



North Dakota Office of State Tax Commissioner

2011 Financial Institution Tax

Cory Fong, Tax Commissioner

Form 35

General instructions
Program instructions
Schedule instructions

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www.nd.gov/tax

- Download tax forms
- Find answers to tax questions through our Frequently Asked Questions.
- E-mail your tax questions:
corptax@nd.gov

Dear Taxpayer,

This booklet contains information that will help you complete the 2011 financial institution tax return, Form 35. Form 35 must be filed using the WebFile program. Inside this booklet you will find information and instructions designed to help you as you use the WebFile program.

I also encourage you to take a few minutes to read the Special Reminders included in this booklet. In that section you will find a few items highlighted, such as electronic funds transfer, Federal Form 1120 attachments, and tax payment deadlines for the general fund portion and the distribution fund portion.

The financial institution tax return must be used by financial institutions as defined in North Dakota Century Code § 57-35.3-01(2). A definition of a financial institution is found on page 1, under "Who must file."

If you have questions about WebFile, need tax forms, or would like other North Dakota tax information, visit our web site at www.nd.gov/tax or give us a call at 701.328.1249

I also encourage you to let us know what you think we are doing well and what we can do to improve our service to you. Feel free to e-mail, phone, or write us using the contact information found on the back cover of this booklet.

Sincerely,

Cory Fong,
Tax Commissioner



New for 2011

- **Lower tax rate**

Effective for taxable years beginning after December 31, 2010, the tax rate for financial institution tax is 6.5%. The portion of the tax allocated to the state general fund was lowered from 2% to 1.5%. The portion allocated to the financial institution distribution fund for the counties remained unchanged at 5%. The \$50 total minimum tax was not changed.

- **Qualified Endowment Fund Credit**

A new tax credit is allowed for charitable gifts made to a qualified endowment. The credit is equal to 40% of the contribution and the maximum credit that can be claimed in a taxable year is \$10,000. The credit is allowed only against the state general fund portion of the financial institution tax. Any unused credit may be carried forward for three years.

A financial institution that owns an interest in a passthrough entity qualified to claim the credit may claim the credit in proportion to the financial institution's ownership interest.

- **Housing Incentive Fund Credit**

A new credit is available for a contribution to the housing incentive fund administered by the North Dakota Housing Finance Agency. The purpose of the fund is to provide assistance to public and private projects that address unmet housing needs in the state. The credit is equal to 100% of the contribution. The credit is only allowed against the state general fund portion of the financial institution tax. Any unused credit may be carried forward for ten years.

Special Reminders

A sample 2011 Form 35 and related instructions for filing are available to be viewed on our web site at www.nd.gov/tax/financialinst/elecfile. Keep in mind the form is for informational purposes only and cannot be used for filing your return. Form 35 must be filed using the WebFile program.

- We invite and encourage all financial institutions to take advantage of the Electronic Funds Transfer (EFT) program. We offer an Automated Clearing House (ACH) credit procedure to accept EFT payments for all financial institution tax related payments. More information is posted on our web site under Financial Institutions, Electronic Filing. ACH debit is not available at this time.
- When sending in the Financial Institution Tax Remittance Form (Form 35RF), a full copy of the Federal Form 1120 must be attached. If more than one financial institution is included on a Federal consolidated 1120, we only require one copy of the Federal consolidated 1120 be sent in. Be sure to write on each additional financial institution's Form 35RF which return the Federal consolidated 1120 is attached to or it will be assumed a Federal return was not sent in and one will be requested.
- The general fund portion (3/13) of the 2011 financial institution tax is due April 15, 2012 and the distribution fund portion (10/13) is due January 15, 2013. If desired, both payments may be submitted by the April 15, 2012 deadline. There are no other payments that need to be made for financial institutions. (The Form 40-ES and Form 40-EXT are not to be used to make financial institution tax payments. These forms are only for companies filing a corporate income tax return using Form 40.)
- The Form 35RF has a circle in the signature section to allow, if marked, the North Dakota Office of State Tax Commissioner to discuss the return with the preparer. See the instructions in this booklet for more information.
- If a tax credit for any contribution has been taken on the return, an adjustment needs to be made on the statutory adjustments schedule to the extent a tax credit is taken. See the instructions for Schedule SA, line 13, for more information.
- For further information about filing your financial institution tax return, visit our web site at www.nd.gov/tax or contact us at 701.328.3239.

Specific instructions for the financial institution tax program

The financial institution tax computer program, developed in a menu format, is available on the Web. On-screen buttons, instructions, and prompts are provided to assist in operating the program and completing the return.

Access the WebFile program at: www.nd.gov/tax/financialinst/elecfile

In order to access the program and file a return, taxpayers must have a user name and password. (If a financial institution tax return was filed last year, a new user name and password is not required.) To obtain a user name and password, contact the Office of State Tax Commissioner at 701.328.3239. Once you sign on using the given name and password, you will be asked to change your password. The password limitations are as follows:

- Must contain a minimum of six (6) characters; and
- At least one character must be a number.

Please note that the user name and password are case sensitive.

To enter data (*dollar amounts must be entered as whole dollars*) use the “Tab” key to move to the data input fields; to move backward in the data input fields, use the “Tab” and “Shift” keys together. Corrections are easy: tab to the data input field and re-enter the correct data. Use the mouse pointer (or space bar) to click the desired options, and to answer “yes” to questions.

Entries are saved each time you progress to a new form or schedule, or by clicking the “save” icon on the menu bar.

Be sure to review the return before filing by clicking on the “Preview This Return” button on the FIT WebFile Filing Information page. **Once a return is filed, you can no longer edit the return. All changes after that point will have to be made by filing an amended return.**

The return can be saved as a “.pdf” document for the taxpayer’s records.

For technical assistance with the program, call 701.328.3239.

General instructions

Who must file

A financial institution located or doing business within North Dakota must file a North Dakota financial institution tax return, Form 35.

A financial institution includes:

1. A corporation or other business entity registered under state law as a bank holding company, registered under the Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the National Housing Act, as amended;
2. A national bank organized and existing as a national bank under the National Bank Act;
3. A savings association or federal savings bank as defined under the Federal Deposit Insurance Act;
4. A bank or thrift institution incorporated or organized under the laws of any state;
5. A trust company organized under the laws of any state, the United States, a dependency or insular possession of the United States, or a foreign country;
6. A corporation organized under Public Law 63.6, § 25A (relating to foreign banking);
7. An agency or branch of a foreign depository as defined under Public Law 95-369;
8. A production credit association organized under the Farm Credit Act of 1933;
9. A corporation whose voting stock is more than 50% owned directly or indirectly by any of the entities described in 1 through 8 above. This does not include an insurance company taxable under North Dakota Century Code § 26.1-03-17 or a corporation taxable under N.D.C.C. ch. 57-38;
10. A corporation or other business entity deriving more than 50% of its total gross income for financial accounting purposes from finance leases. For this classification to apply:
 - (a) The average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent requirement; and
 - (b) Gross income from incidental or occasional transactions must be disregarded.

11. Any other person or business entity deriving more than 50% of its gross income from activities that entities described in 2 through 8 and 10 above are authorized to transact. This does not include an insurance company taxable under N.D.C.C. § 26.1-03-17, a real estate broker, a securities dealer, or a person or entity taxable under N.D.C.C. ch. 57-38.

How to file

Form 35 must be Web filed. The return consists of a Web filed Form 35, a properly completed and signed Financial Institution Tax Remittance Form (Form 35RF), and all required enclosures. A return will not be considered complete until a Form 35RF is submitted.

Taxable year

Form 35 must be completed on a calendar year (*January through December*) basis, regardless of the taxable year used for federal tax purposes.

Financial institutions whose federal taxable year ends on a date other than December 31 must enclose a statement reconciling their fiscal year tax information to a calendar year basis.

A financial institution which was previously subject to the provisions of N.D.C.C. ch. 57-38 and filed its North Dakota corporation income tax return, Form 40, on a fiscal year basis, is now required to file its financial institution tax return, Form 35, on a calendar year basis. If applicable, a Form 40 must be completed for the full fiscal year ending in 2011, and a financial institution tax return must be completed for the short period beginning in 2011 and ending on December 31, 2011.

When to file

Form 35 must be filed on or before April 15 following the end of the calendar year.

Extension of time to file. An extension of time to file Form 35 may be obtained in one of the following ways:

- **Federal extension**
If an extension of time to file the federal income tax return is obtained, that extension is automatically accepted for North Dakota financial institution tax purposes. The extension of time to file is the same number of months for both the federal and state returns.
- **State extension**
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, or by submitting a written request prior to the due date (*or extended due date*) of the return.

If an extension is obtained, click the extension box on the web file program under "Begin New Return" and enclose a copy of the federal extension form or the approved North Dakota extension request with Form 35RF.

An extension of time to file Form 35 does not extend the time to pay any net tax liability due. If an extension of time to file the return is obtained, see "Payment of tax" for information on how and when to pay.

Statement for pass-through entity owners

On or before the due date (*or extended due date*) for filing Form 35, a financial institution that is a Subchapter S corporation or partnership, or a limited liability company treated like a partnership, must give a statement to each shareholder, partner or member--limited to individuals, estates or trusts--containing all of the following:

1. Name, address and federal EIN of the financial institution;
2. Calendar year for which the statement is provided;
3. An amount, identified as "N.D.C.C. ch. 57-35.3 adjustment amount," equal to the shareholder's, partner's or member's pro rata share of the adjustment amount below:
 - If the Single Entity Method is used to complete Form 35, the adjustment amount is determined by subtracting the amount on Schedule SA, line 15 from the amount on page 1, line 1 and multiplying the difference by the apportionment factor (*page 1, line 5*). Add to this result the amount on page 1, line 7 and subtract the amount on page 1, line 11. (*Federal income tax assigned to exempt income on line 11 must be added back*);
 - If the Combined Report Method is used to complete Form 35, the adjustment amount is determined by subtracting the amount on Schedule SA, line 15 from the amount on Schedule WW, line 3 and multiplying the difference by the apportionment factor (*page 1, line 5*). Add to this result the amount on page 1, line 7 and subtract the amount on page 1, line 11. (*Federal income tax assigned to exempt income on line 11 must be added back*); and

4. If the financial institution has claimed a Renaissance Zone income exemption and the calculation in item #3 creates a loss, two adjustments should be given to shareholders:
 - The financial institution "N.D.C.C. ch. 57-35.3 adjustment amount" reported as zero; and
 - The shareholder's share of the Renaissance Zone exemption in proportion to their ownership in the financial institution.
5. The statement: **This statement contains information that is important to the preparation of your North Dakota income tax return. For instructions on how to report this information on your North Dakota income tax return, contact the North Dakota Office of State Tax Commissioner and ask for the Income Tax Guideline: Adjustment For Income (Loss) From S Corporation, Partnership or LLC Subject To N.D.C.C. ch. 57-35.3.**

Enclosures

A complete copy of the federal income tax return as filed with the Internal Revenue Service must be enclosed with Form 35RF. If more than one financial institution is included on a Federal consolidated 1120, we only require one copy of the Federal consolidated 1120 be sent in. Be sure to write on each additional financial institution's remittance form which return the Federal consolidated 1120 is attached to.

Incomplete return

All applicable lines on Form 35 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 will be returned to the taxpayer.

Payment of tax

The financial institution net tax liability is payable as follows:

- **State general fund portion— Due APRIL 15, 2012**
The state general fund portion of the net tax liability (*on Form 35, page 1, line 26*) must be paid on or before April 15 following the end of the taxable year. The minimum tax due is \$12. If an extension of time to file the return is obtained, the financial institution must determine the state general fund portion of its net tax liability and remit this amount along with Form 35PV, North Dakota Financial Institution Payment Voucher. The Form 35PV is located on the WebFile program under "Prepare a Payment Voucher."

- **Financial institution tax distribution fund portion— Due JANUARY 15, 2013**
The financial institution tax distribution fund portion of the net tax liability (*on Form 35, page 1, line 26*) must be paid on or before January 15 of the second year following the taxable year. The minimum tax due is \$38. The Office of State Tax Commissioner will send a payment notification to the financial institution prior to the January 15 due date.

Payment for each portion of the tax must be made by check or money order payable to: **North Dakota State Tax Commissioner.**

Payment may also be made by electronic funds transfer. Information regarding electronic payments can be found on the department's web site at www.nd.gov/tax, under Financial Institutions, Electronic Filing.

Information on computing penalty and interest is found on page 4.

Preparer authorization

If the financial institution 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 Form 35RF. This authorization applies only to the individual whose signature appears in the "Signature of Preparer" section of the financial institution's return. It does not apply to the firm, if any, shown in that section.

If the circle is marked, the financial institution 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 financial institution 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 financial institution 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 financial institution is not authorizing the preparer to receive any refund check, bind the financial institution to anything (*including any additional tax liability*), or otherwise represent the financial institution before the North Dakota Office of State Tax Commissioner. If the financial institution 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. Click on Misc Forms/Pubs on the top of the page.

Where to file or obtain additional forms and instructions

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

Obtain North Dakota tax forms, send messages, and find other information on the Office of State Tax Commissioner's web site at www.nd.gov/tax.

Forms and instructions may also be obtained by calling 701.328.1249.

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

Instructions for "Begin New Return"

Be sure all the information entered on this Web page is correct before advancing to the next Web page. You cannot return to this Web page at a later time to edit it. To correct any mistakes made on this Web page, you must delete the return and start over.

Short period return

A financial institution required to file a federal short period return must file a North Dakota short period return for the same taxable period. The North Dakota return must be filed by April 15, or by the date prescribed by the IRS, whichever date is later.

When filing a short period return, be sure to click the short period box on the WebFile program under 'Begin New Return'. A new user name and password is needed for the second short period return filed for the same form year.

The financial institution tax distribution fund portion of the net tax liability for a short period return must be paid on or before January 15 of the year following the return due date.

Amended returns

In general, an amended return must be filed if:

- An amended federal income tax return is filed;
- North Dakota income or federal tax is changed as the result of a federal audit;
- An error is discovered on a previously filed return; or
- A refund of federal income tax deducted on a previously filed North Dakota return is received.

Amended returns for taxable years beginning before January 1, 2003

Contact the Office of State Tax Commissioner at 701.328.3239 for information on how to file amended returns for these periods.

Amended returns for taxable years beginning after December 31, 2002

Access the WebFile program for the appropriate taxable year from the web site. Complete the form using the revised information. Be sure to click the amended box on the WebFile program under 'Begin a New Return.'

Reporting methods

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

A financial institution must file using the applicable method below:

- **Single entity method**
Except where the combined report method applies, a financial institution must use the single entity method of filing.
- **Combined report method**
A financial institution engaged in a unitary business with one or more corporations must file using the combined report method.

A unitary business is a group of corporations carrying on activities in which its component parts transfer value among themselves through:
 1. Unity of ownership—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 50% of the voting stock of another corporation;

2. Unity of operation—The group receives benefits from functional integration or economies of scale; and
3. Unity of use—The group contributes to or receives benefits from centralized management and policy information.

A consolidated North Dakota financial institution tax return may not be filed by two or more financial institutions, even though the combined report method applies. Each financial institution must file its own return.

Instructions for "Information Menu"

If the **Single Entity Method** is used for both North Dakota and federal purposes, enter the federal taxable income from:

- Federal Form 1120, line 30; or
- Federal Form 1120S, Schedule K, line 18; or
- Federal Form 1065, Analysis of Net Income (Loss) Schedule, Line 1.

If the **Single Entity Method** is used for North Dakota purposes and the financial institution is included in a consolidated Federal Form 1120, enter the financial institution's federal taxable income before consolidating adjustments/eliminations from:

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

If the **Combined Report Method** is used for North Dakota purposes, federal taxable income is entered on Schedule WW.

North Dakota loss carryforward

Enter the *entire* accumulated net operating loss carryforward attributable to North Dakota sources, less any losses previously deducted.

A North Dakota net operating loss may be carried forward for the same number of years allowed under federal income tax law.

Enclose a worksheet with Form 35RF showing the amount of North Dakota net operating loss incurred and deducted for each year.

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 this income in a manner which fairly distributes all of the financial institution's expenses to its various types of income.

Tax Credits

Lines 21 and 22

Contributions to Nonprofit Private College and High Schools

The tax credit for contributions to a nonprofit private college or high school is equal to the lesser of:

- 50% of the contributions;
- 4.6% (.046) of the financial institution tax balance on line 18; or
- \$2,500.

Tax credits are available if the contribution(s) are made by the due date of this return (*without extension*). The tax credits may reduce only the state general fund portion of the financial institution tax liability, but not below the \$12 minimum (*3/13 of the \$50 total minimum tax*).

On the “information menu”, enter the actual contribution made and the webfile program will calculate the credit amount and automatically place that amount on Form 35, page 1.

Enclose a copy of a receipt for each qualifying contribution or a cancelled check (front and back) with Form 35RF.

Line 23

Contributions to Rural Leadership ND Scholarship Tuition Program Credit

The credit is equal to 50% of the contribution to the Rural Leadership ND Scholarship Tuition Program Credit and may reduce only the state general fund portion of the financial institution tax liability, but not below the \$12 minimum (*3/13 of the \$50 total minimum tax*).

On the “information menu”, enter the actual contribution made and the webfile program will calculate the credit amount and automatically place that amount on Form 35, page 1.

Enclose a copy of a receipt for each qualifying contribution or a cancelled check (front and back) with Form 35RF.

Line 24

Contributions to a Qualified Endowment Fund Credit (*New for 2011*)

A tax credit is available for a charitable contribution of cash or property to a qualified endowment fund in North Dakota. See N.D.C.C. § 57-35.5-05(4). The credit is equal to 40% of the qualifying contributions made during the tax year, up to a maximum tax credit of \$10,000. The tax credit may

reduce only the state general fund portion of the financial institution tax liability, but not below the \$12 minimum (*3/13 of the \$50 total minimum tax*). If the credit exceeds the tax liability, the unused portion may be carried over and used on subsequent years’ returns for up to three tax years.

On the “information menu”, enter the calculated credit that will be reported on Form 35, page 1.

Enclose a copy of a receipt for each qualifying contribution or a cancelled check (front and back), or a receipt from the qualified nonprofit organization acknowledging its I.R.C. § 501(c)(1) status and the date and amount of the eligible contribution, with Form 35RF.

Line 25

Contributions to a Housing Incentive Fund Credit (*New for 2011*)

A tax credit is available for contributing to the housing incentive fund administered by the North Dakota Housing Finance Agency. See N.D.C.C. § 57-35.3-05(5).

The credit is equal to 100% of the amount contributed to the fund. If the credit exceeds the tax liability, the unused portion may be carried over and used on subsequent tax years’ returns for up to ten years.

If you made a qualifying contribution to the housing incentive fund administered by the North Dakota Housing Finance Agency, enter on this line the total credit shown on the credit certificate issued to you by the Agency.

Attach a copy of the certification of the contribution to the fund issued by the North Dakota Housing Finance Agency for each year the credit is claimed.

Renaissance Zone income exemption

If the financial institution is claiming exempt income as a result of the Renaissance Zone Act, enter the amount from Schedule RZ. Attach the completed Schedule RZ. Schedule RZ can be found on our web site or obtained by contacting the Office of State Tax Commissioner at 701.328.1249.

Prepaid Tax

Enter an amount only if a Form 35PV was previously submitted.

Penalty and interest

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

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, 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, 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 35, page 1, interest at the rate of 1% per month accrues on the overpayment beginning forty-five days after the due date of the return (*without extension*) or after the date the return is filed, whichever date is later.

Instructions for Schedule WW

All references to “corporation(s)” include financial institutions.

A financial institution, which is a member of a unitary group, is required to file its North Dakota Financial Institution tax return using the combined report method. See Reporting methods on page 3 of General instructions.

A “unitary group” is a group of affiliated corporations engaged in a unitary business, irrespective of the country or countries in which the corporations conduct business activity.

An “affiliated corporation” means a parent corporation and any corporation of which more than fifty percent of the voting stock is owned directly or indirectly by the parent corporation or another member of the unitary group.

A financial institution filing its North Dakota income tax return using the combined report method must include only the apportionment factors and statutory adjustments of the unitary group.

Instructions for Schedule SA

North Dakota statutory adjustments must be made on a basis consistent with the filing method indicated on WebFile Return Summary information.

Additions

Line 3

Taxes measured by income

Enter all taxes, including franchise and privilege taxes, measured by income which were paid to any taxing authority (*including a foreign country*) and deducted in determining federal taxable income.

Line 4

Interest income from state and local obligations

Enter interest income from state and local obligations, including the State of North Dakota and its political subdivisions, which is exempt from federal income tax.

Line 5

Federal charitable contributions deduction

Enter the amount of charitable contributions deducted in determining federal taxable income under I.R.C. § 170.

Line 6

Federal bad debt reserve deduction

(Applies only to a building and loan or a savings and loan association)

Enter the amount of a bad debt reserve deduction computed in determining federal taxable income under I.R.C. § 585.

Subtractions

Line 9

Bad debt deduction

(Applies only to a building and loan or a savings and loan association. Use this line only if an entry is made on Schedule SA, line 6.)

If the bad debt reserve method under I.R.C. § 585 is used to account for bad debts for federal income tax purposes, enter an amount equal to the deduction that would have been allowed under I.R.C. § 166(a) if a deduction had not been claimed under I.R.C. § 585 or 593.

Line 10

I.R.C. § 593(g) adjustment

Enter the amount of any adjustment taken into account for federal income tax purposes under I.R.C. § 593(g) when computing reserves for bad debts.

Line 11

Expenses related to federally-exempt income

Enter any interest expense and other expenses relating to income exempt from federal income tax if:

- The federally-exempt income is taxable under the financial institution tax; **and**
- The interest expense and other expenses were disallowed as deductions in determining federal taxable income under I.R.C. §§ 171(a)(2), 265, or 291.

Line 12

Wages and salaries not deductible under I.R.C. § 280C(a)

Enter the amount not deductible for federal income tax purposes under I.R.C. § 280C(a).

Line 13

Charitable contributions deduction

Enter an amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under I.R.C. § 170 if the percentage limitation under I.R.C. § 170(b)(2) was applied in all relevant taxable years to North Dakota apportionable income rather than federal taxable income. For this purpose, North Dakota apportionable income is to be computed without regard to the deduction on this line and, if applicable, the deduction on Schedule SA, line 9. In addition, no deduction is allowed for a contribution made if and to the extent a tax credit on Form 35, page 1, lines 21 through 25 is allowed for the contribution.

Line 14

Allocable income

Enter all nonbusiness income less related expenses. The method used to attribute expenses to nonbusiness income must fairly distribute all of the financial institution's deductions to all of its various types of income.

If an entry is made on this line, the following must be enclosed with Form 35RF:

- 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

Other income exempt from North Dakota tax

Enter on this line other income included in federal taxable income that is exempt from North Dakota tax under federal or North Dakota law or constitutional provisions.

Instructions for Schedule FACT

This schedule must be completed by a financial institution that conducts its business activity within and without North Dakota, and must be completed on a basis consistent with the filing method indicated on WebFile Return Summary information.

The amounts to enter for property, payroll, and receipts must be for the calendar year for which the return is filed. For a complete discussion of the apportionment factor, see N.D.C.C. §§ 57-35.3-13, et. seq.

Property factor

The property factor is a fraction, the numerator of which is the average value of the financial institution's property for tax purposes within North Dakota and the denominator of which is the average value of the financial institution's or the unitary group's property within and without North Dakota.

Only include property for which the income or expenses are included, or would have been included if not fully depreciated or expensed, in the computation of the apportionable income base.

Do not include the value of construction in progress.

Average value of owned property

The "average value" of owned property is determined by adding the value of the property on the first and last days of the calendar year and dividing the sum by two. If this general averaging method does not properly reflect average value, the taxpayer may elect, or the tax commissioner may require, averaging on a more frequent basis. The valuation of the property depends on the type of property—see the specific line instructions for lines 1 through 6 for how to value the property. The valuation of rented property is discussed in the specific instructions for line 7.

Property located within North Dakota

In general, property is located within North Dakota if it is physically located or used within North Dakota. The following apply for determining whether certain types of property are located within North Dakota:

- Transportation property is located within North Dakota to the extent it is used within this state. A motor vehicle is deemed used entirely within North Dakota if it is registered in this state. An aircraft is deemed used within this state to the extent of the number of landings within

North Dakota. If the extent of use within North Dakota cannot be determined, transportation property is deemed to be used wholly within this state if its principal base of operations is within North Dakota.

- Loans and credit card receivables are located within North Dakota if properly assigned to a regular place of business within this state. They are properly assigned if there is a preponderance of substantive contacts with a regular place of business within North Dakota. Substantive contacts—solicitation, investigation, negotiation, approval, and administration of the loan—are determined based on the facts and circumstances of each case.

Lines 1 through 3

Buildings and other fixed depreciable assets, land, and inventories

In the North Dakota column, enter the average value of buildings and other fixed depreciable assets, land, and inventories owned by the financial institution and located within North Dakota. These assets must be valued at the original cost or other basis used for federal income tax purposes without regard to depreciation, amortization, or depletion.

In the Total column, enter the average value of the same types of property located or used within and without North Dakota.

Line 4

Loans

In the North Dakota column, enter the average value of loans located within North Dakota. Value loans at the outstanding principal balance without regard to any reserve for bad debts. Do not include the portion of a loan charged off or a specifically allocated reserve that is treated as charged off for federal income tax purposes.

In the Total column, enter the average value of loans located within and without North Dakota.

Line 5

Credit card receivables

In the North Dakota column, enter the average value of credit card receivables located within North Dakota. Value credit card receivables at the outstanding principal balance without regard to any reserve for bad debts. Do not include the portion of credit card receivables charged off for federal income tax purposes.

In the Total column, enter the average value of credit card receivables located within and without North Dakota.

Line 6

Other

In the North Dakota column, enter the average value of property not included on lines 1 through 5 which is located within North Dakota.

In the Total column, enter the average value of property not included on lines 1 through 5 which is located within and without North Dakota.

Line 7

Rented property

For leased real and tangible personal property located within North Dakota, enter in the North Dakota column the amount determined by multiplying the annual gross rents by eight. Do not include rental payments for leased property that is deemed to be owned by the financial institution under federal income tax law.

In the Total column, enter the amount determined by multiplying by eight the annual gross rents on all leased real and tangible personal property that is located within and without North Dakota.

If this general valuation method results in inaccurate valuations, the taxpayer may request, or the tax commissioner may require, another method of valuation.

Payroll factor

The payroll factor is a fraction, the numerator of which is the financial institution's total compensation paid within North Dakota and the denominator of which is the total compensation paid by the financial institution or the unitary group within and without North Dakota. Only include compensation included in the computation of the apportionable income base for the calendar year.

“Compensation” means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services to the extent the amount is included in the employees' gross income as defined under the Internal Revenue Code.

Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

- The employee's services are performed entirely within this state;
- The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state;

- If the employee's services are performed both within and without this state, the employee's compensation must be attributed to North Dakota:

- If the employee's principal base of operations is within North Dakota;
- If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or
- If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

Line 9

Wages, salaries, commissions and other compensation

In the North Dakota column, enter compensation paid to employees within North Dakota for personal services.

In the Total column, enter compensation paid to employees within and without North Dakota for personal services.

Receipts factor

The receipts factor is a fraction, the numerator of which is the financial institution's receipts within North Dakota and the denominator of which is the financial institution's or the unitary group's receipts within and without North Dakota. In general, only include receipts which constitute business income and are included in the computation of the apportionable income base for the calendar year.

Line 10

Rentals and subrentals

Enter in the North Dakota column:

- Rents from the lease of real property owned by the financial institution and located within North Dakota;
- Rents from the sublease of real property located within North Dakota;
- Rents from the lease of tangible personal property (*except transportation property*) owned by the financial institution and located within North Dakota when first placed in service by the lessee; and
- Rents from the lease of transportation property to the extent used in North Dakota. A motor vehicle is deemed used entirely within North Dakota if registered in this state. An aircraft is deemed to be used in this state to the extent of the

number of landings in North Dakota. If the extent of use in North Dakota cannot be determined, transportation property is deemed used entirely within this state if the property has its principal base of operations in North Dakota.

In the Total column, enter total rents within and without North Dakota from the lease and sublease of the same types of property.

Line 11

Interest (including fees or penalties in the nature of interest)

Enter in the North Dakota column:

- Interest from loans **secured** by real property if:
 1. The real property is located within North Dakota;
 2. The real property is located within and without North Dakota and more than fifty percent of the fair market value of the real property is located within North Dakota; or
 3. More than fifty percent of the fair market value of the real property is not located within any one state and the borrower is located within North Dakota.
- Interest from loans **not secured** by real property where the borrower is located within North Dakota;
- Interest from credit card receivables and fees (such as annual fees) charged to cardholders, where the cardholder's billing address is within North Dakota; and
- Interest from investment/trading assets and activities. See **Investment and trading receipts** in the shaded box on page 7 for information on what to include in the factor.

In the Total column, enter total interest receipts within and without North Dakota from the same sources.

Line 12

Net gains from sales or exchanges

"Net gains" is the sum of all gains resulting from the sale of loans, credit card receivables, and investment/trading assets. A loss resulting from such sales is excluded from the computation of net gains. Net gains must be computed for each category below.

Enter in the North Dakota column:

- Net gains from the sale of loans **secured** by real property, (including income recorded under the coupon stripping rules of I.R.C. § 1286 determined by multiplying the net gains by a fraction, the numerator

Investment and trading receipts

Information in this section

- Defines what is meant by investment/trading assets and activities;
- Describes which receipts from investment/trading assets and activities to include in the receipts factor on Schedule FACT; and
- Explains how to determine the amount of receipts from investment/trading assets and activities to include in the North Dakota column on lines 11, 12 and 13 of Schedule FACT.

Investment/trading assets and activities defined

Investment/trading assets and investment activities include:

- Investment securities;
- Trading account assets;
- Federal funds;
- Securities purchased and sold under agreements to resell or repurchase;
- Options;
- Futures and forward contracts;
- Notional principal contracts (such as swaps);
- Equities;
- Foreign currency transactions; and
- Other investment/trading assets and activities.

Receipts to include in receipts factor on Schedule FACT

Interest, dividends, net gains from sales or exchanges, and other income from investment/trading assets and activities are included in the receipts factor on Schedule FACT. Also included are:

- The amount by which interest income from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements; and
- The amount by which interest, dividends, gains and other income from trading assets and activities (including assets

and activities in the matched book, in the arbitrage book, and foreign currency transactions) exceeds amounts paid in lieu of interest and dividends plus losses from the same assets and activities.

Receipts from investment/trading assets and activities to include in the North Dakota column on lines 11, 12 and 13 of Schedule FACT

The amount of receipts from investment/trading assets and activities to include in the North Dakota column on lines 11, 12 and 13 of Schedule FACT must be determined under one of the two following methods:

Method 1 (Average value method)

Under this method, multiply the income from investment/trading assets and activities by the following fraction:

$$\frac{\text{AVERAGE VALUE of investment/trading assets assigned to a regular place of business within North Dakota}}{\text{AVERAGE VALUE of all investment/trading assets within and without North Dakota}}$$

For this purpose, "AVERAGE VALUE" is determined in the same manner as the average value of tangible personal property is determined for property factor purposes. See instructions for **Property Factor** on page 5.

Method 2 (Gross income method)

Under this method, multiply the income from investment/trading assets and activities by the following fraction:

$$\frac{\text{GROSS INCOME of investment/trading assets assigned to a regular place of business within North Dakota}}{\text{GROSS INCOME of all investment/trading assets within and without North Dakota}}$$

If the taxpayer elects, or the tax commissioner requires the use of Method 2 (*Gross income method*), the taxpayer must use Method 2 on all subsequent tax returns unless the taxpayer obtains prior permission from the tax commissioner to use, or the tax commissioner requires, a different method.

For more information regarding investment and trading receipts, refer to N.D.C.C. § 57-35.3-15(13).

and denominator of which consist of the respective amounts of interest from all loans **secured** by real property reported in the receipts factor on line 11;

- Net gains from the sale of loans **not secured** by real property, (including income recorded under the coupon stripping rules of I.R.C. § 1286 determined by multiplying the net gains by a fraction, the numerator and denominator of which consists of the respective amounts of interest from all loans **not secured** by real property reported in the receipts factor on line 11;
- Net gains from the sale of credit card receivables determined by multiplying the net gains by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all credit card receivables included in the receipts factor on line 11; and
- Net gains from the sale of investment/trading assets. See **Investment and trading receipts** in the shaded box on page 7 for information on what to include in the factor.

In the Total column, enter the total net gains within and without North Dakota from the same sources.

Line 13

Dividends

In the North Dakota column, enter dividends from investment/trading assets and activities. See **Investment and trading receipts** in the shaded box on page 7 for information on what to include in the factor.

In the Total column, enter total dividends from investment/trading assets and activities within and without North Dakota.

Line 14

Loan servicing fees

Enter in the North Dakota column:

- Loan servicing fees for loans owned by the financial institution and **secured** by real property, multiplied by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all loans **secured** by real property reported in the receipts factor on line 11;
- Loan servicing fees related to loans owned by the financial institution and **not secured** by real property, multiplied by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all loans **not secured** by real property reported in the receipts factor on line 11; and

- Loan servicing fees received for servicing secured or unsecured loans of others if the borrower is located within North Dakota.

In the Total column, enter total loan servicing fees within and without North Dakota from the same sources.

Line 15

Other

Enter in the North Dakota column:

- Receipts from credit card merchant discount if the commercial domicile of the merchant is within North Dakota. Reduce these receipts by any related cardholder chargebacks. Do not reduce these receipts by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders;
- Credit card issuer's reimbursement fees equal to the amount determined by multiplying the fees by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all credit card receivables included in the receipts factor on line 11;
- Receipts from services not otherwise apportioned if:
 1. The services are performed within North Dakota; or
 2. The services are performed within and without North Dakota and a greater proportion of the income-producing activity is performed within North Dakota based on cost of performance; and
- Any other receipts, including receipts from investment/trading assets and activities, not specifically described in the instructions for lines 10 through 14 which are properly included in the apportionable income base.

In the Total column, enter total other receipts within and without North Dakota from the same sources.

Line 16

Throwback receipts

If the financial institution's commercial domicile is in North Dakota, enter on this line (in the North Dakota column) any receipts included in the denominator of lines 10 through 15 which were not assigned to any state.

Instructions for Schedule FTD

Use the line instructions that apply to the box that is checked on WebFile Return Summary information.

Single Entity Method

A financial institution filing as a single entity for **both** North Dakota and federal purposes must complete lines 1, 2, 3, 7, 8, 9, 10, 11, 12, 13 and 19. Enter 1.000000 on line 6.

A financial institution filing as a single entity for North Dakota purposes **and** included in a consolidated Federal Form 1120 must complete lines 1-13 and 19.

Line 1

Federal income tax liability

Enter the federal income tax liability from the federal income tax return filed with the IRS as follows:

- If Federal Form 1120 was used, enter the amount from line 31; or
- If Federal Form 1120S was used, enter the investment credit recapture tax computed on Federal Form 4255 and included on line 22c.

Line 2a

Alternative minimum taxable income adjustments

Total the adjustments from Federal Form 4626, Page 1, that **do not** become a part of North Dakota net income, and enter the total here.

Line 2b

Adjusted current earnings adjustments

Total the Federal adjusted current earnings (ACE) adjustments from the Federal ACE worksheet, that **do not** become a part of North Dakota net income, and enter 75% of the total here.

Line 2d

Federal alternative minimum taxable income

Enter the amount of the financial institution's Federal alternative minimum taxable income from the Federal Form 4626.

Line 2f

Federal alternative minimum tax

Enter the financial institution's Federal alternative minimum tax. Enclose a worksheet with Form 35RF.

Line 4

Federal income tax liability

Enter the financial institution's federal income tax liability. Enclose a worksheet substantiating this computation with Form 35RF.

Line 5

Profit company federal income tax liability

Enter the total federal income tax liability for all corporations included in the consolidated federal return with each corporation's federal income tax liability computed on a pro forma separate company return. The separate company tax liability of any corporation which does not result in a positive tax liability shall be zero. Enclose a worksheet substantiating this computation with Form 35RF.

Line 8

Federal taxable income

Enter the amount from Form 35, line 1.

Line 9

Income not taxable to North Dakota

Enter the income (*before apportionment*) included on line 8 not taxable to North Dakota, such as income allocated outside North Dakota.

Combined Report Method

The following line instructions apply to a financial institution filing its North Dakota return using the combined report method.

If a financial institution tax return includes income from more than one federal tax return, a separate pro forma Schedule FTD must be completed for each financial institution that filed a federal tax return. The amounts on lines 1, 2, 3, 7, 8 and 12 from the separate pro forma Schedule FTD's must be aggregated and the totals entered on the appropriate lines on the financial institution's Form 35.

Enclose a worksheet substantiating the computations on the separate pro forma schedules.

Line 1

Federal income tax liability

Enter the federal income tax liability from the federal income tax return filed with the IRS as follows:

- If Federal Form 1120 was used, enter amount from line 31; or
- If Federal Form 1120S was used, enter the investment credit recapture tax computed on Federal Form 4255 and included on line 22c.

Line 2a

Alternative minimum taxable income adjustments

Total the adjustments from Federal Form 4626, Page 1, that *do not* become a part of North Dakota net income, and enter the total here.

Line 2b

Adjusted current earnings adjustments

Total the Federal adjusted current earnings (ACE) adjustments from the Federal ACE worksheet, that *do not* become a part of North Dakota net income, and enter 75% of the total here.

Line 2d

Federal alternative minimum taxable income

If a member of a Federal consolidated group, enter the amount of Federal alternative minimum taxable income from the consolidated Federal Form 4626.

Line 2f

Federal alternative minimum tax

If a member of a Federal consolidated group, enter the amount of Federal alternative minimum tax from the consolidated Federal Form 1120, Schedule J.

Line 4

Federal income tax liability

Enter the separate company pro forma federal income tax liability for all of the unitary corporations which are included in the consolidated federal return. The separate company tax liability of any corporation which does not result in a positive tax liability shall be zero. Enclose a worksheet with Form 35RF substantiating this computation.

Line 5

Profit company federal income tax liability

Enter the total federal income tax liability for all corporations included in the consolidated federal return with each corporation's federal income tax liability computed on a pro forma separate company return. The separate company tax liability of any corporation which does not result in a positive tax liability shall be zero. Enclose a worksheet substantiating this computation with Form 35RF.

Note: If all companies from the federal return are included in the North Dakota return, this ratio should be 1.000000.

Line 8

Federal taxable income

Enter the total federal taxable income for all unitary corporations whose income is included in the Federal Form 1120. Enclose a worksheet with Form 35RF substantiating this computation.

Line 9

Income not taxable to North Dakota

Enter the income (*before apportionment*) included on line 8 not taxable to North Dakota, such as income allocated outside North Dakota.

Line 15

Total Income

"Total income" is federal taxable income of those corporations which are included in the unitary group and are required to file a federal income tax return, plus or minus the adjustments (*before apportionment*) provided in N.D.C.C. § 57-35.3-02, except for the federal income tax deduction. Use the following computation table to determine the total income to be entered on line 15.

1. Federal taxable income (from Schedule FTD, line 8)
2. Total additions (from page 1, line 2)
3. Balance (Add lines 1 and 2)....
4. Total subtractions (from page 1, line 3)
5. Balance (Subtract line 4 from line 3)
6. Net intercompany adjustments in lines 2 and 4
7. Total income (Subtract line 6 from line 5) Enter result here and on Schedule FTD, line 15

Line 16

Income relating to federal foreign tax credit

Enter the total taxable income from sources without the U.S., **after** loss recapture as computed on Federal form(s) 1118, Part II, Schedule B or Federal form(s) 5735.

Instructions for Schedule AMTR

North Dakota Schedule AMTR is used to compute the deduction and carryforward of Federal Alternative Minimum Tax (AMT) which has been disallowed in prior years.

Previously disallowed federal AMT may be deducted only if a federal credit for prior year minimum tax is claimed; however, the deduction may not create or increase a North Dakota net operating loss.

The deduction of federal AMT disallowed is used to reduce North Dakota income on Form 35, page 1. Any portion of the disallowed federal AMT remaining after 2011 may be carried forward to future calendar years and used to reduce North Dakota income when a federal credit for prior year minimum tax is claimed.

For more information regarding the deduction and carryforward of alternative minimum tax, refer to North Dakota Century Code § 57-35.3-02(2)(i) and North Dakota Admin. Code ch. 81-03-05.5.

Instructions for Schedule TC

Tax credits

These credits may not reduce the financial institution tax liability below the \$50 minimum.

- **Renaissance Zone Tax Credits**
If the financial institution is claiming tax credits as a result of the Renaissance Zone Act, enter the amount from Schedule RZ. Attach the completed Schedule RZ to Form 35RF. Schedule RZ can be found on our web site or obtained by contacting the Office of State Tax Commissioner at 701.328.1249.

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

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 or assistance: 701.328.3239

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

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

Fax

You may fax your request or question to 701.328.1942