

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2082
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsections 1, 2, and 6 of section 57-38-04 and subsection 4 of section 57-38-30.3 of the North Dakota Century Code, relating to the credit for income taxes paid to another state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 2, and 6 of section 57-38-04 of the North Dakota Century Code are amended and reenacted as follows:

1. a. Income from personal or professional services performed in this state by individuals must be assigned to this state regardless of the residence of the recipients of such income, except that income from such services performed within this state by an individual who resides and has the individual's place of abode in another state to which place of abode the individual customarily returns at least once a month must be excluded from the individual's income for the purposes of this chapter if such income is subject to an income tax imposed by the state in which the individual resides, provided that the state in which the individual resides allows a similar exclusion for income received from similar services performed in that state by residents of North Dakota.
 - b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, must be excluded from income to the extent that the income is subject to an income tax imposed by the state of the individual's residence; provided, that the state allows a similar exclusion of the compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For purposes of this subdivision, the term an individual who performs services for a common carrier engaged in interstate transportation is limited to an individual who performs the services for a common carrier only during the course of making regular runs into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier.
2. ~~Except as provided in subsection 1:~~
 - a. ~~Income received from personal or professional services performed by residents of this state, regardless of where such services are performed, and income received by residents of this state from intangible personal property must be assigned to this state. If a tax is paid to another state or territory of the United States or to the District of Columbia on any income assigned to this state under this subsection, a credit for any tax so paid may be deducted from the tax assessed under this chapter; provided, that this credit for such tax may not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's adjusted gross income as computed pursuant to the Internal Revenue Code of 1954, as amended. 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.~~

- b. ~~Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, shall be excluded from income to the extent that such income is subject to an income tax imposed by the state of the individual's residence; provided, that such state allows a similar exclusion of such compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For the purposes of this subdivision, the words "an individual who performs services for a common carrier engaged in interstate transportation" must be limited to an individual who performs such services for a common carrier only during the course of making regular "runs" into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also taxable under this section. 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. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of section 57-38-01.2. 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 subdivision 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 this subsection.~~
 - ~~(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.~~
6. a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists principally of the holding of the property and the collection of income and gains ~~therefrom~~ from the business, must be assigned to this state without regard to the situs of the property.
- b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to where the business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.

- c. ~~If a tax is paid to another state or territory of the United States or to the District of Columbia on any income assigned to this state under this subsection, a credit for any tax so paid may be deducted from the tax assessed under this chapter; provided, that this credit for the tax may not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's adjusted gross income as computed pursuant to the Internal Revenue Code of 1954, as amended. The tax commissioner may require written proof of the tax paid to another state. The required proof shall be provided in a form and manner as determined by the tax commissioner. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to 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. 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. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of section 57-38-01.2. 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 subdivision 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.~~

SECTION 2. AMENDMENT. Subsection 4 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

4. a. ~~A resident individual, estate, or trust must be allowed~~ is entitled to a credit against the tax otherwise due imposed under this section for the amount of any income tax imposed on paid by the taxpayer for the taxable year by to another state or territory of the United States or the District of Columbia on income derived from sources therein and which in those jurisdictions that is also subject to tax under this section.
- b. ~~The credit provided under this subsection may not exceed the proportion of the tax otherwise due under this section that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's federal adjusted gross income as reported on the taxpayer's federal income tax return. 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.
- e. 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.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2082.

Senate Vote: Yeas 45 Nays 0 Absent 2

House Vote: Yeas 90 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,
at _____ o'clock _____ M.

Secretary of State