



# North Dakota 2011 Corporation Income Tax

Cory Fong, Tax Commissioner

## Form 40 Form 40-UT Form 40-ES

Dear Taxpayer,

North Dakota's strong economy enabled the 2011 North Dakota Legislature to provide corporations with a 19.6 percent reduction in their income tax rates. This provides \$25 million per biennium in income tax relief for corporations, a benefit that will start with their 2011 North Dakota returns. Combining this year's tax rate reduction with the tax rate reduction passed two years ago by the 2009 North Dakota Legislature, corporations have received a 23.5 percent reduction in their income tax rates since 2008.

In addition to lower tax rates, other legislation affecting corporations was also passed, including two new income tax credits - a new housing incentive fund tax credit and a new automation tax credit. For more information on these legislative changes and others, see the following page of this booklet.

The Tax Department offers taxpayers filing the Form 40 Corporation Income Tax Return an electronic filing method, the Modernized e-File (MeF) program. If you have not used MeF in the past, I hope you will consider using this electronic option. By using MeF, taxpayers are able to electronically file both their North Dakota and their federal return at the same time. In addition, all taxpayers also have the option to use electronic funds transfer (EFT) to make any necessary payments. For more information, check with your tax preparer, your software vendor, or visit our web site at [www.nd.gov/tax](http://www.nd.gov/tax).

As you get ready to file your North Dakota corporation income tax return, take a few minutes to be sure you are using the correct form:

- Corporations engaged in business in North Dakota or having sources of income from North Dakota must file a North Dakota Corporation Income Tax Return, Form 40.
- A corporation which files a Federal Form 1120S as a small business corporation must file a North Dakota Small Business Corporation Income Tax Return, Form 60.
- Financial institutions (see North Dakota Century Code ch. 57-35.3) located or doing business within North Dakota must file a North Dakota Financial Institution Tax Return, Form 35. Form 35 must be submitted using WebFile.

To learn more about North Dakota's taxes or to access various forms and publications, please visit our web site at [www.nd.gov/tax](http://www.nd.gov/tax).

I invite you to let us know what you think we are doing well and what we can do to improve our service to you. Our phone number, address, and e-mail information is found on the back of this booklet.

Thank you,

Cory Fong,  
Tax Commissioner

**Need help?**  
Visit our web site:  
[www.nd.gov/tax](http://www.nd.gov/tax)

- **Download tax forms**
- **Find answers to tax questions through our Frequently Asked Questions.**
- **Learn about North Dakota tax credits available to corporations**
- **E-mail your tax questions:**  
[corptax@nd.gov](mailto:corptax@nd.gov)



*New for 2011*  
*(Effective for taxable years beginning after 12/31/10*  
*unless otherwise noted)*

## Lower Tax Rates

Effective for taxable years beginning after December 31, 2010, the income brackets and tax rates are:

If North Dakota taxable income is		The tax is:
Over	But not over	
\$ 0	\$ 25,000	1.68% of North Dakota Taxable Income
25,000	50,000	\$ 420.00 + 4.23% of amount over \$ 25,000
50,000		\$ 1,477.50 + 5.15% of amount over \$ 50,000

If a corporation elects to use the water's edge method to apportion its income, the corporation is subject to an additional 3.5% on its North Dakota income.

## Corporate Income Tax Credit Changes

- **Housing Incentive Fund Tax Credit**

A new credit is available for contributing to a housing incentive fund administered by the North Dakota Housing Finance Agency. This credit is equal to 100% of the amount contributed to the fund. There is a statewide cap of \$15 million in total credits for the 2011 and 2012 tax years. (These provisions reflect the changes made in the special legislative session in November 2011.)

- **Angel Fund Credit**

The existing tax credit has been revised to allow passthrough entities to pass the credit to owners based on their respective ownership interests in the entity. The lifetime limit on this credit is now \$150,000 per taxpayer. Also, for 2011 and 2012 tax years only, the taxpayer may elect to sell, assign, or transfer the credit to another taxpayer.

- **Biodiesel and Green Diesel Fuel Credits**

The existing biodiesel tax credits have been expanded to also apply to "green diesel."

- **Automation Credit**

A new credit was created for purchasing new or used machinery and equipment for the purpose of automating a manufacturing process. Note: This credit does not take effect until the 2013 tax year, and then only applies to the 2013, 2014, and 2015 tax years.

For details on these and other credits available to corporate income tax filers, see the *2011 North Dakota Corporate Income Tax Credits* booklet on our web site.

## **Water's Edge Filers - Repeal of Domestic Disclosure Spreadsheet Requirement**

For the taxable years beginning prior to January 1, 2011, a domestic disclosure spreadsheet was required to be filed for taxpayers electing the water's edge filing method. For years beginning after December 31, 2010, the requirement to file a domestic disclosure spreadsheet was repealed.

## **Consolidated Combined Returns - Filing Methods Renamed** **For taxable years beginning prior to January 1, 2011, the filing methods have been changed.**

- Filing method "b1. 100% ND Consol. Return" has been eliminated.
- Filing method "b2. Apportioning Corp. Consol. Return" has been renamed as "b1. Combined Report Method Consol. Return."
- Taxpayers who previously elected either "b1. 100% ND Consol. Return" or "b2. Apportioning Corp. Consol. Return" now should elect "b1. Combined Report Method Consol. Return."
- The newly renamed election now includes both apportioning and 100% ND consolidated groups.

# *Special Reminders*

## **Electronic Filing**

Taxpayers have the ability to electronically file North Dakota corporate income tax returns if the federal return was electronically filed with the IRS using the Modernized E-file (MeF) program. Check with your software vendor, tax preparer, or our web site to see if your vendor is an approved provider. If filing your return electronically, we also encourage electronic funds transfer (EFT) using ACH credits. ACH debits are only available if you electronically file the return. Contact us or refer to our web site for information on both of these items.

## **Water's Edge Election Notice**

The water's edge election is binding for five consecutive taxable years upon making the election. Each subsequent year of the five year period does not constitute a new five year election. An election in year six would be a binding election for another five years.

## **Filing Extension**

If your return is filed after the original due date and a federal or state extension has been obtained, to avoid penalty be sure to enclose a copy of the extension and mark the extension circle 'yes' on page 1 of the Form 40.

## **Tax Credit Booklet**

There is a Corporate Income Tax Credit Booklet located on our web site at <http://www.nd.gov/tax/business/forms/corpincomeforms.html> under the applicable tax year. This booklet details each credit that can be claimed on the Corporation Income Tax Return and how each should be computed. Each booklet is designed specifically for a specific year.

## **North Dakota Net Operating Loss Merger Considerations**

A North Dakota net operating loss (NOL) belongs to the corporation that incurred it, regardless of its North Dakota business activities or filing method. The North Dakota NOL of the non-surviving corporation in a merger is forfeited and may not be used as a deduction by the surviving corporation.

## **Property Tax Credit**

Year 2008 was the final year of the two-year program for a corporation to take a credit on its North Dakota corporation income tax return for taxes on property classified as commercial property located in North Dakota. If a corporation failed to claim a property tax credit available to it on the 2007 and 2008 tax returns, in order to claim the credit an amended return must be filed within the statute of limitations, which is generally three years after the later of the original due date of the return or the date the return was filed.

For more information about filing your corporate income tax return, visit our web site at [www.nd.gov/tax](http://www.nd.gov/tax) or contact us at 701.328.1249.

## General instructions

### Who must file

Every corporation engaged in business in North Dakota or having income from North Dakota sources must file a North Dakota Corporation Income Tax Return, Form 40.

For example, a North Dakota Form 40 must be filed by:

- Corporations, including business trusts, associations, and joint-stock companies;
- Cooperative corporations distributing their net income through patronage dividends;
- Insurance companies conducting business activities not subject to the North Dakota gross premiums tax;
- Tax-exempt organizations having unrelated business taxable income; and
- Organizations that anticipate receiving a tax exempt status notification from the Internal Revenue Service, but have not actually received such notification by the end of the taxable year.

A corporation which files a Federal Form 1120S as a small business corporation must file a North Dakota Small Business Corporation Income Tax Return, Form 60.

Financial institutions located or doing business within North Dakota must file a North Dakota Financial Institution Tax Return, Form 35. (*See N.D.C.C. ch. 57-35.3*)

### Due date

A calendar year corporation filing Form 40 must file on or before April 15 following the close of the calendar year.

A corporation reporting on a fiscal year basis must file on or before the 15th day of the fourth month following the close of the fiscal year. Use the 2011 Form 40 for fiscal years that begin in 2011 and end in 2012.

A cooperative must file on or before the 15th day of the ninth month following the close of the calendar or fiscal year. Answer "Yes" to Question #4 on page 2 of Form 40.

Tax-exempt organizations required to file an income tax return to report unrelated business taxable income must file a corporation income tax return on or before the 15th day of the fifth month after the tax year ends.

### Short period return

A corporation required to file a federal short period return must file a North Dakota short period return for the same period. The North Dakota return must be filed by April 15th or by the date prescribed by the Internal Revenue Service, whichever is later.

See instructions for the North Dakota Form 40-ES at the end of this booklet for due dates of estimated payments on short period returns.

A corporation terminating as a Subchapter S Corporation during the year, or a corporation changing its annual accounting period, must annualize its North Dakota taxable income and prorate its state tax liability in the same manner as the federal tax liability is prorated.

### Extension of time for filing

An extension of time to file a federal return is automatically accepted by North Dakota as an extension of time to file the state return. The state extension is for the same number of additional months as the federal extension. Attach a copy of the federal extension Form 7004 to the state tax return and mark the extension circle on page 1 of the Form 40. **The return will be processed as a delinquent return if a copy of the federal extension is not attached.**

If a federal extension is not obtained, or if an extension of time beyond the time period covered by a federal extension is needed, a North Dakota extension may be obtained by completing and filing North Dakota Form 101. This form may be obtained by contacting us.

An extension of time to file a North Dakota return does not extend the time for payment of the tax, and extension interest at the rate of 12% per annum will apply to any payment made after the regular due date of the state tax return. Penalty does not apply to tax paid within the extension period.

Extension payments must be accompanied by Form 40-EXT identifying the name, address, and Federal Identification Number of the taxpayer. The form can be found on our web site. Alternatively, a letter containing the above information along with a copy of the approved state extension of time to file may be submitted with the prepayment of tax due.

### Payment of tax

If tax due (*including interest and penalty*) is less than \$5.00, payment need not be made. If tax is due, the total payment due must be paid at the time of, or before, the return is filed. Payment may be made with check or money order, made payable to the North Dakota State Tax Commissioner.

Payment may also be made by using the Automated Clearing House (ACH) credit procedure of electronic funds transfer. To learn more, visit our web site at [www.nd.gov/tax](http://www.nd.gov/tax). Click on Corporate Income, then Electronic Payment, and then EFT.

### Preparer authorization

If the corporation wants to allow the North Dakota Office of State Tax Commissioner to discuss its 2011 tax return with the preparer who signed it, mark the circle in the signature area of the return. This authorization applies only to the individual whose signature appears in the "Signature of Preparer" section of the corporation's return. It does not apply to the firm, if any, shown in that section.

If the circle is marked, the corporation is authorizing the North Dakota Office of State Tax Commissioner to contact the preparer to answer any questions that may arise during the processing of its return.

The corporation is also authorizing the preparer to:

- Give the North Dakota Office of State Tax Commissioner any information that is missing from the return;
- Call the North Dakota Office of State Tax Commissioner about the processing of the return or the status of any related refund or payment(s); and
- Respond to certain North Dakota Office of State Tax Commissioner notices that the corporation has shared with the preparer about math errors and return preparation. The notices will not be sent to the preparer.

The authorization will automatically end no later than the due date (*excluding extensions*) for filing the corporation's 2012 tax return.

The corporation is not authorizing the preparer to receive any refund check, bind the corporation to anything (*including any additional tax liability*), or otherwise represent the corporation before the North Dakota Office of State Tax Commissioner. If the corporation wants to expand the preparer's authorization, North Dakota Form 500, Authorization to Disclose Tax Information and Designation of Representative, will need to be signed and filed with our office. North Dakota Form 500 can be found on our web site at [www.nd.gov/tax](http://www.nd.gov/tax). Click on Corporate Income and then Forms.

### Attachments

A complete copy of the federal income tax return as filed with the Internal Revenue Service must be attached to Form 40.

### Overpayments

Overpayments of income tax may be applied to the 2012 estimated tax (*minimum \$5.00*) or issued as a refund (*minimum \$5.00*).

## Interest and penalty

The Office of State Tax Commissioner will notify the taxpayer of any interest and penalty owed on tax due. If desired, interest and penalty may be computed by the taxpayer on tax due and entered on the return.

### Interest:

If the full amount of the tax is not paid by the original due date, the following provisions for interest apply:

- If an extension was obtained, interest on the tax due during the extension period is computed at 12% per annum, through the extended due date. Beginning with the month thereafter, interest is computed at 1% per month or fraction of a month.
- If an extension was not obtained, interest on the tax due is computed at 1% per month or fraction of a month, except the month in which the tax became due.

### Penalty:

- If the full amount of tax is not paid by the due date (*or extended due date*), penalty is equal to 5% of the unpaid tax due or \$5.00, whichever is greater.
- If the return is not filed by the due date (*or extended due date*), a penalty of 5% of the net tax liability or \$5.00, whichever is greater, applies for the month in which the return is due, with an additional 5% for each additional month (*or a fraction of a month*) during which the delinquency continues, not to exceed 25% of the net tax liability.

If there is an overpayment on Form 40, page 1, interest at the rate of 1% per month accrues on the overpayment beginning forty-five days after the later of:

- the due date of the return (*without extension*); or
- the date the return is filed.

## Incomplete return

All applicable lines on Form 40 must be completed. A return with incomplete lines or schedules or with notations such as “see attached statement” or “available upon audit” is not properly filed and may be returned to the taxpayer.

## Ratios and decimals

On all schedules where a ratio or decimal is called for, use 6 digits after the decimal point.

## To file or obtain additional forms and instructions

Completed returns and written requests for information and forms should be mailed to the Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599.

If you have corporate income tax questions or are seeking tax forms, please e-mail us at [corptax@nd.gov](mailto:corptax@nd.gov), visit our web site at [www.nd.gov/tax](http://www.nd.gov/tax), or call our Corporate Tax Section at 701.328.1249.

For the speech or hearing impaired, call Relay North Dakota at 1.800.366.6888.

## Information at the source

Any corporation doing business in North Dakota that is required to file a Federal Form W-2 or 1099 must also file one with this state. For more information on the requirements and alternatives for satisfying those requirements, contact our office.

## Quick refund

A quick refund of overpaid estimated income tax may be requested by a corporation if the overpayment exceeds five hundred dollars (\$500) and the claim for quick refund is filed after the close of the taxable year but before the 15th day of the fourth month thereafter.

The form for the Quick Refund Of Estimated Income Tax For Corporations (*Form 40-QR*) must be obtained by contacting our office.

## Estimated tax payments

If a corporation's estimated state income tax liability exceeds five thousand dollars (\$5,000) **and** its previous year's state income tax liability exceeded five thousand dollars (\$5,000), the corporation is required to make an estimated tax payment of at least one-fourth of the amount due on each of four prescribed dates.

Information regarding estimated tax payments is located on the last pages of this booklet.

## Amended returns/federal audit changes

An Amended North Dakota Corporation Income Tax Return, Form 40X, must be filed if:

- An amended federal income tax return is filed;
- North Dakota income is changed as a result of a federal audit;
- An error is discovered on a previously filed return;
- The corporation received a refund of federal income tax which was deducted on a previously filed Form 40 for tax years beginning before January 1, 2004.

Information about amended returns can be found in N.D.C.C. §§ 57-38-38 and 57-38-40.

Form 40X and instructions can be obtained by visiting our web site at [www.nd.gov/tax](http://www.nd.gov/tax).

## Federalization

The North Dakota income tax law is perpetually “federalized” for the Federal Taxable Income starting point of the North Dakota return.

## Method of corporation taxation

The North Dakota corporation income tax applies only to that portion of a corporation's taxable income which is derived from or attributable to sources within this state.

A nonapportioning corporation, a corporation whose business activity is conducted solely within North Dakota, computes North Dakota taxable income by adjusting its federal taxable income by North Dakota statutory adjustments.

An apportioning corporation, a corporation whose business activity is conducted both within and without North Dakota, computes North Dakota taxable income by adjusting its federal taxable income by North Dakota statutory adjustments and apportioning this adjusted taxable income using Schedule FACT or CR (*Part II*) of Form 40.

A corporation engaged in a unitary business with one or more corporations (*irrespective of the country or countries in which the corporations conduct business*) must file using the combined report method.

A unitary business is a group of corporations which carries on activities, the component parts of which transfer value among themselves through the unities of ownership, operation and use.

- “Unity of ownership” means the group is under the common control of a single corporation, which is also a member of the group. Control exists when the single corporation owns, directly or indirectly, more than fifty percent of the voting stock of another corporation;
- “Unity of operation” means the group receives benefits from functional integration or economies of scale;
- “Unity of use” means the group of corporations contributes to or receives benefits from centralized management and policy formation.

Whether a group of corporations is engaged in a unitary business depends on the facts and circumstances of each case. If unity of ownership exists, any of the following facts or circumstances creates a presumption that the unities of operation and use exist; therefore, the corporations are engaged in a unitary business if:

- All activities of the group are in the same general line or type of business;
- The activities of the group constitute different steps in a vertically structured enterprise; or
- The group is characterized by centralized management.

## Water's edge election

A corporation required to file its North Dakota return using the worldwide unitary combined report method may elect to use the water's edge method. The water's edge election must be made on the return as originally filed and is binding for five consecutive years. ***If the election is made, a corporation will be subject to a 3.5% surtax on its North Dakota taxable income.***

For the taxable years beginning prior to January 1, 2011, a domestic disclosure spreadsheet was required. However, for years after December 31, 2010, the requirement to file a domestic disclosure spreadsheet was repealed.

## Specific instructions for Form 40, Page 1

### Taxpayer Name

If filing a combined return (line 1, circle b or c) the return should be filed using the taxpayer name and federal identification number of the entity having activity in North Dakota.

If you previously filed a consolidated return (line 1, circle b1 or c1) as a member of a unitary group and are still a member of that group, use the same taxpayer name and federal identification number as previously filed returns. If not, file using the name and federal identification number of another affiliate having activity in North Dakota in 2011.

### Business Code

Enter the business code from the list found on our web site at [www.nd.gov/tax](http://www.nd.gov/tax) that most closely corresponds to the area from which you derived the majority of your income for the tax year.

### Line 1 Income

Mark the circle for the reporting method used to complete the return and enter the income reportable under that method. **Mark ONE circle only.**

#### a. Single Corporate Entity

The single corporate entity method reports income or loss of only one incorporated business that is not part of a unitary business. (See item "Method of corporation taxation" on page 2.)

If the single corporate entity method is used for both North Dakota and federal purposes, enter the federal taxable income from Federal Form 1120, line 30.

If the single corporate entity method is used for North Dakota purposes and the corporation is included in a consolidated Federal Form 1120, enter the corporation's federal taxable income before consolidating adjustments/eliminations from:

- A pro forma separate company federal income tax return, line 30; or
- The by-company schedule showing gross income and deductions, which supports the consolidated federal taxable income.

Cooperatives and other business organizations using federal forms other than Federal Form 1120 must enter the federal taxable income from the appropriate form.

### Combined Report

For North Dakota corporation income tax purposes, a "combined report" means an income tax return on which the tax liability is computed using the methods described in N.D.C.C. chs. 57-38, 57-38.1 and N.D. Admin. Code chs. 81-03-05.1, 81-03-05.2, 81-03-05.3, and 81-03-09.

- Except for 100% North Dakota corporations required to file a consolidated tax return, it is essential to have a unitary business group of corporations before the combined report method can be used. For a discussion of a unitary business group of corporations, see item "Method of corporation taxation" on page 2.
- If filing a combined report method return where only one company apportions income to North Dakota (i.e., circle b or c is marked on Form 40, line 1), the answer to question #7 on page 2 of Form 40 will be "No".
- If filing a combined report method North Dakota tax return where more than one company apportions income to North Dakota (i.e., circle b1 or c1 is marked on Form 40, line 1), the answer to question #7 on page 2 of Form 40 will be "Yes".

#### b. Combined Report Method

Mark the "Combined Report Method" circle if Form 40 includes only one corporation from a unitary business which apportions its income to North Dakota.

The return should be filed using the taxpayer name and federal identification number of the entity having activity in North Dakota.

Complete Schedule WW on page 4 and enter the amount from line 11 on Form 40, line 1. Attach the completed Schedule WW to Form 40 when filed.

Answer "No" to question #7 on page 2 of Form 40.

### Consolidated Return

For North Dakota corporation income tax purposes, a North Dakota "consolidated return" means a single corporation income tax return that reports the tax liability of more than one corporation engaged in business or having sources of income from North Dakota.

- If part of the same unitary group, file the return using the same taxpayer name and federal identification number as previously filed returns if that entity has activity in North Dakota in 2011. If not, file using the name and federal identification number of another affiliate having activity in North Dakota in 2011.
- Only taxpayers who compute their North Dakota tax liability using the combined report method may file a consolidated return.
- Laws and rules governing consolidated returns are found in N.D.C.C. ch. 57-38, and N.D. Admin. Code ch. 81-03-05.1.
- If filing a consolidated North Dakota tax return, circle b1 or c1 should be marked on Form 40, line 1.
- Because a North Dakota consolidated return reports the tax liability of more than one corporation, North Dakota Schedule CR, Parts I, II and III will be completed.
- If filing a consolidated North Dakota tax return (i.e., circle b1 or c1 is marked on Form 40, line 1) the answer to question #7 on page 2 of Form 40 will be "Yes".

### Schedule CR

North Dakota Schedule CR, Parts I, II and III will be completed **only** for corporations that are required to apportion income to North Dakota (i.e., if a corporation **does not have property, payroll, and/or sales in North Dakota, it will not be listed on Schedule CR. However, the denominator of the apportionment factor computation on Part II will be the total property, payroll, and sales for all unitary companies in the combined group.**)

The Schedule CR in this booklet allows for three separate companies to be reported. If more companies are to be reported, copy Parts I, II and III of Schedule CR and continue to complete the additional schedule copies for companies that apportion their income to North Dakota. (See page 7 for specific instructions for Schedule CR.)

**b1. Combined Report Method Consolidated Return**

Mark the "Combined Report Method Consol. Return" circle if the corporation is filing one consolidated North Dakota return using the combined report method.

Two or more apportioning corporations *may* file one North Dakota consolidated return if the corporations are required to use the combined report method and more than one of the corporations has a filing requirement in North Dakota.

If circle b1 is marked:

1. If part of the same unitary group, file the return using the same taxpayer name and federal identification number as previously filed returns if that entity has activity in North Dakota in 2011. If not, file using the name and federal identification number of another affiliate having activity in North Dakota in 2011.
2. Complete Schedule WW on page 4 and enter the amount from line 11 on Form 40, line 1. Attach the completed Schedule WW to Form 40 when filed.
3. Complete North Dakota Schedule CR, Parts I, II and III only for companies that apportion income to North Dakota. If a corporation *does not have* property, payroll, and/or sales in North Dakota, it will not be listed on Schedule CR.
4. Answer "Yes" to question #7 on page 2 of Form 40.

**c. Water's Edge Method**

Mark the "Water's Edge Method" circle if:

- The corporation is a member of a worldwide unitary business group of corporations, and
- The corporation elects to file a North Dakota tax return using the water's edge method, and
- No other corporations in the combined report have a filing requirement in North Dakota, if more than one, see C1 method below.

If circle c is marked:

1. The return should be filed using the taxpayer name and federal identification number of the entity having activity in North Dakota.
2. Complete Schedule WE on page 5 and enter the amount from line 13 on Form 40, line 1. Attach the completed Schedule WE to Form 40 when filed.
3. Answer "No" to question #7 on page 2 of Form 40.

**c1. Water's Edge Method Consolidated Return**

Mark the "Water's Edge Method Consolidated Return" circle if:

- The members of a worldwide unitary business group of corporations elect to file a consolidated tax return using the water's edge method, and
- If two or more apportioning corporations in the combined report have a filing requirement in North Dakota.

If circle c1 is marked:

1. If part of the same unitary group, file the return using the same taxpayer name and federal identification number as previously filed returns if that entity has activity in North Dakota in 2011. If not, file using the name and federal identification number of another affiliate having activity in North Dakota in 2011.
2. Complete Schedule WE on page 5 and enter the amount from line 13 on Form 40 line 1. Attach the completed Schedule WE to Form 40 when filed.
3. Complete North Dakota Schedule CR, Parts I, II and III only for companies that apportion income to North Dakota.
4. Answer "Yes" to question #7 on page 2 of Form 40.

**d. Other**

Mark the "Other" circle if the corporation has received written permission from the Office of State Tax Commissioner to file a North Dakota return using a filing method other than those specified above.

Other filing methods are contained in N.D.C.C. § 57-38.1-18 (for example, *separate accounting or a method using an apportionment factor different from that computed on Schedules FACT or CR*).

If the circle entitled "Other" is marked:

1. Attach a copy of the letter from the Office of State Tax Commissioner granting permission to use, or requiring the use of, this filing method.
2. Attach a worksheet substantiating and explaining the computation of income.
3. Enter the income from the worksheet on Form 40, line 1.

**Line 4  
North Dakota apportionable income**

If completing Schedule CR, enter the amount from Form 40, page 1, line 4 on Schedule CR, Part I, line 4 (*enter the same amount for each company*) and complete Parts I, II and III of Schedule CR.

If a North Dakota consolidated tax return is being filed to report the tax liability of more than one corporation engaged in business in or having sources of income from North Dakota:

1. **Do not** complete lines 5-19 of Form 40, page 1 until Schedule CR has been completed.
2. Complete Schedule CR, Parts I, II and III on pages 6, 7 and 8 and enter the totals on Form 40, page 1.
3. Complete Form 40, page 1.
4. Attach the completed Schedule CR to Form 40 when filed.

**Line 5  
Apportionment factor**

If a corporation has business income from activity solely within this state, enter 1.000000 on this line.

Corporations not filing a consolidated return, enter the apportionment factor from Schedule FACT, line 14.

Corporations completing Schedule CR must enter the apportionment factor from Schedule CR, Part II, line 15a.

It is required that the supporting schedule FACT or CR, Part II, whichever is applicable, be completed, and that the 6-digit factor from the supporting schedule be carried to Form 40, page 1, line 5.

If the supporting schedule is not completed, the return will be considered incomplete and mailed back.

**Line 7  
Income allocated to North Dakota**

Enter nonbusiness income allocated to North Dakota less related expenses. Nonbusiness income is allocated to North Dakota if the income is attributable to North Dakota.

Expenses must be attributed to nonbusiness income in a manner which fairly distributes all of the corporation's expenses to its various types of income.

Corporations completing Schedule CR must enter the total nonbusiness income for all corporations having activity within North Dakota.

**Line 9  
Exemption for new and expanding business**

If the corporation received a new and expanding business exemption from the State Board of Equalization, enter the amount of exempt income computed pursuant to N.D. Admin. Code § 81-03-01.1-06.

Corporations completing Schedule CR must enter the exempt income for each corporation having an exemption.

Attach a schedule showing the computation of exempt income for each corporation.

### Line 10 Renaissance zone income exemption

If the corporation is claiming exempt income as a result of the Renaissance Zone Act, enter the total amount of exemption from the summary part of Schedule RZ. Contact the Office of State Tax Commissioner at 701.328.1243 to obtain Schedule RZ. Attach Schedule RZ to Form 40 when filed.

### Line 11 ND income after income exemptions

If the amount on line 11 is a loss, the loss must be carried forward.

### Line 12 North Dakota loss carryforward

The North Dakota loss carryforward allowed on the Form 40 is the amount of the accumulated North Dakota loss less any previously deducted loss carryback or carryforward.

North Dakota net operating losses incurred in taxable years beginning after December 31, 2002 cannot be carried back to a previous taxable year. These net operating losses must be carried forward. Capital losses may still be carried back.

Attach a worksheet showing the accumulated loss, by year, less any previously deducted loss carryback or carryforward.

Corporations completing Schedule CR must enter the loss carryforward from all corporations listed on Schedule CR.

### Line 14 Gross proceeds allocated to North Dakota from sale of North Dakota tax credits

Enter on this line, the gross proceeds from the sale, assignment or transfer of unused North Dakota tax credits. See the *2011 Corporate Income Tax Credits* booklet for more information.

### Line 15 North Dakota taxable income

If line 14 is zero enter the amount from line 13.

If line 13 is zero or less and line 14 is greater than zero, enter the amount from line 14.

If line 13 is greater than zero, enter the total of line 13 and line 14.

### Line 21 Tax year 2011 estimated income tax payments

Enter the total 2011 estimated income tax payments. Also, enter any 2010 overpayment credited to the 2011 taxable year and any payment voluntarily made to the state with an extension of time for filing.

### Line 22a Interest and penalty for balance due

The Office of State Tax Commissioner will notify the taxpayer of any interest and penalty owed on tax due. If desired, interest and penalty may be computed by the taxpayer on tax due and entered on the return.

#### Interest:

If the full amount of the tax is not paid by the original due date, the following provisions for interest apply:

- If an extension was obtained, interest on the tax due during the extension period is computed at 12% per annum, through the extended due date. Beginning with the month thereafter, interest is computed at 1% per month or fraction of a month.
- If an extension was not obtained, interest on the tax due is computed at 1% per month or fraction of a month, except the month in which the tax became due.

#### Penalty:

- If the full amount of tax is not paid by the due date (*or extended due date*), penalty is equal to 5% of the unpaid tax due or \$5.00, whichever is greater.
- If the return is not filed by the due date (*or extended due date*), a penalty of 5% of the net tax liability or \$5.00, whichever is greater, applies for the month in which the return is due, with an additional 5% for each additional month (*or a fraction of a month*) during which the delinquency continues, not to exceed 25% of the net tax liability.

### Line 22b Interest on underpayment of estimated tax

Instructions for making estimated tax payments are found at the back of this booklet. If estimated payments are not timely made or in the correct amount, interest is charged.

The amount of interest due for underpaid or late payments of estimated tax can be computed on North Dakota Form 40-UT, found at the back of this booklet. Enter the interest from Form 40-UT, line 9 on line 22b. Attach Form 40-UT to Form 40 when filed.

### Line 23a Amount to be credited to year 2012

A corporation may elect to have the overpayment credited to their 2012 estimated tax. The overpayment will be credited to the first installment for 2012.

## Specific instructions for Schedule SA

### Additions

#### Line 3 All taxes measured by income deducted to arrive at federal taxable income

Enter all taxes measured by income, including income taxes, franchise or privilege taxes measured by income (*paid to any taxing authority including a foreign country*) to the extent such taxes were deducted to arrive at federal taxable income.

#### Line 5 Contribution to endowment fund credit adjustment

Enter on this line, the contribution made to an endowment fund that was deducted on your federal income tax return to the extent a credit has been claimed on Schedule TC, line 16.

#### Line 6 Contribution to housing incentive fund credit adjustment

Enter on this line, the contribution made to a housing incentive fund that was deducted on your federal income tax return to the extent a credit has been claimed on Schedule TC, line 23.

#### Line 7 Domestic production activity deduction

Enter on this line the federal deduction allowable under IRC section 199, to the extent the deduction was taken to determine federal taxable income. This federal deduction is the "domestic production activities deduction".

Effective for taxable years ending after April 30, 2009, a cooperative that elects to pass the deduction through to its patrons allowable under Section 199 of the IRC does not include the amount passed through to its patrons in North Dakota taxable income. See N.D.C.C. § 57-38-01.3(1)(i) for further information.

**Line 8****Other additions**

- **Safe harbor leases**

The safe harbor lease provisions in Section 168(f)(8) of the IRC of 1954, as amended, are not adopted in North Dakota in those instances where the minimum investment by the lessor is less than one hundred percent (100%). Enter amounts on line 8.

- Seller/Lessee: sale proceeds, rent expense, amortization expense, lease acquisition cost.
- Buyer/Lessor: interest expense, depreciation expense, amortization expense, acquisition cost, loss on sale of property.

See N.D.C.C. § 57-38-01(5)(a) for more information.

- **Real estate investment trusts**

Include on this line, the dividends paid deduction allowed by a captive real estate investment trust (REIT) on its federal income tax return and included in the taxpayer's federal taxable income. See N.D.C.C. § 57-38-01.3(1)(l) for further information. The dividends paid should be added back only to the extent they have not otherwise been included in apportionable income.

- **ACRS depreciation adjustment**

Enter the amount of depreciation deducted on the federal return for *all* currently held assets placed in service between January 1, 1981 and the end of the 1982 tax year using methods allowed under the Internal Revenue Code provisions in effect as of December 31, 1980. North Dakota income tax statutes did not allow for the use of ACRS depreciation for assets placed in service for 1981 and 1982 only and federal taxable income must be adjusted for the difference in these two methods. In computing this adjustment, exclude safe harbor lease adjustments.

**A worksheet explaining any adjustment on this line must be attached.**

**Subtractions****Line 10****Tax refunds received in year 2011**

Enter all income, franchise or privilege tax refunds received in 2011, to the extent such taxes were previously included in North Dakota taxable income.

Federal income tax refunds received cannot be included on this line. See General instructions: Amended returns/federal audit changes.

**Line 11****Interest on United States Obligations**

Enter the following on this line:

- Interest income from U.S. obligations.
- Interest income from other securities that is specifically exempted from state income tax by federal statute.

Not all interest income from securities issued by federal government agencies is includable on this line. Examples of interest income not includable on this line are from certain mortgage backed securities of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association and interest received from a federal tax refund.

**Lines 12 and 13  
Allocated income and related expenses**

Enter all nonbusiness income on line 12 and enter related expenses on line 13. The method used to attribute expenses to nonbusiness income must fairly distribute all of the corporation's deductions to all of its various types of income.

If an entry is made, all of the following must be attached to Form 40:

- A worksheet showing each type of income or loss item allocated and its amount;
- Documentation showing the state to which the item of income or loss was allocated (*a copy of the other state's tax return is preferred*); and
- A narrative explaining the reasons for allocating each item of income or loss.

**Line 15****IC-DISC distributions**

Enter the actual distributions made by a corporation who elects to be an interest-charge domestic international sales corporation, elects to use intercompany pricing rules under IRC § 994, and is owned by one or more individuals or passthrough entities. Answer "Yes" to question #4 on page 2 of Form 40.

**Line 16****Other subtractions**

**Do not include intercompany eliminations on this line when filing a combined report (filing methods b, b1, c or c1). Report all intercompany eliminations on Schedule WW line 12 or Schedule WE line 6.**

- **Eminent domain sale or transfer**

If the amount on Form 40, page 1, line 1 includes any gain, either ordinary or capital, from property subjected to eminent domain sale or transfer, such gain is not taxable and must be entered on this line.

- **Safe harbor leases**

Section 168(f)(8) (regarding safe harbor leases), of the IRC of 1954, as amended, is not adopted in North Dakota in those instances where the minimum investment by the lessor is less than one hundred percent (100%). Enter amounts as follows:

- Seller/Lessee: interest income and depreciation expense (*for assets placed in service between January 1, 1981 and the end of the 1982 taxable year, use methods allowed under the Internal Revenue Code as of December 30, 1980. For assets placed in service after the 1982 taxable year, use ACRS depreciation*).
- Buyer/Lessor: rental income.

- **Regulated investment companies**

Regulated investment companies, as defined by the IRC, will be allowed to subtract on this line certain dividends paid to shareholders. The dividends paid must be attributable to income that is taxable under N.D.C.C. ch. 57-38 when the regulated investment company earns the income.

- **North Dakota railway bonds**

Enter the amount of interest on bonds issued by a regional railway authority in North Dakota.

- **North Dakota depreciation adjustment**

Enter the amount of depreciation computed for the current taxable year on assets placed in service between January 1, 1981 and the end of the 1982 tax year using methods allowable as of December 31, 1980. (*see instructions for line 7 for further explanation*) In computing this adjustment, exclude safe harbor lease assets.

**A worksheet explaining any adjustment on this line must be attached.**

## Specific instructions for Schedule TC

**Lines 1 and 2****Contributions to nonprofit private colleges and high schools**

Tax credits are available for making contributions to qualifying nonprofit private institutions of secondary and higher education located in North Dakota. Contributions do not qualify unless they are made directly to, or are specifically designated for the exclusive use of, a qualifying institution.

A contribution to an account, fund or entity benefiting both qualifying and nonqualifying institutions does not qualify for the credit. The credits are available if the contribution(s) is made by the due date of this return, including extensions.

The tax credit for contributions made to all eligible schools in *each* category of institution is equal to the lesser of:

- 50% of the contributions, but not to exceed 20% of the total ND income tax due for each corporation; or
- \$2,500.

Enter on line 1 the tax credit computed for contributions to nonprofit private institutions of higher education and enter on line 2 the tax credit computed for contributions to nonprofit private institutions of secondary education.

For each contribution, attach a copy of a receipt from the nonprofit private institution or a copy of a cancelled check (*front and back*).

### Lines 3-21

Instructions for the following tax credits can be found on our web site at [www.nd.gov/tax](http://www.nd.gov/tax). Click on "Corporate Income" then "Publications" then "2011 Corporate Income Tax Credits".

Line 3. Geothermal, solar, wind, biomass energy device credits.

Line 4. Employment of the developmentally disabled or chronically mentally ill credit.

Line 5. Research and experimental expenditure credits generated by taxpayer.

Line 6. Research and experimental expenditure credits purchased by taxpayer.

Line 7. Wage and Salary credits for a new industry.

Line 8. Payment to a certified nonprofit development corporation credit.

Line 9. Renaissance Zone credits.

Line 10. Biodiesel and green diesel fuel production credit.

Line 11. Soybean and canola crushing equipment costs credit.

Line 12. Seed capital business investment credit.

Line 13. Biodiesel and green diesel fuel blending credit.

Line 14. Biodiesel and green diesel fuel sales equipment costs credit.

Line 15. Agricultural commodity processing facility investment credit.

Line 16. Endowment fund contribution credit.

Line 17. Microbusiness investment and employment credit.

Line 18. Internship employment credit.

Line 19. Angel fund investment credit.

Line 20. Angel fund investment credit purchased by taxpayer. (*new for 2011*)

Line 21. Workforce recruitment credit.

Line 22. Wages paid to a mobilized military employee credit.

Line 23. Housing incentive fund credit. (*new for 2011*)

### Line 24 Property tax credit carried forward from 2007 and 2008

Enter on this line the amount, if any, of unused property tax credits carried forward from taxable years 2007 and 2008. Enter only the total that, when combined with the other credits claimed, will not exceed the corporation's total tax liability.

## Specific instructions for Schedule CR

Schedule CR is a worksheet to compute the North Dakota tax liability of multiple nexus companies in one unitary group on one North Dakota "consolidated" return. The tax liabilities are computed for each company apportioning its income to North Dakota, added together, and the total carried to page one of the Form 40.

Before you begin to complete the CR schedules, you must complete lines 1-4 of Form 40 page 1. Each company separately listed on Schedule CR, including those with a zero apportionment factor, will be considered a taxpayer for purposes of having filed a return.

Schedule CR has three parts:

Schedule CR, Part I calculates the tax liability of each company.

• Line 4 - Enter the amount from Form 40, page 1, line 4 (*enter the same amount for each nexus company*).

• Line 5 - Enter the factor as calculated for each company on Schedule CR Part II, line 15.

Schedule CR, Part II calculates the North Dakota apportionment factor for each nexus company.

- Each company computes its separate North Dakota apportionment factor using the total everywhere property, payroll, and sales of the entire unitary business group for the denominators. Each company uses its own separate North Dakota property, payroll, and/or sales as the numerator.

Schedule CR, Part III reports the tax credits available for each company.

The tax credits are calculated for each company and totaled on Line 23. The total is carried to line 19 of Schedule CR, Part I. After all tax credits are reported on Schedule CR, Part III, each tax credit is totaled for all companies and reported on Schedule TC on page 4.

After Schedule CR has been completed and each separate company that apportions its income to North Dakota has computed its North Dakota tax liability and net income tax due, Form 40, page 1 lines 5-20 are completed as follows:

1. Copy the apportionment factor from Schedule CR, Part II, line 15a to line 5 of Form 40 page 1.
2. Add together all the separate companies' amounts for lines 6, 7, 9, 10, 12, 16, 17 and 19 on Schedule CR, Part I and copy the total of each line for all companies to the corresponding line on page 1 of the Form 40.
3. Complete Form 40, Schedule TC. The total credits for all companies included on Schedule CR must equal the credits reported on Form 40, Schedule TC.
4. Copy the amount from Schedule CR, Part I, line 20a to Form 40, page 1, line 20.

Attach the completed Schedule CR to Form 40 when filed.

# Taxpayer Bill of Rights

You may obtain a copy of the North Dakota Taxpayer Bill of Rights by contacting the Office of State Tax Commissioner or visiting our web site at [www.nd.gov/tax](http://www.nd.gov/tax)

## Need forms or assistance?

If you need a North Dakota form or schedule, or if you have a question about preparing your North Dakota return . . .

### Call

Questions: 701.328.1249  
Forms Requests: 701.328.1243

If speech or hearing impaired,  
call us through Relay North Dakota: 1.800.366.6888

### Visit our web site

On our web site, you will find the following resources:

- Tax forms
- Electronic payment information
- Income tax statutes and regulations
- Calendar of due dates, public meetings, and workshops
- Press releases
- On-line message service

Our web site address is:

[www.nd.gov/tax](http://www.nd.gov/tax)

### Come in to see us

Stop in to see us in person at our office in Bismarck.  
You will find us in the—

Corporate Income Tax Section  
State Capitol, 16th Floor  
Monday through Friday  
8:00 a.m. to 5:00 p.m.

### Write

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

### E-mail us

Request forms, ask us a question, or send a message to us via e-mail at:  
[corptax@nd.gov](mailto:corptax@nd.gov)

### Fax

You may fax your request or question to  
701.328.1942