



North Dakota Office of State Tax Commissioner

2006 Fiduciary Income Tax

Cory Fong, Tax Commissioner

Form 38

Includes:

Schedule 1 (Main Method)
Schedule 2 (Optional Method)
Schedule 3
Schedule 4
Schedule K-1

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www.nd.gov/tax

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(frequently asked
questions)

E-mail your
questions:
individualtax@nd.gov



Dear Taxpayer,

The Form 38 and instructions have been significantly revised for 2006 and have been placed in their own booklet for the first time.

You will find the following new features:

- A new state version of Schedule K-1 for providing information to beneficiaries.
- Integration of the new passthrough entity withholding requirement into Form 38.
- Integration of the composite filing method into Form 38.
- More comprehensive set of instructions.

Including the passthrough withholding and composite filing in Form 38 will streamline these processes for trusts. The revised instructions contain more information as well as better guidance in completing Form 38. I invite you to let us know what you think about the new forms and instructions and what can be improved. Your comments help us to improve our services to you.

Please read these instructions carefully. If you have questions or need additional forms, go to our web site at www.nd.gov/tax. Or see the inside front cover of this booklet if you need to contact us by phone, e-mail, or letter.

Thank you,

Cory Fong,
Tax Commissioner

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Required forms

The following forms are needed to complete Form 38:

Form 38	Fiduciary return
Schedule 1 or 2	Calculation of income tax on fiduciary's income
Schedule 3	Beneficiary information
Schedule K-1	Beneficiary's share of North Dakota income (loss), deductions, adjustments, credits, and other items

The following forms may be needed:

Schedule 4	Credit for income tax paid to another state
Form 401-EXT	Fiduciary extension payment voucher
Form 401-UT	Calculation of interest on underpayment or late payment of estimated income tax
Form 101	Application for extension of time to file a North Dakota income tax return

Download these forms from our web site at www.nd.gov/tax.



Taxpayer Bill of Rights

You may get a copy of the North Dakota Taxpayer Bill of Rights by contacting the Office of State Tax Commissioner or by going to our web site at

www.nd.gov/tax

Need help?

You can download forms and find other information on our web site at:

www.nd.gov/tax

E-mail

Individual income tax—
individualtax@nd.gov

Call

Individual income tax—
 Questions **(701) 328-1032**
 Forms **(701) 328-3450**
Speech/hearing impaired
 TDD **(800) 366-6888**

Write

Office of State Tax Commissioner
600 E. Boulevard Ave., Dept. 127
Bismarck, ND 58505-0599

Office

State Capitol, 16th Floor
Monday through Friday
8:00 a.m. to 5:00 p.m.
(except holidays)

Privacy Act Information

In compliance with the Federal Privacy Act of 1974, Public Law 93-579, the disclosure of a social security number or a federal employer identification number on this form is mandatory and is required under Subsections 1 and 7 of N.D.C.C. § 57-38-31. A social security number or federal employer identification number is used as an identification number by the Office of State Tax Commissioner for file control purposes, recordkeeping, and for cross-checking the taxpayer's files with the Internal Revenue Service.

Form 38 Instructions

2006

North Dakota Fiduciary Income Tax Return

"N.D.C.C." references are to the North Dakota Century Code, which contains North Dakota's statutes.

"N.D. Admin. Code" references are to the North Dakota Administrative Code, which contains North Dakota's administrative rules.

What's new for 2006

New passthrough withholding requirement

Starting with the 2006 tax year, a fiduciary for a trust must withhold North Dakota income tax at the rate of 5.54 percent from the year-end distributive share of North Dakota source income of its nonresident individual beneficiaries. The year-end distributive share of North Dakota source income means the portion of the income reported on the beneficiary's Federal Schedule K-1 that is reportable to and subject to tax in North Dakota. In determining North Dakota source income, include only those items of income that would be reportable to North Dakota by a nonresident individual had the individual directly received them. Withholding is not required if:

- The distributive share of North Dakota income for the taxable year is less than \$1,000; or
- The nonresident individual beneficiary elects to be included in a composite income tax return filed by the fiduciary for the trust.

The calculation, reporting, and payment of the income tax required to be withheld has been integrated into the 2006 Form 38. The fiduciary for the trust reports the withholding to the beneficiary on North Dakota Schedule K-1 (Form 38), which is new for 2006. The nonresident individual beneficiary claims the withheld income tax by entering it on the income tax withholding line of the North Dakota individual income tax return and attaching a copy of the North Dakota Schedule K-1. For complete information, see "Withholding from nonresident individual beneficiaries" on page 3.

Note: This withholding requirement does not apply to a fiduciary for an estate.

Changes to composite filing procedure

Starting with the 2006 tax year, the composite filing procedure that is available to a fiduciary for a trust with eligible nonresident individual beneficiaries has changed. The calculation, reporting, and payment of income tax under the composite filing method has been integrated into the 2006 Form 38. For complete information, see "Composite filing method" on page 3.

New look for 2006 Form 38

Both the structure and content of Form 38 have changed for 2006. Following are highlights of the new features of Form 38:

- Both schedules 1 and 2 have been augmented with a new section to show the breakdown of income between the fiduciary and the beneficiaries, and to show the allocation of income to North Dakota and other states in the case of a nonresident estate or trust.
- The new passthrough entity withholding requirement applicable to a trust was integrated into Form 38, including payment of the withheld tax. See Schedule 3.
- The composite filing method available to a fiduciary for a trust with eligible nonresident individual beneficiaries was integrated into Form 38, including payment of the composite income tax. See Schedule 3.
- A new schedule, North Dakota Schedule K-1 (Form 38), was created. See "New state Schedule K-1" below.
- The instructions to Form 38 were revised and expanded to provide more comprehensive guidance on how to prepare the form.

New state Schedule K-1

A new schedule, North Dakota Schedule K-1 (Form 38), has been created to provide fiduciaries with a means to convey to the beneficiaries the information they will need

to properly complete their own North Dakota income tax returns. The schedule includes instructions to the beneficiaries to assist them in transferring the information from the schedule to their North Dakota income tax returns. See the instructions on page 11 for more information.

New disclosure check-off

A new check-off box has been added to Form 38 that the fiduciary may use to authorize the Office of State Tax Commissioner (Tax Department) to talk directly to the person who prepared the return. By checking the box, which is located next to the signature area on page 1 of Form 38, a fiduciary authorizes the Tax Department to contact the preparer with any questions that arise during the processing of the return. The fiduciary also authorizes its preparer to (1) provide information missing from the return, (2) contact the Tax Department about the status of the return's processing, and (3) respond to Tax Department notices that the fiduciary shares with the preparer relating to math errors and return preparation. The authorization only applies to the return on which it is made, and it automatically expires on the due date (excluding extensions) for filing the next year's return. The authorization applies only to the individual whose signature and printed name appears in the paid preparer section of the signature area. It does not apply to the firm, if any, shown in that section. The authorization does not authorize the tax preparer to receive a refund check, to bind the fiduciary in any way (including any additional tax liability), or to otherwise represent the fiduciary before the Tax Department.

New Form 401-UT

A fiduciary may use the new Form 401-UT to determine if enough estimated North Dakota income tax was paid by the quarterly due dates and to calculate the amount of interest due on an underpayment or late payment of estimated tax. A new line has been added to Form 38 on which to enter the amount of interest due.

General instructions

Who must file

Resident estate or trust

A fiduciary for a resident estate or trust must file a 2006 Form 38, *Fiduciary Income Tax Return*, if the fiduciary is required to file a 2006 Form 1041, *U.S. Income Tax Return for Estates and Trusts*.

A fiduciary for a resident estate or trust is generally subject to the same law provisions that apply to a resident individual. The entire income (loss) of a resident estate or trust is reportable to North Dakota regardless of its source. An estate or trust is considered a resident if it has a relationship to North Dakota that is sufficient to create nexus for income tax purposes. See N.D. Admin. Code § 81-03-02.1-04 for more information.

Grantor trust. *In the case of a grantor trust that, in lieu of filing Federal Form 1041, elects an alternative reporting method under the federal income tax regulations, it is deemed to have filed a Federal Form 1041 under this filing requirement.*

Nonresident estate or trust

A fiduciary for a nonresident estate or trust must file a 2006 Form 38, *Fiduciary Income Tax Return*, if both of the following apply:

- The fiduciary is required to file a 2006 Form 1041, *U.S. Income Tax Return for Estates and Trusts*; and
- The estate or trust derived any gross income from North Dakota sources during the 2006 tax year.

A fiduciary for a nonresident estate or trust is generally subject to the same law provisions that apply to a nonresident individual. Only the portion of the nonresident estate's or trust's gross income from North Dakota sources is reportable to North Dakota.

Grantor trust. *In the case of a grantor trust that, in lieu of filing Federal Form 1041, elects an alternative reporting method under the federal income tax regulations, it is deemed to have filed a Federal Form 1041 under this filing requirement.*

For a nonresident estate or trust, gross income from North Dakota sources includes the following:

- Compensation for services performed in North Dakota (for example, wages received by an estate for services performed in North Dakota by the decedent).
- Rents, royalties, and other income from real and tangible personal property located in North Dakota.
- Gain from the sale, exchange, or other disposition of real and tangible personal property located in North Dakota.
- Income from a sole proprietorship, partnership, S corporation, or other trade or business carried on in North Dakota. This includes farming and ranching operations.
- Income from gambling activity carried on in North Dakota.
- Income from another estate or trust consisting of the same kinds of income listed above.

For a nonresident estate or trust, gross income from North Dakota sources generally does not include interest, dividends, pensions, annuities, or income and gain from intangible property. Interest, dividends, gains, and other income from intangible property are included in gross income from North Dakota sources if derived from a trade or business carried on in North Dakota.

Which schedule to use

North Dakota income tax law provides for two methods of calculating the income tax for an estate or trust. The two methods are implemented on two different schedules of Form 38—Schedule 1 (Main Method) and Schedule 2 (Optional Method).

The choice of Schedule 1 or Schedule 2 will affect the fiduciary's tax liability. The two schedules (and their respective calculation methods) are governed by different provisions of North Dakota income tax law. Because the calculation and tax rates are different under each method, the tax result will be different under each one.

So, which schedule should be used? Use the schedule that produces the lowest tax. Because this will depend on the facts in each case, it is advisable to calculate the tax on each schedule and compare the results. Also, don't automatically use the same schedule used last year but check both schedules for the current year to make sure the lowest tax is paid. **Important: Only complete one of the schedules on the return actually filed to avoid possible processing problems.**

If a deduction or tax credit is allowed only on one of the schedules, shouldn't that schedule be used? Not necessarily. Even though a deduction or tax credit is allowed on only one of the two schedules, the deduction or credit may or may not produce a tax that is lower than the tax on the other schedule because of the different tax rates on the two schedules.

When and where to file

The 2006 Form 38 must be filed no later than:

- April 16, 2007, if filing for the 2006 calendar year; or
- The 15th day of the 4th month following the end of the tax year, if filing for a fiscal year beginning in the 2006 calendar year.

Note: *Use the 2005 Form 38 if the estate's or trust's fiscal year began in the 2005 calendar year.*

Mail Form 38 and all required attachments to:

Office of State Tax Commissioner
600 East Boulevard Ave., Dept. 127
Bismarck, ND 58505-0599

Extension of time to file

An extension of time to file Form 38 may be obtained in one of the following ways:

- Obtain a federal extension.
- Separately apply for a North Dakota extension.

Federal extension. If an extension of time to file Federal Form 1041 is obtained, it is automatically accepted as an extension of time to file Form 38. If this applies, a separate North Dakota extension does not have to be applied for, nor does the Office of State Tax Commissioner have to be notified that a federal extension has been obtained prior to filing Form 38. The "Extension" box on page 1 of Form 38 must be checked to indicate that an extension has been obtained. A copy of the federal extension form (Form 7004) **does not** have to be attached to Form 38; however, it should be retained on file in case the Office of State Tax Commissioner requests to see it.

North Dakota extension. If a federal extension is not obtained, but additional time is needed to complete and file Form 38, a separate North Dakota extension may be applied for by filing Form 101, *Application for Extension of Time to File a North Dakota Tax Return*. This is not an automatic

extension—there must be good cause to request a North Dakota extension. Form 101 must be postmarked on or before the due date of Form 38. Notification of whether the extension is accepted or rejected will be provided by the Office of State Tax Commissioner. The “Extension” box on page 1 of Form 38 must be checked to indicate that an extension has been obtained. A copy of the approved Form 101 *does not* have to be attached to Form 38; however, it should be retained on file in case the Office of State Tax Commissioner requests to see it.

Extension interest. If Form 38 is filed on or before the extended due date, and any tax due is paid with the return, no penalty will be charged. Interest on the tax due will be charged at the rate of 12% per year from the original due date of the return to the earlier of the date the return is filed or the extended due date. For this purpose, the interest applies only to the lesser of the tax due (on line 14) or the excess, if any, of the fiduciary’s income tax liability (on line 4) over total estimated taxes paid (on line 9).

Prepayment of tax due. If an extension of time to file Form 38 is obtained and it is expected that there will be a tax due, the expected tax due may be paid on or before the regular due date to avoid any extension interest. To do so, send a check or money order along with a completed 2006 Form 401-EXT, *Fiduciary Extension Payment Voucher*; on or before the regular due date of Form 38.

Alternatively, a payment may be sent with a letter containing the following: (1) Name of estate or trust; (2) FEIN of estate or trust; (3) Fiduciary’s address and phone number; and (4) Statement that the payment is a 2006 Form 401-EXT payment.

Penalty and interest

The tax due must be paid by the due date (without extension) of Form 38 to avoid penalty and interest charges. However, if an extension of time to file the return was obtained, the tax due may be paid by the extended due date of the return without penalty, but extension interest may apply—see **Extension interest** and **Prepayment of tax due** on this page.

If a tax due is paid after the due date (or extended due date, if applicable), a penalty equal to 5% of the tax due (with a minimum of \$5.00) will be charged. In addition, interest

will be charged at the rate of 1% per month or a fraction of a month (except for the month in which the tax was due) until the tax is fully paid. For this purpose, the penalty and interest applies only to the lesser of the tax due (on line 14) or the excess, if any, of the fiduciary’s income tax liability (on line 4) over total estimated taxes paid (on line 9).

Estimated tax requirement (for 2007)

A fiduciary for an estate or trust must pay estimated North Dakota income tax for the 2007 tax year if all four of the following conditions apply:

1. The fiduciary is required to pay estimated federal income tax for the 2007 tax year. This condition applies whether or not the fiduciary actually makes the required payment(s) of estimated tax to the Internal Revenue Service.
2. The net income tax liability on fiduciary’s taxable income for the 2006 tax year (as shown on the 2006 Form 38, page 1, line 4) was equal to or more than \$500. *Note: If the fiduciary was not required to file a North Dakota income tax return for the 2006 tax year, the fiduciary’s net tax liability is zero for purposes of this condition.*
3. The fiduciary expects to owe (after subtracting any estimated North Dakota income tax withholding) an amount equal to or more than \$500 for the 2007 tax year. *Note: Do not include income tax withholding from nonresident individual beneficiaries or composite income tax in this estimation.*
4. The fiduciary expects North Dakota income tax withholding (*other than income tax withholding from nonresident individual beneficiaries*) for the 2007 tax year to be less than the smaller of:
 - a. 90% of the net income tax liability on fiduciary’s taxable income for the 2007 tax year.
 - b. 100% of the net income tax liability on fiduciary’s taxable income for the 2006 tax year (as shown on the 2006 Form 38, page 1, line 4). *Note: If the estate or trust was not in existence for the entire 2006 tax year, this part does not apply; the 90% threshold in part a must be applied.*

In general, one-fourth (25%) of the total estimated tax required to be paid for the 2007 tax year must be paid by April 15, June 15, and September 15, 2007, and January 15, 2008. If there is a requirement to pay estimated tax for 2007, obtain the *2007 Form 401-ES, Estimated income tax—estates and trusts*.

Withholding from nonresident individual beneficiaries

A fiduciary for a trust must withhold North Dakota income tax at the rate of 5.54 percent from the distributive share of North Dakota income of its nonresident individual beneficiaries. Only a trust required to file Form 38 is subject to this requirement. This withholding requirement does not apply to actual distributions made during the tax year but is calculated and reported on the fiduciary return filed after the close of the tax year. Withholding is not required if:

- The year-end distributive share of North Dakota income is less than \$1,000; or
- The nonresident individual beneficiary elects to have his or her year-end distributive share of North Dakota income included in, and the tax on it calculated under, the composite filing method—see “Composite filing method” in the next section for more information.

The amount withheld for a beneficiary is reported on Form 38, Schedule 3, Column 6. The fiduciary must submit a payment with Form 38 for the total withholding reported on Schedule 3. See the instructions to Schedule 3 for more information.

Composite filing method

A composite filing method is available to a fiduciary for a trust with one or more eligible beneficiaries. Under this method, the fiduciary files one return, called a “composite return,” on behalf of one or more eligible beneficiaries. The composite return and the fiduciary’s payment of the income tax calculated on it satisfies the North Dakota income tax filing and payment obligations of the eligible beneficiaries included in it. Therefore, they do not have to file their own North Dakota individual income tax return to report or pay tax on their distributive share of North Dakota income from the trust.

The use of the composite filing method by a fiduciary for a trust is optional, and is a choice that it may make on a year-to-year basis. The fiduciary does not have to obtain prior approval to use the composite filing method.

Exception to withholding. A fiduciary for a trust does not have to withhold North Dakota income tax from the distributive share of North Dakota income of an eligible beneficiary who elects to be included in a composite return.

Eligible beneficiary. An eligible beneficiary is an individual who:

- Is a nonresident of North Dakota; and
- Does not have any North Dakota income from other than the trust or any other partnership, S corporation, trust, or limited liability company (filing as a partnership).

An eligible beneficiary may elect to be included in a composite return regardless of the amount of the beneficiary's distributive share of North Dakota income (or loss). In the case of a loss, the composite tax is zero.

Composite filing method procedure. The distributive share of North Dakota income of an electing beneficiary is multiplied by the highest individual income tax rate (5.54 percent for the 2006 tax year) to determine the beneficiary's composite income tax. (If the North Dakota distributive share is a loss, the composite tax is zero.) No adjustments, deductions, or tax credits are allowed in calculating the tax due under the composite filing method. The Form 38 serves as the composite return. The composite income tax calculated for a beneficiary is reported on Form 38, Schedule 3, Column 7. The fiduciary must submit a payment with Form 38 for the total composite income tax reported on Schedule 3. See the instructions to Schedule 3 for more information.

Election. If an eligible beneficiary agrees to be included in a composite return, the fiduciary's calculation and reporting of a composite income tax for the beneficiary on Schedule 3 of Form 38 constitutes the beneficiary's election to be included in the composite return.

Correcting a previously filed return

If a fiduciary needs to correct an error in Form 38 after it is filed, the fiduciary must file an amended return. There is no special form for this purpose. See "How to prepare an amended return" below.

If a fiduciary paid too much tax because of an error in its 2006 Form 58, the fiduciary generally has three years from the later of the due date (excluding extensions) of the return or the date the return was actually filed in which to file an amended return to correct the error and claim a refund of the overpayment.

See N.D.C.C. § 57-38-40 for other time periods that may apply.

How to prepare an amended 2006 return

1. Obtain a blank 2006 Form 38.
2. Enter the name of the estate or trust, and the fiduciary's name, current address, FEIN, etc., in the top portion of page 1 of Form 38.
3. Check the "Amended return" box at the top of page 1 of Form 38.
4. Complete Schedule 1 or Schedule 2, whichever applies, and Schedule 3 using the corrected information. Also complete Schedule 4 if applicable. Then complete lines 1 through 7 on page 1 of Form 38.
5. Leave line 8 on page 1 blank unless claiming an additional amount not previously claimed.
6. On line 9 of page 1, enter the total taxes due from the previously filed 2006 Form 38, page 1, line 7.
7. Complete lines 10 through 14 of page 1. If there is an overpayment on line 11, enter the full amount on line 13. On an amended return, the amount credited to the next year's estimated tax (line 12) may not be increased or decreased.
8. Attach a statement explaining the reason(s) for filing the amended return. If it is because of changes the fiduciary or the IRS made to the 2006 Federal Form 1041, attach a copy of the amended federal return or IRS notice.
9. Complete and provide a corrected Schedule K-1 to the beneficiaries, as required.

Reporting federal changes

If the Internal Revenue Service (IRS) changes Federal Form 1041, or if a fiduciary files an amended Federal Form 1041, an amended North Dakota Form 38 must be filed within ninety days after the final determination of the IRS changes or the filing of the amended federal return. Enclose a copy of the IRS audit report or the amended federal return with the amended North Dakota Form 38.

W-2/1099 reporting requirement

Every fiduciary that is required to file Federal Form 1099 or W-2 may also have to file one with the Office of State Tax Commissioner. For more information, obtain the document *Income Tax Guideline: Information Returns*.

Use of information

All of the information on Form 38 and its attachments is confidential by law and cannot be given to others except as provided by state law. Information about the beneficiaries is required under state law so the Office of State Tax Commissioner can determine the beneficiary's correct North Dakota taxable income and verify if the beneficiary has filed a return and paid the tax.

General instructions for completing Form 38

Complete Form 38 as follows:

1. Complete Federal Form 1041 in its entirety.
2. Complete Items A through H at the top of page 1 of Form 38—see page 5.
3. Complete either Schedule 1 (on page 2 of Form 38) or Schedule 2 (on page 3 of Form 38). See "Which schedule to use" on page 2 of these instructions. **Do not complete both schedules on the return filed.** The instructions for Schedule 1 start on page 5, and the instructions for Schedule 2 start on page 7.
4. Complete Schedule 3 on page 4 of Form 38—see page 9.
5. Complete lines 1 through 15 on page 1 of Form 38—see page 10.
6. Complete Schedule K-1, if required, for the beneficiaries—see page 11.

Rounding of numbers. Numbers may be entered on the return in dollars and cents, or they may be rounded to the nearest whole dollar. If rounding, drop the cents if less than 50 cents and round up to the next whole dollar amount if 50 cents or higher. For example, \$25.36 becomes \$25.00, and \$25.50 becomes \$26.00.

Fiscal year filers. The tax year for North Dakota income tax purposes must be the same as the tax year used for federal income tax purposes. Use the 2006 Form 38 if the estate's or trust's taxable year began in the 2006 calendar year. *Note: Use the 2005 Form 38 if the taxable year began in the 2005 calendar year.*

Specific line instructions for page 1 of Form 38, Items A-H

Complete Items A through H at the top of page 1 of Form 38. Then complete Schedule 1 or Schedule 2, whichever applies, and Schedule 3 before completing lines 1 through 15 on page 1 of Form 38.

Item A Tax year

The same tax year used for federal income tax purposes (as indicated on the federal return) must be used for North Dakota income tax purposes. Check the applicable box. If the estate or trust has a fiscal year, enter the beginning and ending dates of the fiscal year.

Item B Name and address

Enter the legal name of the estate or trust on the first line of the name and address area. Enter the name and title, if any, of the fiduciary on the second line. Enter the fiduciary's mailing address on the third and fourth lines.

Item C Federal EIN

North Dakota uses the federal employer identification number (FEIN or federal EIN) for identification purposes. Enter the federal employer identification number from page 1 of Federal Form 1041.

Important: Do not enter the fiduciary's own federal employer identification number. A fiduciary for an estate or trust must obtain a separate federal employer identification number for the estate or trust.

Item D Date created

Enter the date the estate or trust was created from page 1 of Federal Form 1041.

Item E Number of beneficiaries

Enter the total number of beneficiaries. Also enter in the boxes provided the number of each type of beneficiary indicated next to the box.

Item F Residency status

Check the applicable box to indicate the residency status of the estate or trust. See "Resident estate or trust" under "Who must file" on page 2 for more information.

Item G Entity type

Check the box for the same entity type checked on page 1 of Federal Form 1041.

Item H Check boxes

Check all applicable boxes.

Initial return. Check this box if this is the first return filed in North Dakota for this estate or trust.

Final return. Check this box if this is the last return to be filed in North Dakota for this estate or trust.

Composite return. Check this box if the return is filed for a trust and one or more nonresident individual beneficiaries have elected to include their distributive shares of North Dakota source income in a composite return. See "Composite filing method" on page 3 for more information.

Amended return. Check this box if this return is being filed to correct a previously filed 2006 Form 38. See "Correcting a previously filed return" on page 4 for more information.

Extension. Check this box if a federal or state extension of time to file the return was obtained. See "Extension of time to file" on page 2 for more information.

Instructions for completing Schedule 1

(Form 38, page 2)

Instructions for Part 1 of Schedule 1

Line 2 Additions

The following items must be entered on this line if taxable to the fiduciary:

- Taxable portion of a lump-sum distribution from Federal Form 4972, line 6 plus line 10. This adjustment does not apply to a fiduciary for a nonresident estate or trust.
- Loss from a passthrough entity subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From A Passthrough Entity Subject To N.D.C.C. ch. 57-35.3. Attach a copy of the statement received from the entity.*
- In the case of an electing small business trust (ESBT), the separate S corporation items of income, gain, loss, etc., that would have been included had they not been removed for purposes of the separate tax calculation on Federal Form 1041.

Line 4a Interest from U.S. obligations

Enter the following on this line if included in the amount on line 1:

- Interest income from U.S. obligations.
- Interest income from other securities that is specifically exempted from state income tax by federal statute.
- The portion of dividend income from a mutual fund attributable to the fund's investment in the same kinds of securities listed above.

Common sources of interest income that may be entered on this line include U.S. savings bonds, Treasury bills and notes, and securities issued by the Banks for Cooperatives, Commodity Credit Corporation, Federal Deposit Insurance Corporation, Federal Farm Credit System, Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal Land Banks, Federal Savings & Loan Insurance Corporations, and Student Loan Marketing Association.

Do not enter on this line interest income from securities of the Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), and Government National Mortgage Association (Ginnie Mae), nor from a federal income tax refund or repurchase agreement. **Attach a statement specifically identifying the securities. For a mutual fund, identify the fund, the qualifying securities, and the percentage of income from qualifying securities.**

**Line 4b
Net long-term capital gain exclusion**

If the amount on line 1 includes a net long-term capital gain, 30 percent of that gain is excludable from North Dakota taxable income. In the case of a nonresident estate or trust, however, the exclusion is allowed only for a net long-term capital gain based on the capital gains and losses reportable to North Dakota. Complete the worksheet on this page to calculate the amount to enter on this line.

**Line 4c
Other subtractions**

The following items may be entered on this line, but only to the extent the income is included in the amount on line 1:

- Income earned or received by a Native American while living and working on the Indian reservation where enrolled.
- Taxable part of a retirement, sick pay, or unemployment payment from the U.S. Railroad Retirement Board. **Attach a copy of Form RRB-1099 or RRB-1099-R (or both, if applicable).**

- Income from a passthrough entity subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From A Passthrough Entity Subject to N.D.C.C. ch. 57-35.3*. **Attach a copy of the statement received from the entity.**
- Income exempted under N.D.C.C. ch. 40-63 (Renaissance Zone Act). **Attach Schedule RZ.**
- Income exempted under N.D.C.C. ch. 40-57.1 (new or expanding business income exemption). **Attach statement showing calculation of exempt income.**
- Compensation received by a National Guard or U.S. armed forces member mobilized for federal active duty service under Title 10 of United States Code. Compensation received for annual training, basic military training, professional military education, or volunteer active duty for which no mobilization orders were issued is not eligible. **Attach a copy of the mobilization orders.**
- Compensation received by a nonresident individual for active duty in the U.S. armed forces.

**Instructions for
Part 2 of Schedule 1**

All estates and trusts—Enter the amounts from the 2006 Federal Form 1041, page 1, lines 1 through 8, on the corresponding line in Column A. Then complete lines 9 through 11 in Column A.

Nonresident estate or trust only— Enter in Column B (North Dakota) the portion of the amount in Column A that is reportable to North Dakota. See below for the instructions to lines 1 through 8 of Column B. Then complete lines 9 through 11 in Column B. Complete lines 1 through 11 in Column C by entering the difference between Column A and Column B.

**Instructions for Column B only—
North Dakota portion
(Part 2 of Schedule 1 only)**
Important: Do not include in Column B the portion of any North Dakota income that was subtracted in Part 1, line 4d.

**Line 1, Column B
Interest income**

Enter the fiduciary’s share of interest received from a partnership, S corporation, or limited liability company doing business in North Dakota, to the extent the interest is apportioned or allocated to North Dakota by the partnership, S corporation, or limited liability company. Do not include any interest from U.S. obligations.

**Line 2, Column B
Ordinary dividends**

Enter the fiduciary’s share of dividend income received from a partnership, S corporation, or limited liability company doing business in North Dakota, to the extent the dividend income is apportioned or allocated to North Dakota by the partnership, S corporation, or limited liability company.

Worksheet for calculating net long-term capital gain exclusion

(for Schedule 1, Part 1, line 4b)

1. Enter amount from 2006 Schedule D (Form 1041), line 14a, column (2).
If zero or less, stop here; no exclusion is allowed **1** _____
2. Enter amount from 2006 Schedule D (Form 1041), line 15, column (2).
If zero or less, stop here; no exclusion is allowed **2** _____
3. Enter the smaller of line 1 or line 2. This is the fiduciary’s federal net long-term capital gain **3** _____
 - If a **resident estate or trust**, enter the amount from line 3 on line 5 and go to line 6.
 - If a **nonresident estate or trust**, go to line 4.
4. Complete lines 4a through 4d using only the capital gains and losses reportable to North Dakota by the fiduciary:
 - a. North Dakota net short-term capital gain (loss) included on 2006 Schedule D (Form 1041), line 13, column (2) **4a** _____
 - b. North Dakota net long-term capital gain (loss) included on 2006 Schedule D (Form 1041), line 14a, column (2). If zero or less, stop here; no exclusion is allowed **4b** _____
 - c. Combine lines 4a and 4b. If zero or less, stop here; no exclusion is allowed **4c** _____
 - d. Enter the smaller of line 4b or line 4c. This is the North Dakota net long-term capital gain **4d** _____
5. Enter the smaller of line 3 or line 4d. Amount of net long-term capital gain eligible for the exclusion **5** _____
6. Multiply line 5 by 30% (.30). This is the allowable exclusion. Enter this amount on Form 38, Schedule 1, Part 1, line 4b **6** _____

**Line 3, Column B
Business income or (loss)**

Enter the net income or loss from a sole proprietorship doing business in North Dakota as reported on Federal Schedule C (Form 1040), to the extent the net income or loss is apportioned and allocated to North Dakota.

**Line 4, Column B
Capital gain (loss)**

Enter net capital gains and losses from the sale or exchange of real or tangible personal property located in North Dakota. Also enter the fiduciary's share of net capital gains and losses from a partnership, S corporation, or limited liability company doing business in North Dakota, to the extent they are apportioned or allocated to North Dakota by the partnership, S corporation, or limited liability company.

**Line 5, Column B
Rents, royalties, partnerships, other estates and trusts, etc.**

Enter the net income or loss from real or tangible personal property located in North Dakota. This includes net income or loss from leasing the property, and from royalties and other income from interests in oil, coal, or other mineral property located in North Dakota.

Enter the fiduciary's share of income or loss from a partnership, S corporation, or limited liability company doing business in North Dakota (that is not reported on the other lines of Part 2), to the extent the income is apportioned and allocated to North Dakota by the partnership, S corporation, or limited liability company.

Enter the fiduciary's share of North Dakota source income and losses from another estate or trust.

**Line 6, Column B
Farm income or (loss)**

Enter the net income or loss from a farm or ranch operation doing business in North Dakota as reported on Federal Schedule F (Form 1040), to the extent the net income or loss is apportioned and allocated to North Dakota.

**Line 7, Column B
Ordinary gain or (loss)**

Enter the ordinary gain or loss from the sale or exchange of real or tangible personal property (other than capital assets) located in North Dakota.

**Line 8, Column B
Other income**

Enter the amount of any other income having its source in North Dakota that is not included on lines 1 through 7 of this part.

would have been included had they not been removed for purposes of the separate tax calculation on Federal Form 1041.

**Line 4a
Subtractions**

Resident estate or trust—A fiduciary for a resident estate or trust may deduct the following items if they are allocated to, or retained by, the fiduciary and included on line 1:

- Interest income, up to a maximum of \$300, received from a North Dakota financial institution.
- Interest income from U.S. obligations and interest from other securities that is exempted from state income tax by federal statute. Include the portion of dividend income from a mutual fund that is attributable to the fund's investment in similar types of securities. **Attach a statement specifically identifying the securities. For a mutual fund, identify the fund, the qualifying securities, and the percentage of income from qualifying securities.**
- Allowable deductions for the sale or lease of land to a qualifying beginning farmer, or for the sale or lease of a revenue-producing enterprise to a qualifying beginning entrepreneur. For more information, go to the Office of State Tax Commissioner's web site at www.nd.gov/tax. **Attach a copy of the Beginning Farmer Statement or Beginning Businessman Statement.**
- Amount of investment, up to a maximum of \$5,000, in a venture capital corporation under N.D.C.C. ch. 10-30.1. **Attach a copy of the Venture Capital Corporation Investment Reporting Form.**
- Income earned by a Native American while living and working on the Indian reservation where enrolled.
- Taxable part of a retirement, sick pay, or unemployment payment from the U.S. Railroad Retirement Board. **Attach a copy of Form RRB-1099 or RRB-1099-R (or both, if applicable).**
- Gain from sale of property due to the exercise of eminent domain.
- Income exempted under N.D.C.C. ch. 40-57.1 (new and expanding business exemption). **Attach statement showing calculation of exempt income.**
- Income exempted under N.D.C.C. ch. 40-63 (Renaissance Zone Act). **Attach Schedule RZ.**

Instructions for completing Schedule 2 (Form 38, page 3)

Instructions for Part 1 of Schedule 2

**Line 2
Additions**

Resident estate or trust—A fiduciary for a resident estate or trust must enter the following items on this line if allocated to, or retained by, the fiduciary:

- Except for North Dakota and its political subdivisions, interest from state and local government obligations that is exempt from federal income tax. Include the portion of dividends received from a mutual fund that is attributable to the fund's investment in the same kinds of obligations.
- State and local income taxes deducted in determining federal taxable income.
- Amount from Federal Form 4972, line 6 plus line 10.

Nonresident estate or trust—A fiduciary for a nonresident estate or trust must enter on this line an amount equal to the state and local income taxes deducted in determining the fiduciary's federal taxable income multiplied by the decimal number from Schedule 2, Part 2, line 12, Column B.

All estates and trusts—A fiduciary for a resident or nonresident estate or trust must enter the following items on this line if allocated to, or retained by, the fiduciary:

- Loss from a passthrough entity subject to North Dakota's financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From A Passthrough Entity Subject To N.D.C.C. ch. 57-35.3*. **Attach a copy of the statement received from the entity.**
- In the case of an electing small business trust (ESBT), the separate S corporation items of income, gain, loss, etc., that

- Amount of income from a passthrough entity subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From A Passthrough Entity Subject To N.D.C.C. ch. 57-35.3. Attach a copy of the statement received from the entity.*
- Compensation received by a National Guard or U.S. armed forces member mobilized for federal active duty service under Title 10 of the United States Code. Compensation received for annual training, basic military training, professional military education, or volunteer active duty for which no mobilization orders were issued is not eligible.

Nonresident estate or trust—A fiduciary for a nonresident estate or trust may deduct the same items listed above if the income is included on line 1 and is reported to North Dakota in Part 2, line 11, Column B.

**Line 4b
Nonresident only:
Other states' income (loss)**

If a nonresident estate or trust, complete all of Part 2. Then enter on this line the amount from Part 2, line 14, Column C.

**Line 6a
Federal income tax**

Enter the amount from the 2006 Federal Form 1041, Schedule G, as follows:

- Line 4.
- **Plus** line 2a (if resident estate or trust).
- **Plus** line 5.
- **Plus** tax from Federal Form 4970 included on line 7.
- **Minus** line 1c.

Electing small business trust—If an electing small business trust (ESBT), include on this line the federal income tax separately computed on the separate S corporation items of income, gain, loss, etc., that were removed from the fiduciary's federal taxable income. (*Note: The separate S corporation items must be added back into the fiduciary's federal taxable income on Schedule 2, Part 1, line 2.*)

**Line 6b
Fiduciary's share of total income**

If resident estate or trust, complete lines 1 through 11 in Column A of Part 2. Then enter the amount from Part 2, line 11, Column A in Part 1, line 6b. **Note:** *A resident estate or trust does not have to complete lines 12 through 14 in Column A of Part 2, nor does it have to complete Columns B and C of Part 2.*

**Instructions for
Part 2 of Schedule 2**

Lines 1 through 11

All estates and trusts—Enter the amounts from the 2006 Federal Form 1041, page 1, lines 1 through 8, on the corresponding line in Column A. Then complete lines 9 through 11 in Column A.

Nonresident estate or trust only—Enter in Column B (North Dakota) the portion of the amount in Column A that is reportable to North Dakota. See the instructions to lines 1 through 8 of Column B later on this page. Then complete lines 9 through 11 in Column B. Complete lines 1 through 11 in Column C by entering the difference between Column A and Column B.

Lines 12 through 14

Resident estate or trust—Do not make an entry on these lines.

Nonresident estate or trust—Divide each of the amounts in Columns B and C on line 11 by the total on line 11, Column A. Round the result to the nearest four decimal places and enter it on line 12 in the applicable column.

Then, enter in Column A of line 13 the total of the amounts from the 2006 Federal Form 1041, page 1, lines 10 through 15b, 19, and 20. Multiply this amount by each of the decimal numbers in Columns B and C on line 12, and enter the result on line 13 in the applicable column.

**Instructions for Column B only—
North Dakota portion
(Part 2 of Schedule 2 only)**

**Line 1, Column B
Interest income**

Enter the fiduciary's share of interest received from a partnership, S corporation, or limited liability company doing business in North Dakota, to the extent the interest is apportioned or allocated to North Dakota by the partnership, S corporation, or limited liability company. Do not include any interest from U.S. obligations.

**Line 2, Column B
Ordinary dividends**

Enter the fiduciary's share of dividend income received from a partnership, S corporation, or limited liability company doing business in North Dakota, to the extent the dividend income is apportioned or allocated to North Dakota by the partnership, S corporation, or limited liability company.

**Line 3, Column B
Business income or (loss)**

Enter the net income or loss from a sole proprietorship doing business in North Dakota as reported on Federal Schedule C (Form 1040), to the extent the net income or loss is apportioned and allocated to North Dakota.

**Line 4, Column B
Capital gain (loss)**

Enter net capital gains and losses from the sale or exchange of real or tangible personal property located in North Dakota. Also enter the fiduciary's share of net capital gains and losses from a partnership, S corporation, or limited liability company doing business in North Dakota, to the extent they are apportioned or allocated to North Dakota by the partnership, S corporation, or limited liability company.

**Line 5, Column B
Rents, royalties, partnerships, other
estates and trusts, etc.**

Enter the net income or loss from real or tangible personal property located in North Dakota. This includes net income or loss from leasing the property, and from royalties and other income from interests in oil, coal, or other mineral property located in North Dakota.

Enter the fiduciary's share of income or loss from a partnership, S corporation, or limited liability company doing business in North Dakota (that is not reported on the other lines of Part 2), to the extent the income is apportioned and allocated to North Dakota by the partnership, S corporation, or limited liability company.

Enter the fiduciary's share of North Dakota source income and losses from another estate or trust.

**Line 6, Column B
Farm income or (loss)**

Enter the net income or loss from a farm or ranch operation doing business in North Dakota as reported on Federal Schedule F (Form 1040), to the extent the net income or loss is apportioned and allocated to North Dakota.

**Line 7, Column B
Ordinary gain or (loss)**

Enter the ordinary gain or loss from the sale or exchange of real or tangible personal property (other than capital assets) located in North Dakota.

**Line 8, Column B
Other income**

Enter the amount of any other income having its source in North Dakota that is not included on lines 1 through 7 of this part.

**Instructions
for completing
Schedule 3
(Form 38, page 4)**

Schedule 3 must be completed to provide information about each beneficiary. In the case of a nonresident individual, estate, or trust beneficiary, the schedule must show the beneficiary's distributive share of North Dakota income (loss). In the case of only a nonresident individual beneficiary, the schedule also must show the amount of North Dakota income tax withheld or the amount of composite income tax paid on the beneficiary's distributive share of North Dakota income. If the estate or trust has more than four beneficiaries, complete and attach as many Schedules 3 needed to list all beneficiaries. If more than one Schedule 3 is needed, complete lines 1 through 4 on only one of them, and include the combined amount for all of the schedules on that one schedule.

**All Beneficiaries
(Columns 1 through 4)**

Columns 1 and 2

Enter the full name, address, and federal identification number as shown on the beneficiary's Federal Schedule K-1. In Column 1, enter the name on the first line and the complete mailing address on the second line.

Column 3

Identify the entity type of the beneficiary by entering the applicable code letter as follows:

Entity type	Code letter
Individual.....	I
Estate.....	E
Trust.....	T
Other.....	O

Note: The "Trust" entity type only applies to a trust that files Federal Form 1041.

If the beneficiary is a limited liability company (LLC) that is a disregarded entity for federal income tax purposes, enter the code letter for the type of entity of the LLC's owner.

Column 4

Enter the sum of the following items from the beneficiary's Federal Schedule K-1 (Form 1041), Part III:

- Box 1** Interest income
- Box 2a** Ordinary dividends
- Box 3** Net short-term capital gain
- Box 4a** Net long-term capital gain
- Box 5** Other portfolio and nonbusiness income
- Box 6** Ordinary business income
- Box 7** Net rental real estate income
- Box 8** Other rental income
- Box 9** Directly apportioned deductions
- Box 11** Final year deductions *(Only include deductions that are allowed as a deduction from gross income in calculating adjusted gross income for federal income tax purposes.)*
- Box 14** Other information *(Only include income and deduction items includable in the calculation of federal adjusted gross income.)*

**Nonresident
Beneficiaries Only
(Columns 5 through 7)**

**Column 5
Nonresident individual, estate, or trust beneficiary**

Complete Column 5 for each nonresident individual, estate, or trust beneficiary. Include in this column the portion of each item of income, loss, and deduction included in the amount in Column 4 that is derived from sources in North Dakota. For this purpose, this includes the same kinds of items that would be reportable to North Dakota had they been directly obtained by the nonresident individual, estate, or trust. These items include:

- Compensation for services performed in North Dakota.
- Net income (loss) from the rental or lease of real and tangible personal property located in North Dakota.
- Net income (loss) attributable to royalty or other income from oil, coal, or other mineral interests located in North Dakota.
- Gain or loss from the sale, exchange, or other disposition of real and tangible personal property located in North Dakota.

- Net income (loss) from a sole proprietorship carried on in North Dakota.
- Net income (loss) from a partnership, S corporation, or other trade or business carried on in North Dakota.
- Income from gambling activity carried on in North Dakota.
- Income, gain, or loss from sources in North Dakota received from another estate or trust, partnership, S corporation, or other passthrough entity.

Income from North Dakota sources generally does not include interest, dividends, pensions, annuities, or income and gain from intangible property. However, if any of these income items were derived from a partnership, S corporation, or limited liability company doing business in North Dakota, they must be included in Column 5 to the extent they are apportioned or allocated to North Dakota by the partnership, S corporation, or limited liability company.

**Column 6
Nonresident individual only**

If the beneficiary is a nonresident individual, and the amount in Column 5 is \$1,000 or more, multiply the amount in Column 5 by 5.54 percent (.0554) and enter the result in Column 6. However, if the nonresident individual beneficiary elected to be included in a composite return, leave Column 6 blank and see the instructions to Column 7. See "Withholding from nonresident individual beneficiaries" on page 3 for more information.

Add the amounts in Column 6 for all nonresident individual beneficiaries and enter the result on line 3 at the bottom of Schedule 3 and on Form 38, page 1, line 5.

**Column 7
Nonresident individual only**

Complete Column 7 for each nonresident individual beneficiary who elected to be included in a composite return filed by the fiduciary. Multiply the nonresident individual beneficiary's amount in Column 5 by 5.54 percent (.0554) and enter the result in Column 7. If the amount in Column 5 is zero or less, enter zero in Column 7. See "Composite filing method" on page 3 for more information.

Add the amounts in Column 7 for all nonresident individual beneficiaries and enter the result on line 4 at the bottom of Schedule 3 and on Form 38, page 1, line 6.

Instructions for completing Schedule 4 (Form 38, page 4)

The fiduciary for an estate or trust may be eligible for a credit for income tax paid to another state if both of the following apply:

- It is a resident estate or trust.
- The fiduciary is required to pay income tax for the tax year to North Dakota and to another state on the *same income*.

Definition of state—For purposes of this credit, “state” means any of the other 49 U.S. states, the District of Columbia, or a territory of the United States. This credit is not available for income tax paid to a local government (such as a city, county, or school district), nor is it available for income tax paid to another country or any of its political subdivisions.

Other state’s return—The credit is allowed only if the fiduciary files an income tax return with the other state. The credit is not allowed based on the amount of any income tax withheld for, or the amount of estimated income tax paid to, another state. *A copy of the other state’s income tax return must be attached to Form 38 to obtain the credit.*

Payment of income tax to more than one other state—If the fiduciary pays income tax to more than one other state for the tax year, a separate Schedule 4 must be completed for each state. Fill in the total of the separately calculated credit amounts on Form 38, page 1, line 2.

Line 2

Enter only those items of income, gain, loss, and adjustments to income (included in the fiduciary’s share of total income on line 1) that have their source in the other state. Generally they have their source in the other state if they are taxable or deductible under the other state’s tax laws. Disregard any adjustment to the fiduciary’s total federal income allowed or required by the other state’s tax laws.

Line 6

Enter the amount of the income tax less any income tax credits (except withholding and estimated tax) shown on the other state’s income tax return.

Specific line instructions for page 1 of Form 38, lines 1-15

Complete either Schedule 1 or Schedule 2, whichever method is chosen to calculate the tax, and Schedule 3 before completing lines 1 through 15 on page 1 of Form 38.

Line 1

Tax on fiduciary’s taxable income

Complete either Schedule 1 (Main Method) or Schedule 2 (Optional Method). **DO NOT complete both schedules on the return that is filed.**

Line 2

Credit for income tax paid to another state

A fiduciary for a resident estate or trust may be eligible for a credit if the fiduciary pays income tax to another state, the District of Columbia, or a territory of the United States on income that is also taxed to the fiduciary in North Dakota. Complete Schedule 4 on page 4 of Form 38 to determine if a credit is allowed. See the instructions to Schedule 4 on this page. **Attach Schedule 4 and a copy of the other state’s income tax return.**

Line 3

Other credits

The following income tax credits are available to an estate or trust. Unless noted otherwise, a credit is allowed on both Schedule 1 and Schedule 2. For information on any of these credits, contact the Office of State Tax Commissioner.

- Credit for preserving or renovating historical property in a North Dakota renaissance zone. **Attach Schedule RZ.**
- Credit for investing in a renaissance fund organization. **Attach Schedule RZ.**
- Credit for investing in a qualified North Dakota agricultural commodity processing facility. **Attach a copy of the Ag Commodity Processing Facility Investment Reporting Form.**
- (Schedule 2 filer only) Credit for making a charitable contribution to a nonprofit private high school (having grades 9 through 12) or a nonprofit private college

(including the independent college fund) in North Dakota. **Attach a copy of a receipt or canceled check (front and back).**

- (Schedule 2 filer only) Credit for installing a geothermal, solar, or wind energy device on property owned or leased in North Dakota. **Attach a statement describing the device, a detailed list of costs, and the date the installation was completed.**
- (Schedule 2 filer only) Credit for hiring a developmentally disabled or chronically mentally ill person. **Attach a statement showing the name and social security number of the employee, the date of hire, and the amount of wages paid during the tax year.**
- (Schedule 2 filer only) Credit for investing in a North Dakota venture capital corporation. **Attach a copy of the Venture Capital Corporation Investment Reporting Form.**
- (Schedule 2 filer only) Credit for investing in the North Dakota Small Business Investment Company. **Attach a copy of the SBIC Investment Reporting Form.**
- (Schedule 2 filer only) Credit for investing in a North Dakota certified nonprofit development corporation. **Attach a copy of the Nonprofit Development Corporation Investment Reporting Form.**
- Credit for investing in a qualified North Dakota seed capital business. **Attach a copy of the Qualified Seed Capital Business Investment Reporting Form.**
- Credit for blending B5 biodiesel fuel or adding equipment to sell B2 biodiesel fuel. **Attach a statement detailing the calculation of the credit(s).**

Line 8

Withholding

Enter the amount of any North Dakota income tax withheld by: (1) an employer on wages of a decedent received by an estate; (2) a payer of gambling winnings; or (3) a payer of a distribution from a pension, annuity, IRA, etc., received by an estate or trust. Be sure the state identified on the Form W-2, W-2G, or Form 1099 is North Dakota (ND). **Attach a copy of the Form W-2, Form W-2G, or Form 1099.**

Line 9**Estimated tax paid**

Enter the amount paid with the 2006 Form 401-ES and, if applicable, the 2006 Form 401-EXT. However, if this is an amended return, do not enter the amounts paid with the 2006 Forms 401-ES and 401-EXT; instead, enter the amount of the total taxes due from line 7 of the previously filed original or amended 2006 Form 38.

Line 12**Application of overpayment to 2007**

If there is an overpayment on line 11, the fiduciary may elect to apply part or all of it as an estimated payment toward the 2007 tax liability. To make the election, enter the portion of line 11 to be applied on line 12. If this election is made, the election and the amount applied may not be changed after the return is filed. If this is an amended return, do not make an entry on this line.

Line 14**Tax due**

A tax due (including the amount, if any, of interest from line 15) must be paid in full with the return when it is filed. Make a check or money order payable to the "ND State Tax Commissioner." A late payment of tax may be subject to penalty and interest charges—see

Penalty and interest on page 3.

Line 15**Interest on underpaid estimated tax**

If the fiduciary for an estate or trust was required to pay estimated North Dakota income tax for 2006, but the fiduciary did not pay enough or paid it late, interest is charged on the underpayment or late payment. To determine if interest is owed on an underpayment or late payment of estimated tax, obtain and complete the **2006 Form 401-UT**.

Instructions for completing Schedule K-1

North Dakota Schedule K-1 (Form 38) must be used by a fiduciary to provide information that beneficiaries will need to complete a North Dakota income tax return. The information included in the schedule will depend on the type of beneficiary.

North Dakota Schedule K-1 (Form 38) must be completed and given to:

- Each nonresident individual, estate, or trust beneficiary.
- Each partnership or corporation beneficiary to whom the fiduciary distributes a North Dakota adjustment or tax credit.
- Each North Dakota resident individual, estate, or trust beneficiary to whom the fiduciary distributes a North Dakota adjustment or tax credit.

If all of the beneficiaries consist of only North Dakota resident individuals, estates, or trusts, and there are no North Dakota adjustments or tax credits to distribute to them, the fiduciary does not have to complete nor provide the North Dakota Schedule K-1 to any beneficiary. All income of a North Dakota resident individual, estate, or trust is subject to North Dakota income tax, regardless of its source.

In addition to the North Dakota Schedule K-1, be sure to give the beneficiary a copy of the *Beneficiary's Instructions to North Dakota Schedule K-1 (Form 38)*. The instructions are included in the Form 38 instruction booklet. They are also available on the Office of State Tax Commissioner's web site.

A copy of all North Dakota Schedule K-1 forms must be enclosed with Form 38 along with any required supplemental statements.

Amended schedule. If a fiduciary files an amended Federal Form 1041, or if the IRS makes any changes to the federal fiduciary return, the fiduciary must file an amended Form 38 for the same tax year, and must issue amended North Dakota Schedule K-1s to its beneficiaries. Check the "Amended" box at the top of the North Dakota Schedule K-1 if it is amended.

Final schedule. Check the "Final" box at the top of the North Dakota Schedule K-1 if it is the last one to be issued by the fiduciary to the beneficiary.

Part 1 Estate or trust information

Item A

Enter the estate's or trust's federal employer identification number (FEIN or federal EIN) as shown on the beneficiary's Federal Schedule K-1.

Important: Do not enter the fiduciary's own federal employer identification number. A fiduciary for an estate or trust must obtain a separate federal employer identification number for the estate or trust.

Item B

Enter the name of the estate or trust as shown on the beneficiary's Federal Schedule K-1.

Item C

Enter the name and address of the fiduciary as shown on the beneficiary's Federal Schedule K-1.

Part 2 Beneficiary information

Item D

Enter the social security number or federal employer identification number (FEIN) of the beneficiary as shown on the beneficiary's Federal Schedule K-1.

Item E

Enter the name and address of the beneficiary as shown on the beneficiary's Federal Schedule K 1.

Item F

Enter the same code letter shown in Column 3 of Schedule 3 of Form 38.

Item G

If the beneficiary is an individual, estate, or trust, check the applicable box to indicate the legal residency status of the beneficiary for North Dakota income tax purposes. If an individual beneficiary changed his or her legal residency to or from North Dakota during the tax year, check the part-year resident status. In the case of an estate or trust beneficiary, only the full-year resident or full-year nonresident status will apply.

Item H

For only a nonresident individual beneficiary, indicate whether the beneficiary is included in a composite return filed by the fiduciary by checking the applicable box.

Part 3 All beneficiaries—North Dakota adjustments and tax credits

Complete this part for a beneficiary only if one or more of the North Dakota adjustments and tax credits applies to the beneficiary.

Line 1**Federally-exempt income from non-North Dakota bonds and securities**

If the beneficiary is a nonresident individual, estate, or trust, do not make an entry on this line. Income from intangible assets is generally not taxable to a nonresident individual, estate, or trust.

For all other beneficiaries, enter the beneficiary's share of interest and dividend income from bonds and securities that is exempt from federal income tax. Do not include income from bonds and securities of North Dakota and any of its political subdivisions.

Line 2
State and local income taxes

Enter the portion of any state or local income taxes allocated to the beneficiary.

Line 3
Interest from U.S. obligations

Enter the portion of any interest from U.S. obligations allocated to the beneficiary. Include interest income from other securities if the interest is specifically exempted from state income tax by federal statute. Also include the portion of dividend income from a mutual fund attributable to the fund's investment in the same kinds of securities.

Lines 4 through 7
Exemptions and deductions

If the fiduciary for the estate or trust qualified for an exemption or deduction under the North Dakota Renaissance Zone Act, the North Dakota Beginning Farmer Program, or Beginning Entrepreneur Program, enter the portion of the exemption or deduction allocated to the beneficiary on the corresponding line of Part 4, lines 4 through 7. This applies only if the income eligible for the exemption or deduction is distributed to the beneficiary.

Line 8
Gain from eminent domain sale

Enter the portion of any gain from the involuntary conversion of private property through the exercise of eminent domain distributed to the beneficiary.

Lines 9 through 16
Tax credits

If the fiduciary qualified for any of the North Dakota tax credits listed on North Dakota Schedule K-1 (Form 38), Part 3, lines 9 through 16, enter the portion of the credit passed through to the beneficiary on the corresponding line.

Part 4
Nonresident individual, estate, or trust beneficiary only—North Dakota income (loss)

Complete Part 4 for only a nonresident individual, estate, or trust beneficiary. Enter on the corresponding line of Part 4, lines 17 through 27, each item of North Dakota income, gain, loss, deduction, etc., included in the amount reported on Form 38, Schedule 3, Column 5.

Part 5
Nonresident individual beneficiary only

Complete Part 5 for only a nonresident individual beneficiary.

Line 28
ND distributive share of income (loss)

Enter the beneficiary's North Dakota distributive share of income (loss) from Form 38, Schedule 3, Column 5.

Line 29
ND income tax withheld

Enter the amount of North Dakota income tax withheld from the beneficiary's North Dakota distributive share of income from Form 38, Schedule 3, Column 6.

Line 30
ND composite income tax

Enter the amount of North Dakota composite income tax on the beneficiary's North Dakota distributive share of income from Form 38, Schedule 3, Column 7.

Before you file
Form 38

Signatures

The return must be signed and dated by the fiduciary, or an authorized representative of the fiduciary.

If the fiduciary pays someone (other than an employee) to prepare the return, the paid preparer also must sign and date the return.

Preparer authorization check-off

The fiduciary may authorize the North Dakota Office of State Tax Commissioner (Tax

Department) to discuss matters pertaining to its 2006 Form 38 with the preparer who signed it. To do so, check the box in the lower right-hand corner of page 1 of Form 38 next to the signature area. This authorization applies only to the individual whose signature and printed name appears in the paid preparer section of the signature area. It does not apply to the firm, if any, shown in that section.

By checking the box, the fiduciary authorizes the Tax Department to contact the preparer to answer any questions that may arise during the processing of Form 38. It also authorizes the preparer to respond to the questions and to provide any information missing from the return, to contact the Tax Department to inquire about the status of the return's processing and related refund or payment, and to respond to Tax Department notices that the fiduciary shares with the preparer pertaining to math errors or return preparation. (*Tax Department notices will not be sent directly to the preparer.*)

This authorization automatically expires on the due date (excluding extensions) for filing the **2007 Form 38**.

This authorization *does not* authorize the preparer to receive a refund check, to bind the fiduciary in any way (including any additional tax liability), or to represent the fiduciary before the Tax Department for any other purpose. To expand the preparer's authorization, the fiduciary must complete and file North Dakota Form 500, *Authorization to Disclose Tax Information and Designation of Representative, with the Tax Department*.

Assembling a paper return

Please assemble Form 38 and its required attachments in the following order:

1. Form 38.
2. Schedule 1 or Schedule 2, whichever applies.
3. Schedule 3.
4. Schedule 4.
5. North Dakota Schedule K-1.
6. Supporting statements required in instructions.
7. Complete copy of Form 1041, including Federal Schedule K-1.

Staple all documents (except check or money order) together at the **top center** of Form 38. Enclose a check or money order made payable to: ND State Tax Commissioner. **Do not send cash.**

2006

Beneficiary's Instructions for North Dakota Schedule K-1 (Form 38)

Purpose of schedule

North Dakota Schedule K-1 (Form 38) is provided to you by the fiduciary for the estate or trust to show your share of the income, gains, losses, deductions, and other items from the estate or trust that you need to complete your North Dakota income tax return. These instructions will assist you in transferring the amounts from the schedule to your North Dakota income tax return.

Partnership or corporation beneficiary.

If you are a corporation, partnership, or a limited liability company treated like a partnership, you have received North Dakota Schedule K-1 only to show your share of the estate's or trust's North Dakota statutory adjustments or tax credits that may affect the preparation of your North Dakota income tax return. See the instructions to Part 3.

Resident individual, estate, or trust beneficiary.

If you are a North Dakota resident individual, estate, or trust, you must report to North Dakota your entire share of the estate's or trust's income, gains, losses, and deductions included in your federal taxable income. You have received North Dakota Schedule K-1 only to show your share of the estate's or trust's North Dakota statutory adjustments or tax credits that may affect the preparation of your North Dakota income tax return. See the instructions to Part 3.

Nonresident individual, estate, or trust beneficiary.

If you are a nonresident individual, estate, or trust, you must report to North Dakota your share of the estate's or trust's income, gains, losses, and deductions having their source in North Dakota. These items are shown in Part 4 of North Dakota Schedule K-1. Unless you are a nonresident individual who elected to include your share of these items in a composite return filed on your behalf by the fiduciary for the estate or trust, you must file a North Dakota income tax return to report and pay the required income tax on them.

Composite return election. If you are a nonresident individual who elected to include your share of the estate's or trust's North Dakota income, gains, losses, and deductions in a composite return filed by the fiduciary for the estate or trust, you are not required to file a North Dakota individual income tax return. If this applies to you, you received North Dakota Schedule K-1 to show your share

of these items and the composite income tax paid on them. If you later choose to file your own North Dakota individual income tax return, follow the instructions below to transfer the amounts from North Dakota Schedule K-1 to your return.

Amended Schedule K-1 (Form 38). If you received an amended North Dakota Schedule K-1 (Form 38) from the fiduciary for the estate or trust, and you previously filed a North Dakota income tax return to report your share of income, etc., from the estate or trust, you must file an amended North Dakota income tax return to report the changes in income, gains, losses, and deductions. You also must attach a copy of the amended North Dakota Schedule K-1 (Form 38) to your amended North Dakota income tax return.

Part 3 All beneficiaries—North Dakota adjustments and tax credits

Note: Wherever you see "Not applicable" in the right-hand column of the following lists, it means that the item does not apply to the return you are completing; do not enter the item on the return.

Lines 1–16

Form ND-1 filer:

Include the amount from this schedule:	On:
Lines 1–2	Not applicable
Line 3	Form ND-1, line 6
Line 4	Sch. RZ, Part 1, line 14
Line 5	Form ND-1, line 12
Lines 6–8	Not applicable
Line 9	Sch. RZ, Part 4, line 7
Line 10	Sch. RZ, Part 5, line 4
Line 11	Form ND-1, line 23
Line 12	Form ND-1, line 22
Line 13	Form ND-1, line 25
Line 14	Form ND-1, line 26
Lines 15–16	Not applicable

Form ND-2 (Schedule 2 filer only):

Include the amount from this schedule:	On:
Line 1	Sch. 2, line 2
Line 2	Sch. 2, line 3
Line 3	Sch. 2, line 7
Line 4	Sch. RZ, Part 1, line 14
Line 5	Sch. 2, line 21
Line 6a	Sch. 2, line 14
Line 6b	Sch. 2, line 12

Line 6c	Sch. 2, line 13
Line 7a	Sch. 2, line 18
Line 7b	Sch. 2, line 16
Line 7c	Sch. 2, line 17
Line 8	Sch. 2, line 21
Line 9	Sch. RZ, Part 4, line 7
Line 10	Sch. RZ, Part 5, line 4
Line 11	Page 1, line 9
Line 12–15	Page 1, line 7
Line 16	Page 1, line 8

Form ND-2 (Schedule 3 filer only):

Include the amount from this schedule:	On:
Line 1	Sch. 3, Part 1, line 12
Line 2	Sch. 3, Part 1, line 17
Line 3	Not applicable
Line 4	Sch. RZ, Part 1, line 14
Line 5	Sch. 3, Part 1, line 5
Line 6a	Sch. 3, Part 1, line 4
Line 6b	Sch. 3, Part 1, line 2
Line 6c	Sch. 3, Part 1, line 3
Line 7a–8	Sch. 3, Part 1, line 5
Line 9	Sch. RZ, Part 4, line 7
Line 10	Sch. RZ, Part 5, line 4
Line 11	Page 1, line 9
Line 12–15	Page 1, line 7
Line 16	Page 1, line 8

Form 38 (Schedule 1 filer only):

Include the amount from this schedule:	On:
Lines 1–2	Not applicable
Line 3	Sch. 1, line 4a
Line 4	Sch. RZ, Part 1, line 14
Line 5	Sch. 1, Part 1, line 4c
Lines 6–8	Not applicable
Line 9	Sch. RZ, Part 4, line 7
Line 10	Sch. RZ, Part 5, line 4
Lines 11–14	Form 38, page 1, line 3
Lines 15–16	Not applicable

Form 38 (Schedule 2 filer only):

Include the amount from this schedule:	On:
Lines 1–2	Sch. 2, Part 1, line 2
Line 3	Sch. 2, Part 1, line 4a
Line 4	Sch. RZ, Part 1, line 14
Lines 5–8	Sch. 2, Part 1, line 4a
Line 9	Sch. RZ, Part 4, line 7
Line 10	Sch. RZ, Part 5, line 4
Lines 11–16	Form 38, page 1, line 3

Form 40 filer:

Include the amount from this schedule:	On:
Line 1	Sch. SA, line 5
Line 2	Sch. SA, line 3
Line 3	Sch. SA, line 11
Line 4	Sch. RZ, Part 1, line 14

Line 5	Page 1, line 9
Lines 6–7	Not applicable
Line 8	Sch. SA, line 17
Line 9	Sch. RZ, Part 4, line 7
Line 10	Sch. RZ, Part 5, line 4
Line 11	Sch. TC, line 12
Line 12	Sch. TC, line 15
Line 13	Sch. TC, line 13
Line 14	Sch. TC, line 14
Line 15	Sch. TC, line 5
Line 16	Sch. TC, line 9

Form 35 filer:

Include the amount from this schedule:

On:	
Line 1	Sch. SA, line 4
Line 2	Sch. SA, line 3
Line 3	Not applicable
Line 4	Sch. RZ, Part 1, line 14
Lines 5–8	Not applicable
Line 9	Sch. RZ, Part 4, line 7
Line 10	Sch. RZ, Part 5, line 4
Lines 11–16	Not applicable

Forms 58 and 60: Include the amounts from lines 1–16 of this schedule on the applicable lines of Schedule K of Form 58 or Form 60.

**Part 4
Nonresident individual,
estate, or trust beneficiaries
only—North Dakota income
(loss)**

If you are a nonresident individual, estate, or trust, lines 17 through 27 of Part 4 show your share of the estate’s or trust’s North Dakota income, gains, losses, and deductions that you must report on your North Dakota income tax return. Transfer these amounts to your North Dakota income tax return as instructed below based on the type of return you are filing.

If the full amount of any item is not included in your federal adjusted gross income because of passive activity loss limitations, capital loss limitations, section 179 deduction limitations, or for other reasons, enter on your return only that portion of the item included in your federal adjusted gross income.

Attach a statement to your North Dakota income tax return explaining any difference between an amount shown on North Dakota Schedule K-1 (Form 38) and the amount reported on your North Dakota income tax return.

Form ND-1 filer (nonresident only):

Include the amount from this schedule: On Schedule ND-1NR, Column B:

Lines 17–18	Line 2
Lines 19–20	Line 4
Line 21–25	Line 6
Line 26	Line 4 (if capital loss) or line 8 (if net operating loss)
Line 27	Line 8

Form ND-2 filer (nonresident only):

Include the amount from this schedule: On Schedule 3, Part 2, Column B:

Lines 17–18	Line 2
Lines 19–20	Line 4
Line 21–25	Line 6
Line 26	Line 4 (if capital loss) or line 8 (if net operating loss)
Line 27	Line 8

Form 38, Schedule 1 filer (nonresident only)

Include the amount from this schedule: On Schedule 1, Part 2, Column B:

Line 17	Line 1
Line 18	Line 2
Lines 19–20	Line 4
Lines 21–25	Line 5
Line 26	Line 4 (if capital loss) or line 8 (if net operating loss)
Line 27	Line 8

Form 38, Schedule 2 filer (nonresident only)

Include the amount from this schedule: On Schedule 2, Part 2, Column B:

Line 17	Line 1
Line 18	Line 2
Lines 19–20	Line 4
Lines 21–25	Line 5
Line 26	Line 4 (if capital loss) or line 8 (if net operating loss)
Line 27	Line 8

**Part 5
Nonresident individual
beneficiary only**

Lines 28 through 30 apply only to a nonresident individual beneficiary.

Line 28

This is the net amount of your North Dakota distributive share of income (loss) from the estate or trust. Do not enter the amount from this line anywhere on your return. **It is for your information only.**

If you have a North Dakota distributive share of income of \$1,000 or more, the fiduciary for the estate or trust was required to withhold North Dakota income tax from it at the rate of 5.54 percent unless you elected to include it in a composite return filed by the fiduciary.

Line 29

The amount shown on this line is the amount of North Dakota income tax withheld by the fiduciary for the estate or trust from your North Dakota distributive share of income. Include this amount on Form ND-1, line 28, or Form ND-2, page 1, line 11. **Attach a copy of North Dakota Schedule K-1 (Form 38) to your return.**

Line 30

If you elected to include your North Dakota distributive share of income (loss) in a composite return, the amount shown on this line is the amount of North Dakota composite income tax paid on your behalf by the fiduciary for the estate or trust. If you made this election, you are not required to file your own North Dakota individual income tax return. **This is for your information only.**

Note: If you later choose to file your own North Dakota individual income tax return, you may claim this amount as a tax payment on your return. Attach a copy of the North Dakota Schedule K-1 (Form 38) to your return to support the amount claimed.