



North Dakota Office of State Tax Commissioner

2010 Fiduciary Income Tax

Cory Fong, Tax Commissioner

**Changes for
2010**

See page 1

Web site

www.nd.gov/tax

E-Mail

[individualtax@](mailto:individualtax@nd.gov)

[nd.gov](mailto:individualtax@nd.gov)



Form 38

Includes:

Form 38 (pages 1-3)
Schedule K-1

Dear Taxpayer,

Inside this booklet you will find the paper forms and instructions you need to file your 2010 North Dakota fiduciary income tax.

The instructions in this booklet are intended to help the fiduciary prepare an accurate and complete return. I invite comments on where improvements might be made to these forms and instructions so that we can provide better service to North Dakota's taxpayers.

As you go through the booklet, you will notice that there is little change in the 2010 North Dakota fiduciary income tax return and instructions from the prior year. Any notable changes and other developments that may affect you are discussed on page 1 of this booklet.

If you have any questions or need assistance, visit our web site at www.nd.gov/tax or contact our office. You'll find contact information on the inside front cover of this booklet.

Thank you,

A handwritten signature in black ink that reads "Cory Fong".

Cory Fong,
Tax Commissioner

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Required forms

The following forms are needed to complete Form 38:

| | |
|---------------------|--|
| Form 38 | Fiduciary return (3 pages) |
| Schedule K-1 | Beneficiary's share of North Dakota income (loss), deductions, adjustments, credits, and other items |

The following forms may be needed:

| | |
|-----------------------|---|
| Form 38-EXT | Fiduciary extension payment voucher |
| Schedule 38-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, estate and trust income tax—

individualtax@nd.gov

Call

Individual income tax—

Questions **(701) 328-1247**

Forms **(701) 328-1243**

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.

Changes affecting estates and trusts

Developments, updates, and items of interest relating to estate and trust income tax

Retroactive property tax relief income tax credit

Schedule RPT, Retroactive Property Tax Credit For Estates and Trusts, has been discontinued for the 2010 tax year. This was a one-time income tax credit only allowed for the 2009 tax year. However, in the case of an estate or trust that qualified for and retained part or all of the 2009 credit, if the estate or trust was unable to use all of the credit because it exceeded the 2009 income tax liability, the estate or trust may carry over the unused portion of the credit and claim it on its 2010 Form 38—see the instructions to the 2010 Form 38, page 1, line 3.

Form name change

Form 38-UT, Calculation of interest on underpayment or late payment of estimated income tax for estates and trusts, has been renamed Schedule 38-UT beginning with the 2010 version of the form.

Authorizing others to access confidential information of the estate or trust

Except where North Dakota income tax law specifically provides for an exception, the Office of State Tax Commissioner (Tax Department) must protect the confidentiality of the information contained in any return or report that an estate or trust is required to file with the Tax Department. This protection goes so far as to prohibit the Tax Department from disclosing whether or not the estate or trust has filed a required return or report. The fiduciary for an estate or trust, of course, may access the estate's or trust's confidential information upon appropriate verification of the fiduciary's identity.

If a fiduciary for an estate or trust relies on a third party, such as an accountant or attorney, to handle the estate's or trust's income tax affairs, there may be times when the third party needs to access the estate's or trust's confidential information on file with the Tax Department. Unless the fiduciary plans on requesting the information and giving it to the third party, the Tax Department may not provide any confidential information to a third party representative without the fiduciary's written authorization.

A fiduciary can authorize the Tax Department to disclose the estate's or trust's confidential information to a third party by completing Form 500, Authorization To Disclose Tax Information And Designation of Representative. Either the fiduciary or the third party may present the completed Form 500 to the Tax Department. The form allows the fiduciary to limit the type of information that the Tax Department may disclose to the third party.

Form 500 can be obtained from the Tax Department's web site at www.nd.gov/tax by clicking on **Miscellaneous Tax Forms and Publications** on the menu at the left-hand side of the page.

Form 38 Instructions

2010

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.

General instructions

Who must file

Resident estate or trust

A fiduciary for a resident estate or trust must file a 2010 Form 38, *Fiduciary Income Tax Return*, if the fiduciary is required to file a 2010 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.

Nonresident estate or trust

A fiduciary for a nonresident estate or trust must file a 2010 Form 38, *Fiduciary Income Tax Return*, if both of the following apply:

- The fiduciary is required to file a 2010 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 2010 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.

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. However, 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.

Grantor trust

A grantor trust that, in lieu of filing Form 1041, elects to use an alternative filing method prescribed by the federal income tax regulations is deemed to have a requirement to file Form 1041 for purposes of the North Dakota filing requirements.

Tax-exempt trust

A fiduciary for a trust that is tax-exempt under Internal Revenue Code § 501(a) must file a 2010 Form 38 if (1) the fiduciary is required to file a federal income tax return to report the trust's unrelated business taxable income, (2) the federal income tax is calculated using the tax rates applicable to a trust, and (3) the unrelated business taxable income is reportable to North Dakota. The unrelated business taxable income is reportable to North Dakota if the trust is a North Dakota resident trust or, in the case of a nonresident trust, the unrelated business taxable income has a source in North Dakota.

Bankruptcy estate

A fiduciary that is required to file a 2010 Form 38 for a bankruptcy estate must file it in a manner similar to how the 2010 Form 1041 is filed. Use Form 38 only as a transmittal for Form ND-1. In the top margin of Form ND-1, write "Attachment to Form 38." Attach Form ND-1 to Form 38. Complete Items A through H at the top of Form 38. Enter on Form 38, page 1, line 7, the net tax liability from Form ND-1, page 2, line 27. Then complete lines 8 through 17 on page 1 of Form 38 as required.

When and where to file

The 2010 Form 38 must be filed no later than:

- April 15, 2011, if filing for the 2010 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 2010 calendar year.

Note: Use the 2009 Form 38 if the estate's or trust's fiscal year began in the 2009 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. 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.

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.

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.

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 2010 Form 38-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 name, address and phone number; and, (4) Statement that the payment is a 2010 Form 38-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 Form 38 was obtained, the tax due may be paid by the extended due date of the return without penalty, but extension interest will apply—see **Extension interest** and **Prepayment of tax due** on this page.

If Form 38 is filed on or before its due date (or extended due date), but the tax due is not paid with the return, a penalty equal to 5% of the tax due or \$5.00, whichever is greater, must be paid.

If Form 38 is not filed on or before its due date (or extended due date), a penalty equal to 5% of the tax due or \$5.00, whichever is greater, for the month the return was due plus 5% of the tax due for each additional month (or fraction of a month) during which the return remains delinquent must be paid. This penalty may not exceed 25% of the tax due.

In addition to any penalty, interest must be paid at the rate of 1% per month (or fraction of a month), except for the month in which the tax was due, on any tax due that remains unpaid after the due date (or extended due date) of the return.

Estimated tax requirement (for 2011)

A fiduciary for an estate or trust must pay estimated North Dakota income tax for the 2011 tax year if all four of the following conditions apply:

1. The fiduciary is required to pay estimated federal income tax for the 2011 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 North Dakota net income tax liability on the fiduciary's taxable income for the 2010 tax year (as shown on the 2010 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 2010 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) North Dakota income tax equal to or more than \$500 for the 2011 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 2011 tax year to be less than the smaller of:
 - a. 90% of the North Dakota net income tax liability on fiduciary's taxable income for the 2011 tax year.

- b. 100% of the North Dakota net income tax liability on fiduciary's taxable income for the 2010 tax year (as shown on the 2010 Form 38, page 1, line 4). *Note: If the estate or trust was not in existence for the entire 2010 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 2011 tax year must be paid by April 15, June 15, and September 15, 2011, and January 15, 2012. If there is a requirement to pay estimated tax for 2011, obtain the 2011 Form 38-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 4.86% (.0486) 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 requirement does not apply to actual distributions made by the fiduciary to nonresident individual beneficiaries during the tax year; instead, the withholding amount is calculated on the beneficiaries' year-end distributive share and is reported on the Form 38 filed for the tax year. An amount less than 4.86% of the distributive share may be withheld if the beneficiary meets certain conditions—see Form PWA for details.

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 BI, Column 6. The fiduciary must submit a payment with Form 38 for the total withholding reported on Schedule BI. See the instructions to Schedule BI 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 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 or S corporation).

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 (4.86% for the 2010 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 BI, Column 7. The fiduciary must submit a payment with Form 38 for the total composite income tax reported on Schedule BI. See the instructions to Schedule BI 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 BI 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 on its 2010 Form 38, 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 2010 return

1. Obtain a blank 2010 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. Fill in the “Amended return” circle at the top of page 1 of Form 38.
4. Complete the Tax Computation Schedule and Schedule BI using the corrected information. Also complete Schedule CR, 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 10 of page 1, enter the total taxes due from the previously filed 2010 Form 38, page 1, line 7. If the total taxes due have not been fully paid, only enter the amount paid.
7. Complete lines 11 through 16 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 2010 Federal Form 1041, attach a copy of the amended federal return or IRS notice.

9. Complete and provide a corrected North Dakota 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 of these instructions.
3. Complete the Tax Computation Schedule on page 2 of Form 38—see page 5 of these instructions.
4. Complete Schedule BI on page 3 of Form 38—see page 7 of these instructions.
5. Complete lines 1 through 17 on page 1 of Form 38—see page 9 of these instructions.
6. Complete Schedule K-1, if required, for the beneficiaries—see page 9 of these instructions.

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 2010 Form 38 if the estate's or trust's taxable year began in the 2010 calendar year. *Note: Use the 2009 Form 38 if the taxable year began in the 2009 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 the Tax Computation Schedule and Schedule BI before completing lines 1 through 17 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. Fill in the applicable circle. If the estate or trust has a fiscal year, enter the beginning and ending dates of the fiscal year. Use the 2010 Form 38 only if the estate's or trust's tax year began in the 2010 calendar 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 the number of each type of beneficiary.

Item F Residency status

Fill in the applicable circle 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

If Federal Form 1041 was used, fill in the circle next to the same entity type (Items 1-9) checked on page 1 of Form 1041. Fill in the circle next to "Other" (Item 10) if the fiduciary filed:

- Form 1041-QFT (Write "Qualified funeral trust" on the line.)
- Form 990-T for a tax-exempt trust with unrelated business taxable income (Write "Tax-exempt trust with UBTI" on the line.)

Item H Check off items

Fill in all applicable circles.

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

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

Composite return. Fill in this circle 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 4 for more information.

Amended return. Fill in this circle if this return is being filed to correct a previously filed 2010 Form 38. See "Correcting a previously filed return" on page 4 for more information.

Extension. Fill in this circle 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 Tax Computation Schedule (Form 38, page 2)

Instructions for Part 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.*
- For 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.
- Amount of charitable contribution on which the fiduciary claims a North Dakota endowment fund tax credit under N.D.C.C. § 57-38-01.21, but only to the extent the contribution reduced the fiduciary's federal taxable income. Include the amount of an endowment fund contribution adjustment from a North Dakota Schedule K-1 if the related charitable contribution is deducted in calculating the fiduciary's taxable income.

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 and the interest income from them. 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
Qualified dividend exclusion**

Resident estate or trust— A fiduciary for a resident estate or trust may enter on this line 30 percent of the qualified dividends allocated to the estate or trust and reported on Form 1041, line 2b(2). **Do not** include qualified dividends that were allocated to the beneficiaries.

Nonresident estate or trust. A fiduciary for a nonresident estate or trust may enter on this line 30 percent of the portion of the qualified dividends allocated to the estate or trust and reported on Form 1041, line 2b(2), **that are reportable to North Dakota.** Qualified dividends allocated to the estate or trust that are reportable to North Dakota must be included in the fiduciary's share of total income reported on Form 38, Tax Computation Schedule, Part 2, Column B, line 11.

**Line 4d
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 any Indian reservation in North Dakota.
- 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 activated for federal active duty service under Title 10 of United States Code. Compensation received for annual training, basic military training, or professional military education 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.
- Contributions made during the tax year to a College SAVE account administered by the Bank of North Dakota. The maximum deduction allowed is \$5,000.

Instructions for Part 2

All estates and trusts—Enter the amounts from the 2010 Federal Form 1041, page 1, lines 1 through 8, on the corresponding lines in Column A. Then complete lines 9 through 11 in Column A.

Worksheet for calculating net long-term capital gain exclusion

(for Form 38, Part 1, line 4b)

- Enter amount from 2010 Schedule D (Form 1041), line 14a, column (2).
If zero or less, stop here; no exclusion is allowed **1** _____
- Enter amount from 2010 Schedule D (Form 1041), line 15, column (2).
If zero or less, stop here; no exclusion is allowed **2** _____
- 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.
- Complete lines 4a through 4d using only the capital gains and losses reportable to North Dakota by the fiduciary:
 - North Dakota net short-term capital gain (loss) included on 2010 Schedule D (Form 1041), line 13, column (2) **4a** _____
 - North Dakota net long-term capital gain (loss) included on 2010 Schedule D (Form 1041), line 14a, column (2). If zero or less, stop here; no exclusion is allowed **4b** _____
 - Combine lines 4a and 4b. If zero or less, stop here; no exclusion is allowed **4c** _____
 - Enter the smaller of line 4b or line 4c. This is the North Dakota net long-term capital gain **4d** _____
- Enter the smaller of line 3 or line 4d. Amount of net long-term capital gain eligible for the exclusion **5** _____
- Multiply line 5 by 30% (.30). This is the allowable exclusion. Enter this amount on Form 38, Part 1, line 4b **6** _____

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**

Important: Do not include in Column B the portion of any North Dakota income that was subtracted in Part 1, line 4e.

**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 that entity. 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 that entity.

**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 that entity.

**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 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 that entity.

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 reportable on line 4, column B) 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 BI (Form 38, page 3)

Schedule BI must be completed to provide information about each beneficiary. In the case of a nonresident individual beneficiary only, the schedule must show the beneficiary's distributive share of North Dakota income (loss) and the amount, if any, 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 BI needed to list all beneficiaries. If more than one Schedule BI 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 single-member 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 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 (<i>Only include deductions that are allowed as a deduction from gross income in calculating adjusted gross income for federal income tax purposes.</i>) |

Box 14 Other information (*Only include income and deduction items includable in the calculation of federal adjusted gross income.*)

Nonresident Individual Beneficiaries Only (Columns 5 through 7)

Column 5

Nonresident individual only

Complete Column 5 for each nonresident individual 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 received by the nonresident individual. 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, to the extent it is apportioned and allocated to 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.

For a nonresident individual beneficiary, 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 that entity.

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 4.86% (.0486) and enter the result in Column 6. However, the following exceptions apply:

- If the nonresident individual beneficiary provides you with a completed Form PWA, enter the amount from line 6 of the Form PWA in Column 6 and fill in the circle under "Form PWA."
- If the nonresident individual beneficiary elects 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.

Column 7

Nonresident individual only

Complete Column 7 for each nonresident individual beneficiary who elects to be included in a composite return. Multiply the nonresident individual beneficiary's amount in Column 5 by 4.86% (.0486) 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 4 for more information.

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

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.*

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 CR 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 1-17

Complete the Tax Computation Schedule and Schedule BI before completing lines 1 through 17 on page 1 of Form 38.

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 CR on page 3 of Form 38 to determine if a credit is allowed. See the instructions to Schedule CR on page 8. **Attach a copy of the other state's income tax return.**

Line 3 Other credits

Following is a list of other tax credits available to an estate or trust. Include on this line an allowable credit reported on a North Dakota Schedule K-1 received by the estate or trust. Also include the portion of an allowable unused credit carried over from a prior tax year. For more information on a credit, see the schedule, form, or income tax law noted in the instruction. **Except where an official form or other document is required to be attached, attach a statement supporting a credit claimed on this line.**

- 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 utility costs incurred as a nonparticipating property owner in a North Dakota renaissance zone. **Attach Schedule RZ.**
- Credit for investing in a certified North Dakota agricultural commodity processing facility. The credit is equal to 30% of the investment. No more than \$50,000 of the total credit may be used in any tax year. An unused credit may be carried forward up to 10 years. See N.D.C.C. ch. 57-38.6.

- Credit for installing a geothermal energy device on property owned or leased in North Dakota. See N.D.C.C. §§ 57-38-01.8 and 57-38-30.3(7)(o).
- Credit for investing in a certified North Dakota seed capital business. The credit is equal to 45% of the investment. No more than \$112,500 of the total credit may be used in any tax year. An unused credit may be carried forward up to 4 years. See N.D.C.C. ch. 57-38.5.
- Credit for blending B5 biodiesel fuel. See N.D.C.C. § 57-38-01.22.
- Credit for adapting or adding equipment to sell B2 biodiesel fuel. See N.D.C.C. § 57-38-01.23.
- Credit for hiring eligible college student under a North Dakota internship program. See N.D.C.C. § 57-38-01.24.
- Credit for conducting qualifying research in North Dakota. See N.D.C.C. § 57-38-30.5.
- Credit for investing in an angel fund in North Dakota. The credit is equal to the lesser of (1) 45% of the investment or (2) \$45,000. An unused credit may be carried forward up to 4 years. See N.D.C.C. § 57-38-01.26.
- Credit for the cost of new investment and new employment incurred by a business certified as a microbusiness. See N.D.C.C. § 57-38-01.27.
- Credit for making a charitable contribution to a qualified endowment fund in North Dakota. See N.D.C.C. § 57-38-01.21.
- Credit for hiring an employee to fill a hard-to-fill position (workforce recruitment credit). See N.D.C.C. § 57-38-01.25.
- Credit for wages paid to an employee mobilized for federal active duty. **Attach Schedule ME.**

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 12 Application of overpayment to 2011

If there is an overpayment on line 11, part or all of it may be applied as an estimated payment toward the 2011 tax liability. To do so, enter the portion of line 11 to be applied on line 12. 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 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 16 Penalty and interest

Our office will notify the fiduciary of any penalty and interest owed for late filing or late payment, or interest owed on tax due during an extension period. However, if desired, the fiduciary may calculate these amounts and enter them on this line, and submit payment for them with the return. See **Penalty and interest** on page 3 for how to calculate these amounts.

Line 17 Interest on underpaid estimated tax

If the fiduciary for an estate or trust was required to pay estimated North Dakota income tax for 2010, 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, obtain and complete the **2010 Schedule 38-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 to be 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 which 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.

A North Dakota Schedule K-1 does not have to be completed nor given to a partnership, corporation, or North Dakota resident individual, estate, or trust beneficiary if there are no North Dakota adjustments or tax credits distributable to the 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, the fiduciary must provide the beneficiary with a copy of the *Beneficiary's Instructions to North Dakota Schedule K-1 (Form 38)*.

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. Fill in the "Amended" circle at the top of the North Dakota Schedule K-1.

Final schedule. Fill in the "Final" circle 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

Items A, B, and C

For Items A, B, and C, enter the identifying information for the estate or trust as shown on the beneficiary's Federal Schedule K-1 (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.

Part 2 Beneficiary information

Items D and E

For Items D and E, enter the identifying information for the beneficiary as shown on the Federal Schedule K-1 (Form 1041).

Item F

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

Item G

If the beneficiary is an individual, estate, or trust, fill in the applicable circle 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 a nonresident individual beneficiary only, fill in the applicable circle to indicate whether the beneficiary is included in a composite return filed by the fiduciary.

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 an individual, estate, or trust, do not make an entry on this line.

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

If the beneficiary is an individual, estate, or trust, do not make an entry on this line.

For all other beneficiaries, enter the portion of any state or local income taxes deducted in calculating ordinary income (loss) that was 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 and 5 Exemptions and deductions

If the fiduciary for the estate or trust qualified for a renaissance zone exemption or a new or expanding business income exemption, enter the portion of the exemption allocated to the beneficiary on the corresponding line of Part 3, lines 4 and 5. This applies only if the income eligible for the exemption or deduction is distributed to the beneficiary.

Line 6 College SAVE deduction

Enter the portion of a College SAVE deduction allocated to the beneficiary.

Lines 7 through 19 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 7 through 19, 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 only for a nonresident individual, estate, or trust beneficiary. Enter on the corresponding line of Part 4, lines 20 through 30, each item of North Dakota income, gain, loss, deduction, etc., included in the amount reported on Form 38, Schedule BI, Column 5.

Part 5 Nonresident individual benefi- ciary only

Complete Part 5 only for a nonresident individual beneficiary.

Line 31 ND distributive share of income (loss)

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

Line 32**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 BI, Column 6.

Line 33**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 BI, 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 2010 Form 38 with the preparer who signed by filling in the circle to the right of the signature area.

This allows the Tax Department to contact the preparer if any questions arise during the processing of the return. It also allows 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 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. It only applies to the 2010 return and automatically expires on the due date (excluding extensions) for filing the 2011 return.

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.