

Page 1, line 13, replace ", one thousand five hundred" with "and surviving spouse filing status, one thousand six hundred"

Page 1, replace lines 18 through 20 with:

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

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

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

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

If North Dakota taxable income is:		The tax is equal to	Of amount over
Over	Not over		
\$0	\$37,450	1.10%	\$0
\$37,450	\$90,750	\$411.95 + 2.04%	\$37,450
\$90,750	\$189,300	\$1,499.27 + 2.27%	\$90,750
\$189,300	\$411,500	\$3,736.36 + 2.64%	\$189,300
\$411,500		\$9,602.44 + 2.90%	\$411,500

b. Married filing jointly and surviving spouse:

If North Dakota taxable income is:		The tax is equal to	Of amount over
Over	Not over		
\$0	\$62,600	1.10%	\$0
\$62,600	\$151,200	\$688.60 + 2.04%	\$62,600
\$151,200	\$230,450	\$2,496.04 + 2.27%	\$151,200
\$230,450	\$411,500	\$4,295.02 + 2.64%	\$230,450
\$411,500		\$9,074.74 + 2.90%	\$411,500

c. Married filing separately:

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

d. Head of household:

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

e. Estates and trusts:

If North Dakota taxable income is:		The tax is equal to	Of amount over
Over	Not over		
\$0	\$2,500	1.10%	\$0
\$2,500	\$5,900	\$27.50 + 2.04%	\$2,500
\$5,900	\$9,050	\$96.86 + 2.27%	\$5,900
\$9,050	\$12,300	\$168.37 + 2.64%	\$9,050
\$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.

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

- ~~g.~~ ~~The tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost of living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost of living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.~~
- ~~h.b.~~ The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.
2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
- a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under section 57-38-01.35.
 - d. Reduced by forty percent of:
 - (1) The excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.
 - (2) Qualified dividends as defined under Internal Revenue Code section 1(h)(11), added by section 302(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963 et seq.], but only if taxed at a federal income tax rate that is lower than the regular federal income tax rates applicable to ordinary income. If, for any taxable year, qualified dividends are taxed at the regular federal income tax rates applicable to ordinary income, the reduction allowed under this subdivision is equal to thirty

percent of all dividends included in federal taxable income. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.

- e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
- f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under section 57-38-01.35.
- g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
- ~~i. Reduced by interest and income from bonds issued under chapter 41-37.~~
- ~~j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
 - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
 - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
 - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.~~
- ~~k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.~~
- ~~l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.~~
- ~~m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of~~

section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.

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

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

~~p.o.~~ For married individuals filing jointly, reduced by an amount equal to the excess of the recomputed itemized deductions or standard deduction over the amount of the itemized deductions or standard deduction deducted in computing federal taxable income. For purposes of this subdivision, "itemized deductions or standard deduction" means the amount under section 63 of the Internal Revenue Code that the married individuals deducted in computing their federal taxable income and "recomputed itemized deductions or standard deduction" means an amount determined by computing the itemized deductions or standard deduction in a manner that replaces the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for married individuals filing jointly with an amount equal to double the amount of the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for a single individual other than a head of household and surviving spouse. If the married individuals elected under section 63(e) of the Internal Revenue Code to deduct itemized deductions in computing their federal taxable income even though the amount of the allowable standard deduction is greater, the reduction under this subdivision is not allowed. Married individuals filing jointly shall compute the available reduction under this subdivision in a manner prescribed by the tax commissioner.

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

- f.g. Reduced by the amount of expenses incurred by an employee which are directly related to the attainment of higher education or career and technical education which are reimbursed by the employee's employer, but only to the extent the amount of reimbursement is reported as federal taxable income.
 - s.r. Reduced by the amount received by a taxpayer as retired military personnel benefits, including retired military personnel benefits paid to the surviving spouse of a deceased retired member of the armed forces of the United States, a reserve component of the armed forces of the United States, or the national guard, but only to the extent the amount was included in federal taxable income.
 - t.s. Reduced by the amount of social security benefits included in a taxpayer's federal adjusted gross income under section 86 of the Internal Revenue Code.
3. The same filing status used when filing federal income tax returns must be used when filing state income tax returns.
 4.
 - a. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this section for the amount of income tax paid by the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section.
 - b. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subsection may not exceed an amount equal to the tax imposed under this section multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by federal adjusted gross income less the amounts under subdivisions a and b of subsection 2.
 - c. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subsection may not exceed the lesser of the following:
 - (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
 - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
 - d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
 5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.

6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.
7. A taxpayer filing a return under this section is entitled to the following tax credits:
 - a. Family care tax credit under section 57-38-01.20.
 - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
 - c. Agricultural business investment tax credit under section 57-38.6-03.
 - d. Seed capital investment tax credit under section 57-38.5-03.
 - e. Planned gift tax credit under section 57-38-01.21.
 - f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
 - g. Internship employment tax credit under section 57-38-01.24.
 - h. Workforce recruitment credit under section 57-38-01.25.
 - i. ~~Marriage penalty credit under section 57-38-01.28.~~
 - j. Research and experimental expenditures under section 57-38-30.5.
 - ~~k.~~j. Geothermal energy device installation credit under section 57-38-01.8.
 - ~~l.~~k. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
 - ~~m.~~l. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
 - ~~n.~~m. Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.
 - ~~o.~~n. Angel investor tax credit under section 57-38-01.26.
 - ~~p.~~o. Twenty-first century manufacturing workforce incentive under section 57-38-01.36 (effective for the first four taxable years beginning after December 31, 2018).
 - ~~q.~~p. Income tax credit for employment of individuals with developmental disabilities or severe mental illness under section 57-38-01.16.
 - ~~r.~~ Individual income tax credit under section 57-38-01.37 (effective for the first two taxable years beginning after December 31, 2020).
 - q. Individual income tax credit under section 1 of this Act.

8. A taxpayer filing a return under this section is entitled to ~~the any~~ exemption ~~provided for which the taxpayer qualifies~~ under section 40-63-04.
 9. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
 - (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
 - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.
 - b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
 - c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
 - d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
10. ~~The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.~~

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

57-38-75. Rounding.

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

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

Page 1, line 21, remove " - **EXPIRATION DATE**"

Page 1, line 21, remove "the first two"

Page 1, line 22, remove ", and is thereafter ineffective"

Renumber accordingly

2023 SENATE FINANCE AND TAXATION

HB 1118

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1118
3/13/2023

Relating to an individual income tax credit, relating to the imposition of a flat income tax rate of one and ninety-nine hundredths' percent for individuals, estates, and trusts and rounding rules, relating to the marriage penalty credit.

10:17 AM Chairman Kannianen opens hearing.

Senator Present: **Kannianen, Weber, Patten, Rummel, Piepkorn, Magrum.**

Discussion Topics:

- Legislation effect
- State comparison
- Property tax increase
- Fiscal note
- Tax credit

10:17 AM Representative Heinert introduced bill and testified in favor. #24264

10:31 AM Timothy Vermeer, Senior Analyst for Tax Foundation, testified in favor. #24157

10:46 AM Representative Heinert answered questions.

10:47 AM Doug Kellogg, State Projects Director for Americas Tax Reform, verbally testified in opposition.

10:50 AM Matt Peyerl, Office of State Tax Commissioner, testified verbally neutral.

10:57 AM Jace Beehler, Policy Advisor for ND Governor Office, testified verbally neutral.

11:00 AM Chairman Kannianen closed the meeting.

Nathan Liesen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1118
3/21/2023

Relating to an individual income tax credit, relating to the imposition of a flat income tax rate of one and ninety-nine hundredths' percent for individuals, estates, and trusts and rounding rules, relating to the marriage penalty credit; and to provide an effective date.

3:25 PM Chairman Kannianen opened the meeting.

Senator Present: **Kannianen, Weber, Patten, Rummel, Piepkorn, Magrum.**

Discussion Topics:

- Committee Action

3:26 PM Senator Weber moved Do Not Pass.

3:26 PM Senator Patten seconded.

Roll call vote

Senators	Vote
Senator Jordan Kannianen	Y
Senator Mark F. Weber	Y
Senator Jeffery J. Magrum	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Dean Rummel	Y

Motion passed 6-0-0

Chairman Kannianen will carry the bill.

3:27 PM Chairman Kannianen closed the meeting.

Nathan Liesen, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1118, as engrossed: Finance and Taxation Committee (Sen. Kannianen, Chairman)
recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1118 was placed on the Fourteenth order on the calendar. This bill
affects workforce development.

TESTIMONY

HB 1118

23.0399.01001
Title.

Prepared by the Legislative Council staff for
Representative Headland
February 14, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1118

Page 1, line 1, remove "and a new subdivision to"

Page 1, line 2, remove "subsection 7 of section 57-38-30.3"

Page 1, line 3, after "credit" insert "; to amend and reenact sections 57-38-30.3 and 57-38-75 of the North Dakota Century Code, relating to the imposition of a flat income tax rate of one and ninety-nine hundredths percent for individuals, estates, and trusts and rounding rules; to repeal section 57-38-01.28 of the North Dakota Century Code, relating to the marriage penalty credit"

Page 1, line 3, after the first semicolon insert "and"

Page 1, line 3, remove "; and to provide an expiration date"

Page 1, line 10, replace "The" with "Based on an individual's filing status used for federal income tax purposes, the maximum"

Page 1, line 10, after "credit" insert "that may be claimed"

Page 1, line 10, remove "equal to"

Page 1, line 11, remove "taxpayers, seven"

Page 1, line 12, replace "hundred fifty" with "filing status, eight hundred"

Page 1, line 13, remove "taxpayers"

Page 1, line 13, replace ", one thousand five hundred" with "and surviving spouse filing status, one thousand six hundred"

Page 1, replace lines 18 through 20 with:

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

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

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

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

If North Dakota taxable income is:

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

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

If North Dakota taxable income is:

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

c. ~~Married filing separately.~~

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
\$0	\$31,300	1.10%	\$0
\$31,300	\$75,600	\$344.30 + 2.04%	\$31,300
\$75,600	\$115,225	\$1,248.02 + 2.27%	\$75,600
\$115,225	\$205,750	\$2,147.51 + 2.64%	\$115,225
\$205,750		\$4,537.37 + 2.90%	\$205,750

d. ~~Head of household.~~

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
\$0	\$50,200	1.10%	\$0
\$50,200	\$129,600	\$552.20 + 2.04%	\$50,200
\$129,600	\$209,850	\$2,171.96 + 2.27%	\$129,600
\$209,850	\$411,500	\$3,993.64 + 2.64%	\$209,850
\$411,500		\$9,317.20 + 2.90%	\$411,500

e. ~~Estates and trusts.~~

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
\$0	\$2,500	1.10%	\$0
\$2,500	\$5,900	\$27.50 + 2.04%	\$2,500
\$5,900	\$9,050	\$96.86 + 2.27%	\$5,900
\$9,050	\$12,300	\$168.37 + 2.64%	\$9,050
\$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.

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

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

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

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

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

- b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
- c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under section 57-38-01.35.
- d. Reduced by forty percent of:
 - (1) The excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.
 - (2) Qualified dividends as defined under Internal Revenue Code section 1(h)(11), added by section 302(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963 et seq.], but only if taxed at a federal income tax rate that is lower than the regular federal income tax rates applicable to ordinary income. If, for any taxable year, qualified dividends are taxed at the regular federal income tax rates applicable to ordinary income, the reduction allowed under this subdivision is equal to thirty percent of all dividends included in federal taxable income. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.
- e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
- f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under section 57-38-01.35.
- g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.

- ~~i.~~ ~~Reduced by interest and income from bonds issued under chapter 41-37.~~
- ~~j.~~ Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
 - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
 - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
 - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
- ~~k.~~j. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
- ~~l.~~k. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
- ~~m.~~l. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.
- ~~n.~~m. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.
- ~~o.~~n. Reduced by the amount of income of a taxpayer, who resides anywhere within the exterior boundaries of a reservation situated in this state or situated both in this state and in an adjoining state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources anywhere within the exterior boundaries of a

reservation situated in this state or both situated in this state and in an adjoining state.

- p-o. For married individuals filing jointly, reduced by an amount equal to the excess of the recomputed itemized deductions or standard deduction over the amount of the itemized deductions or standard deduction deducted in computing federal taxable income. For purposes of this subdivision, "itemized deductions or standard deduction" means the amount under section 63 of the Internal Revenue Code that the married individuals deducted in computing their federal taxable income and "recomputed itemized deductions or standard deduction" means an amount determined by computing the itemized deductions or standard deduction in a manner that replaces the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for married individuals filing jointly with an amount equal to double the amount of the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for a single individual other than a head of household and surviving spouse. If the married individuals elected under section 63(e) of the Internal Revenue Code to deduct itemized deductions in computing their federal taxable income even though the amount of the allowable standard deduction is greater, the reduction under this subdivision is not allowed. Married individuals filing jointly shall compute the available reduction under this subdivision in a manner prescribed by the tax commissioner.
- q-p. Reduced by an amount equal to four thousand one hundred fifty dollars for taxable year 2018, for each birth resulting in stillbirth, as defined in section 23-02.1-01, for which a fetal death certificate has been filed under section 23-02.1-20. For taxable years beginning after December 31, 2018, the deduction amount must be adjusted annually on January first of each year by the cost-of-living adjustment. For purposes of this subdivision, "cost-of-living adjustment" means the percentage increase in the consumer price index for all urban consumers in the midwest region as determined by the United States department of labor, bureau of labor statistics, for the most recent year ending December thirty-first. The exemption may only be claimed in the taxable year in which the stillbirth occurred.
- r-q. Reduced by the amount of expenses incurred by an employee which are directly related to the attainment of higher education or career and technical education which are reimbursed by the employee's employer, but only to the extent the amount of reimbursement is reported as federal taxable income.
- r-s. Reduced by the amount received by a taxpayer as retired military personnel benefits, including retired military personnel benefits paid to the surviving spouse of a deceased retired member of the armed forces of the United States, a reserve component of the armed forces of the United States, or the national guard, but only to the extent the amount was included in federal taxable income.
- s-t. Reduced by the amount of social security benefits included in a taxpayer's federal adjusted gross income under section 86 of the Internal Revenue Code.

3. The same filing status used when filing federal income tax returns must be used when filing state income tax returns.
4.
 - a. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this section for the amount of income tax paid by the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section.
 - b. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subsection may not exceed an amount equal to the tax imposed under this section multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by federal adjusted gross income less the amounts under subdivisions a and b of subsection 2.
 - c. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subsection may not exceed the lesser of the following:
 - (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
 - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
 - d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.
6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.
7. A taxpayer filing a return under this section is entitled to the following tax credits:
 - a. Family care tax credit under section 57-38-01.20.

- b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
 - c. Agricultural business investment tax credit under section 57-38.6-03.
 - d. Seed capital investment tax credit under section 57-38.5-03.
 - e. Planned gift tax credit under section 57-38-01.21.
 - f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
 - g. Internship employment tax credit under section 57-38-01.24.
 - h. Workforce recruitment credit under section 57-38-01.25.
 - ~~i. Marriage penalty credit under section 57-38-01.28.~~
 - ~~j. Research and experimental expenditures under section 57-38-30.5.~~
 - ~~k. Geothermal energy device installation credit under section 57-38-01.8.~~
 - ~~l. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.~~
 - ~~m. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.~~
 - ~~n. Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.~~
 - ~~o. Angel investor tax credit under section 57-38-01.26.~~
 - ~~p. Twenty-first century manufacturing workforce incentive under section 57-38-01.36 (effective for the first four taxable years beginning after December 31, 2018).~~
 - ~~q. Income tax credit for employment of individuals with developmental disabilities or severe mental illness under section 57-38-01.16.~~
 - ~~r. Individual income tax credit under section 57-38-01.37 (effective for the first two taxable years beginning after December 31, 2020).~~
 - q. Individual income tax credit under section 1 of this Act.
8. A taxpayer filing a return under this section is entitled to ~~the~~any exemption ~~provided for which the taxpayer qualifies~~ under section 40-63-04.
9. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
- (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
 - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior

taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
 - c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
 - d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
10. ~~The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.~~

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

57-38-75. Rounding.

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

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

Page 1, line 21, remove " - EXPIRATION DATE"

Page 1, line 21, remove "the first two"

Page 1, line 22, remove ", and is thereafter ineffective"

Renumber accordingly

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 ~~and a new subdivision to~~
2 ~~subsection 7 of section 57-38-30.3~~ of the North Dakota Century Code, relating to an individual
3 income tax credit; to amend and reenact sections 57-38-30.3 and 57-38-75 of the North Dakota
4 Century Code, relating to the imposition of a flat income tax rate of one and ninety-nine
5 hundredths percent for individuals, estates, and trusts and rounding rules; to repeal section
6 57-38-01.28 of the North Dakota Century Code, relating to the marriage penalty credit; and to
7 provide an effective date; ~~and to provide an expiration date.~~

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

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

11 **Individual income tax credit.**

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

~~SECTION 2. A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:~~

~~Individual income tax credit under section 1 of this Act.~~

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

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

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

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

~~If North Dakota taxable income is:~~

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

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

~~If North Dakota taxable income is:~~

Over	Not over	The tax is equal to	Of amount over
\$0	\$62,600	1.10%	\$0

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1	\$62,600	\$151,200	\$688.60 + 2.04%	\$62,600
2	\$151,200	\$230,450	\$2,496.04 + 2.27%	\$151,200
3	\$230,450	\$411,500	\$4,295.02 + 2.64%	\$230,450
4	\$411,500		\$9,074.74 + 2.90%	\$411,500
5	c. Married filing separately:			
6	If North Dakota taxable income is:			
7	Over	Not over	The tax is equal to	Of amount over
8	\$0	\$31,300	1.10%	\$0
9	\$31,300	\$75,600	\$344.30 + 2.04%	\$31,300
10	\$75,600	\$115,225	\$1,248.02 + 2.27%	\$75,600
11	\$115,225	\$205,750	\$2,147.51 + 2.64%	\$115,225
12	\$205,750		\$4,537.37 + 2.90%	\$205,750
13	d. Head of household:			
14	If North Dakota taxable income is:			
15	Over	Not over	The tax is equal to	Of amount over
16	\$0	\$50,200	1.10%	\$0
17	\$50,200	\$129,600	\$552.20 + 2.04%	\$50,200
18	\$129,600	\$209,850	\$2,171.96 + 2.27%	\$129,600
19	\$209,850	\$411,500	\$3,993.64 + 2.64%	\$209,850
20	\$411,500		\$9,317.20 + 2.90%	\$411,500
21	e. Estates and trusts:			
22	If North Dakota taxable income is:			
23	Over	Not over	The tax is equal to	Of amount over
24	\$0	\$2,500	1.10%	\$0
25	\$2,500	\$5,900	\$27.50 + 2.04%	\$2,500
26	\$5,900	\$9,050	\$96.86 + 2.27%	\$5,900
27	\$9,050	\$12,300	\$168.37 + 2.64%	\$9,050
28	\$12,300		\$254.17 + 2.90%	\$12,300
29	f.a. For an individual who is not a resident of this state for the entire year, or for a			
30	nonresident estate or trust, the tax is equal to the tax otherwise computed under			
31	this subsection multiplied by a fraction in which:			

- 1 (1) The numerator is the federal adjusted gross income allocable and
2 apportionable to this state; and
3 (2) The denominator is the federal adjusted gross income from all sources
4 reduced by the net income from the amounts specified in subdivisions a and
5 b of subsection 2.

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

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

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

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

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

30 b. Reduced by the portion of a distribution from a qualified investment fund
31 described in section 57-38-01 which is attributable to investments by the qualified

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

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

- 1 | m.l. Reduced by the amount received by a taxpayer that was paid by an employer
2 | under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire
3 | the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the
4 | extent the amount received by the taxpayer is included in federal taxable income.
5 | The reduction applies only if the employer is entitled to the credit under section
6 | 57-38-01.25. The taxpayer must attach a statement from the employer in which
7 | the employer certifies that the employer is entitled to the credit under section
8 | 57-38-01.25 and which specifically identified the type of payment and the amount
9 | of the exemption under this section.
- 10 | n.m. Reduced by the amount up to a maximum of five thousand dollars, or ten
11 | thousand dollars if a joint return is filed, for contributions made under a higher
12 | education savings plan administered by the Bank of North Dakota, pursuant to
13 | section 6-09-38.
- 14 | e.n. Reduced by the amount of income of a taxpayer, who resides anywhere within
15 | the exterior boundaries of a reservation situated in this state or situated both in
16 | this state and in an adjoining state and who is an enrolled member of a federally
17 | recognized Indian tribe, from activities or sources anywhere within the exterior
18 | boundaries of a reservation situated in this state or both situated in this state and
19 | in an adjoining state.
- 20 | p.o. For married individuals filing jointly, reduced by an amount equal to the excess of
21 | the recomputed itemized deductions or standard deduction over the amount of
22 | the itemized deductions or standard deduction deducted in computing federal
23 | taxable income. For purposes of this subdivision, "itemized deductions or
24 | standard deduction" means the amount under section 63 of the Internal Revenue
25 | Code that the married individuals deducted in computing their federal taxable
26 | income and "recomputed itemized deductions or standard deduction" means an
27 | amount determined by computing the itemized deductions or standard deduction
28 | in a manner that replaces the basic standard deduction under section 63(c)(2) of
29 | the Internal Revenue Code for married individuals filing jointly with an amount
30 | equal to double the amount of the basic standard deduction under section 63(c)
31 | (2) of the Internal Revenue Code for a single individual other than a head of

- 1 household and surviving spouse. If the married individuals elected under
2 section 63(e) of the Internal Revenue Code to deduct itemized deductions in
3 computing their federal taxable income even though the amount of the allowable
4 standard deduction is greater, the reduction under this subdivision is not allowed.
5 Married individuals filing jointly shall compute the available reduction under this
6 subdivision in a manner prescribed by the tax commissioner.
- 7 ~~e.p.~~ Reduced by an amount equal to four thousand one hundred fifty dollars for
8 taxable year 2018, for each birth resulting in stillbirth, as defined in section
9 23-02.1-01, for which a fetal death certificate has been filed under section
10 23-02.1-20. For taxable years beginning after December 31, 2018, the deduction
11 amount must be adjusted annually on January first of each year by the
12 cost-of-living adjustment. For purposes of this subdivision, "cost-of-living
13 adjustment" means the percentage increase in the consumer price index for all
14 urban consumers in the midwest region as determined by the United States
15 department of labor, bureau of labor statistics, for the most recent year ending
16 December thirty-first. The exemption may only be claimed in the taxable year in
17 which the stillbirth occurred.
- 18 ~~f.g.~~ Reduced by the amount of expenses incurred by an employee which are directly
19 related to the attainment of higher education or career and technical education
20 which are reimbursed by the employee's employer, but only to the extent the
21 amount of reimbursement is reported as federal taxable income.
- 22 ~~s.f.~~ Reduced by the amount received by a taxpayer as retired military personnel
23 benefits, including retired military personnel benefits paid to the surviving spouse
24 of a deceased retired member of the armed forces of the United States, a reserve
25 component of the armed forces of the United States, or the national guard, but
26 only to the extent the amount was included in federal taxable income.
- 27 ~~t.s.~~ Reduced by the amount of social security benefits included in a taxpayer's
28 federal adjusted gross income under section 86 of the Internal Revenue Code.
- 29 3. The same filing status used when filing federal income tax returns must be used when
30 filing state income tax returns.

- 1 4. a. A resident individual, estate, or trust is entitled to a credit against the tax imposed
2 under this section for the amount of income tax paid by the taxpayer for the
3 taxable year by another state or territory of the United States or the District of
4 Columbia on income derived from sources in those jurisdictions that is also
5 subject to tax under this section.
- 6 b. For an individual, estate, or trust that is a resident of this state for the entire
7 taxable year, the credit allowed under this subsection may not exceed an amount
8 equal to the tax imposed under this section multiplied by a ratio equal to federal
9 adjusted gross income derived from sources in the other jurisdiction divided by
10 federal adjusted gross income less the amounts under subdivisions a and b of
11 subsection 2.
- 12 c. For an individual, estate, or trust that is a resident of this state for only part of the
13 taxable year, the credit allowed under this subsection may not exceed the lesser
14 of the following:
- 15 (1) The tax imposed under this chapter 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 North Dakota sources less the amounts under
19 subdivisions a and b of subsection 2.
- 20 (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal
21 adjusted gross income derived from sources in the other jurisdiction
22 received while a resident of this state divided by federal adjusted gross
23 income derived from sources in the other states.
- 24 d. The tax commissioner may require written proof of the tax paid to another state.
25 The required proof must be provided in a form and manner as determined by the
26 tax commissioner.
- 27 5. Individuals, estates, or trusts that file an amended federal income tax return changing
28 their federal taxable income figure for a year for which an election to file state income
29 tax returns has been made under this section shall file an amended state income tax
30 return to reflect the changes on the federal income tax return.

- 1 6. The tax commissioner may prescribe procedures and guidelines to prevent requiring
2 income that had been previously taxed under this chapter from becoming taxed again
3 because of the provisions of this section and may prescribe procedures and guidelines
4 to prevent any income from becoming exempt from taxation because of the provisions
5 of this section if it would otherwise have been subject to taxation under the provisions
6 of this chapter.
- 7 7. A taxpayer filing a return under this section is entitled to the following tax credits:
 - 8 a. Family care tax credit under section 57-38-01.20.
 - 9 b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
 - 10 c. Agricultural business investment tax credit under section 57-38.6-03.
 - 11 d. Seed capital investment tax credit under section 57-38.5-03.
 - 12 e. Planned gift tax credit under section 57-38-01.21.
 - 13 f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and
14 57-38-01.23.
 - 15 g. Internship employment tax credit under section 57-38-01.24.
 - 16 h. Workforce recruitment credit under section 57-38-01.25.
 - 17 i. ~~Marriage penalty credit under section 57-38-01.28.~~
 - 18 j. Research and experimental expenditures under section 57-38-30.5.
 - 19 ~~k.~~j. Geothermal energy device installation credit under section 57-38-01.8.
 - 20 ~~l.~~k. Long-term care partnership plan premiums income tax credit under section
21 57-38-29.3.
 - 22 ~~m.~~l. Employer tax credit for salary and related retirement plan contributions of
23 mobilized employees under section 57-38-01.31.
 - 24 ~~n.~~m. Income tax credit for passthrough entity contributions to private education
25 institutions under section 57-38-01.7.
 - 26 ~~o.~~n. Angel investor tax credit under section 57-38-01.26.
 - 27 ~~p.~~o. Twenty-first century manufacturing workforce incentive under section
28 57-38-01.36 (effective for the first four taxable years beginning after
29 December 31, 2018).
 - 30 ~~q.~~p. Income tax credit for employment of individuals with developmental disabilities or
31 severe mental illness under section 57-38-01.16.

- 1 ~~r. Individual income tax credit under section 57-38-01.37 (effective for the first two~~
2 ~~taxable years beginning after December 31, 2020).~~
- 3 g. Individual income tax credit under section 1 of this Act.
- 4 8. A taxpayer filing a return under this section is entitled to ~~the any~~ exemption ~~provided for~~
5 which the taxpayer qualifies under section 40-63-04.
- 6 9. a. If an individual taxpayer engaged in a farming business elects to average farm
7 income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the
8 taxpayer may elect to compute tax under this subsection. If an election to
9 compute tax under this subsection is made, the tax imposed by subsection 1 for
10 the taxable year must be equal to the sum of the following:
- 11 (1) The tax computed under subsection 1 on North Dakota taxable income
12 reduced by elected farm income.
- 13 (2) The increase in tax imposed by subsection 1 which would result if North
14 Dakota taxable income for each of the three prior taxable years were
15 increased by an amount equal to one-third of the elected farm income.
16 However, if other provisions of this chapter other than this section were
17 used to compute the tax for any of the three prior years, the same
18 provisions in effect for that prior tax year must be used to compute the
19 increase in tax under this paragraph. For purposes of applying this
20 paragraph to taxable years beginning before January 1, 2001, the increase
21 in tax must be determined by recomputing the tax in the manner prescribed
22 by the tax commissioner.
- 23 b. For purposes of this subsection, "elected farm income" means that portion of
24 North Dakota taxable income for the taxable year which is elected farm income
25 as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C.
26 1301], as amended, reduced by the portion of an exclusion claimed under
27 subdivision d of subsection 2 that is attributable to a net long-term capital gain
28 included in elected farm income.
- 29 c. The reduction in North Dakota taxable income under this subsection must be
30 taken into account for purposes of making an election under this subsection for
31 any subsequent taxable year.

2021 Comparison

1.99% Flat Tax Rate with \$800 and \$1600 Tax Relief Credit						
All Filers - Comparison by Bracket Level						
Bracket Level	Number of Returns	Net Tax Liability with original Tax Rates and \$350 and \$700 Tax Relief Credit	Net Tax Liability 1.99% Flat Rate with \$800 and \$1600 Tax Relief Credit	Taxpayer Savings	Percentage Of Savings	Average Savings Per Return
1	558,394	\$20,301,117	\$15,685,830	\$4,615,287	2.8%	\$8
2	248,824	\$163,599,388	\$140,313,858	\$23,285,530	14.2%	\$94
3	52,901	\$101,598,530	\$93,041,063	\$8,557,467	5.2%	\$162
4	27,090	\$97,749,568	\$83,189,481	\$14,560,087	8.9%	\$537
5	28,907	\$356,568,674	\$243,694,266	\$112,874,408	68.9%	\$3,905
Total	916,116	\$739,817,277	\$575,924,498	\$163,892,779	100.0%	\$179

\$750 and \$1500 Tax Relief Credit						
All Filers - Comparison by Bracket Level						
Bracket Level	Number of Returns	Net Tax Liability with original Tax Rates and \$350 and \$700 Tax Relief Credit	Net Tax Liability with \$750 and \$1500 Tax Relief Credit	Taxpayer Savings	Percentage Of Savings	Average Savings Per Return
1	558,394	\$20,301,117	\$7,584,951	\$12,716,166	8.9%	\$23
2	248,824	\$163,599,388	\$69,232,813	\$94,366,575	65.7%	\$379
3	52,901	\$101,598,530	\$80,452,171	\$21,146,359	14.7%	\$400
4	27,090	\$97,749,568	\$88,216,150	\$9,533,418	6.6%	\$352
5	28,907	\$356,568,674	\$350,733,356	\$5,835,318	4.1%	\$202
Total	916,116	\$739,817,277	\$596,219,441	\$143,597,836	100.0%	\$157

1.50% Flat Tax Rate						
All Filers - Comparison by Bracket Level						
Bracket Level	Number of Returns	Net Tax Liability with original Tax Rates and \$350 and \$700 Tax Relief Credit	Net Tax Liability 1.50% Flat Rate	Taxpayer Savings	Percentage Of Savings	Average Savings Per Return
1	558,394	\$20,301,117	\$0	\$20,301,117	5.8%	\$36
2	248,824	\$163,599,388	\$92,617,096	\$70,982,292	20.4%	\$285
3	52,901	\$101,598,530	\$66,381,772	\$35,216,758	10.1%	\$666
4	27,090	\$97,749,568	\$60,258,417	\$37,491,151	10.8%	\$1,384
5	28,907	\$356,568,674	\$173,439,571	\$183,129,103	52.8%	\$6,335
Total	916,116	\$739,817,277	\$392,696,856	\$347,120,421	100.0%	\$379

1.99% Flat Tax Rate						
All Filers - Comparison by Bracket Level						
Bracket Level	Number of Returns	Net Tax Liability with original Tax Rates and \$350 and \$700 Tax Relief Credit	Net Tax Liability 1.99% Flat Rate	Taxpayer Savings	Percentage Of Savings	Average Savings Per Return
1	558,394	\$20,301,117	\$0	\$20,301,117	10.0%	\$36
2	248,824	\$163,599,388	\$124,725,251	\$38,874,137	19.2%	\$156
3	52,901	\$101,598,530	\$89,017,958	\$12,580,572	6.2%	\$238
4	27,090	\$97,749,568	\$81,098,834	\$16,650,734	8.2%	\$615
5	28,907	\$356,568,674	\$242,005,749	\$114,562,925	56.4%	\$3,963
Total	916,116	\$739,817,277	\$536,847,792	\$202,969,485	100.0%	\$222

Good morning Madam Chair and Members of the Committee,

House Bill 1118 is similar to HB 1158 in that it would significantly flatten the state's current five-bracket system. The primary differences involve the rate and the design of the base.

House Bill 1118 would impose a 1.99 percent rate in contrast to the 1.5 percent rate of HB 1158. The 1.99 percent rate is also a truly flat rate as it applies to all taxable income. By contrast, HB 1158 would impose an unwieldy large exemption structure to exempt roughly 60 percent of the current tax base from income taxation creating a de facto two-tiered system.

Since workers and small business owners consider the impact of taxation on their next dollar of income when they make decisions about how much to work and where to work, a 1.99 percent rate will yield greater economic benefits than the current 2.9 percent rate. While not as low as the 1.5 percent rate, HB 1118's truly flat rate will still set conditions for in-migration and an increase in the labor force in North Dakota, on the margin as workers would be able to take home more of their next dollar of income.

Reducing the individual income tax to a flat 1.99 percent would improve the state's tax neutrality and lower barriers to productivity. But the challenge again is that states in the region and across the country that directly compete with North Dakota forgo at least one major tax, often the individual income tax, and thus effectively have a top marginal rate of 0 percent. A nearly 2 percent rate, modest as it may be, will still have to compete with states where residents pay nothing and file no return.

In deciding on the rate, it should not so much be an issue of whether to choose 1.99 or 1.5, but what the state can afford. If the state can only afford a \$383 million cut, the cost of HB 1118, then the legislature should leave the rate at 1.99 percent. But if it can afford more, the rate could be set lower. Whatever the legislature decides, the rate should be set as a function of affordability and sustainability.

A bill with a flat rate of anything more than 1.1 percent would likely amount to a tax increase on the lowest income earners, which is why HB 1118 increases the resident tax credit from \$300 to \$800 for single filers and from \$700 to \$1,600 for married filers. The increased credit would shield lower-income filers from increased tax liability due to their exposure to a higher rate. The intent of the \$44,757

March 9, 2023

The industry testified in support of HB 1286 before the House Finance and Taxation Committee on February 7, 2023, and positioned the additional 1% extraction tax if the price of oil is over \$90 per barrel for three consecutive months as a "windfall" for the state. The industry failed to mention in their testimony that the legislature lowered the extraction tax from 6.5% to 5% in 2015 which was a "windfall" for the industry. The worst the industry can do is pay a half percent LESS in tax than they did as recently as 2015 even if the trigger price is activated.

An industry representative portrayed the trigger as a 20% tax increase. That perspective falls apart once you realize the industry was given a 23% decrease by the legislature and is further taken out of context knowing that the price of oil must be at historic highs in order to trigger an increase of 1%.

Since 1970, oil has only been over \$90 per barrel in six of the fifty plus years. For every additional \$1 million in revenue the industry earns over \$90 per barrel they would have to pay the state of North Dakota \$10,000. How many of your constituents would gladly pay the state of North Dakota \$10,000 if they received \$1 million in return?

As they so often do, the industry and its lobbyists claim that they will take their business to other states if the legislature does not act in their favor. What the industry will never be able to do is magically extract the oil in North Dakota from Texas or anywhere else.

Learning from history is only effective if one recalls what the history is. The history tells us that the industry will be paying LESS in oil extraction tax no matter what the price of oil is because of the compromise they agreed to in 2015 to lower the tax rate in return for paying an extra 1% when oil is selling for historically high prices. Any additional tax revenue based on the \$90 indexed trigger price will be far more beneficial helping to pay for schools, roads, and water projects in North Dakota rather than increasing the profits of the oil industry.

For these reasons I urge you to vote no on HB 1286.

Tom Wheeler
Williston Basin Royalty Owners Association