

Office of the Attorney General
State of North Dakota

Opinion No. 81-111

Date Issued: October 12, 1981

Requested by: Kent Conrad, State Tax Commissioner

--QUESTION PRESENTED--

I.

Whether a husband and wife who file a joint federal income tax return and who wish to file separate North Dakota individual income tax returns for the same year, must both use the simplified optional method provided for in Section 57-38-30.3 of the North Dakota Century Code, if one of them elects to do so.

II.

Whether the spouse who does not elect to file pursuant to Section 57-38-30.3, N.D.C.C., notwithstanding the provisions of Section 57-38-01.15, N.D.C.C., can itemize deductions on his or her state income tax return if the other spouse does elect to file pursuant to Section 57-38-30.3, N.D.C.C., if they filed a joint federal income tax return in which they used the zero bracket allowance method rather than itemizing deductions.

--ATTORNEY GENERAL'S OPINION--

I.

It is the Attorney General's opinion that if a husband and wife file a joint federal income tax return and separate North Dakota income tax returns one may elect to use the simplified optional method provided for by Section 57-38-30.3, N.D.C.C., and the other may elect to use the method provided for in the other sections of Chapter 57-38, N.D.C.C., or they both may elect to use the same method.

II.

It is the Attorney General's further opinion that if a husband and wife file a joint federal income tax return using the zero bracket allowance method rather than itemizing deductions and one of them elects to use the simplified optional method provided for by Section 57-38-30.3, N.D.C.C., while the other spouse uses the method provided for in the other sections of Chapter 57-38, N.D.C.C., the spouse who does not use the method provided in Section 57-38-30.3, N.D.C.C., may itemize deductions even though deductions were not itemized on the joint federal income tax return.

--ANALYSIS--

I.

Section 57-38-30.3, N.D.C.C., provides in part as follows:

57-38-30.3. SIMPLIFIED OPTIONAL METHOD OF COMPUTING TAX.

1. Notwithstanding any other provisions of this chapter, an individual, estate, or trust may elect to determine state income tax liability by applying the provisions of this section. . . .

There is nothing in this provision or in other provisions of Section 57-38-30.3, N.D.C.C., which indicates that, in a case where a married couple decides to file separate state returns, a married individual should be treated differently from an unmarried individual for purposes of making the election authorized by the section. Because these provisions do not expressly require or necessarily imply that in the case of a married couple both spouses must use the simplified optional method if either elects to do so, either has the right to use the simplified optional method regardless of whether the other does or does not elect to do so.

II.

The simplified optional method contained in Section 57-38-30.3, N.D.C.C., provides a completely new method for filing and computing state income tax that is in no way related to how the individual spouses filed their federal income tax returns. The election to use the simplified optional method is not conditioned on whether the zero bracket allowance method or the itemizing of deductions was used by them on a joint federal return or on their separate individual federal returns.

Section 57-38-01.15, N.D.C.C. with the 'provided' clause underlined, is as follows:

57-38-01.15. ITEMIZATION OF DEDUCTIONS. Any individual taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may itemize deductions in lieu of taking a standard deduction event though a standard deduction was used in determining federal taxable income; provided that married persons filing separately for state income tax purposes must both either itemize or take the standard deduction. . . .

The 'provided' clause of Section 57-38-01.15, N.D.C.C., cannot be reconciled or harmonized with Section 57-38-30.3, N.D.C.C., the new simplified optional method of filing that is not related to either the itemizing of deductions or the taking of the standard deduction. The provisions of Section 57-38-30.3, N.D.C.C. do not prescribe how anyone

not using the simplified optional method should file a state return. The result then is that the spouse not using the simplified optional method comes within the provisions of the first clause of Section 57-38-01.15, N.D.C.C., and can elect to itemize deductions on his or her state return even though the zero bracket allowance method was used on a joint federal return.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented is decided by the courts.

Calvin N. Rolfson
Deputy Attorney General

Prepared by: Albert R. Hausauer
Assistant Attorney General