

For Tax Year 2009

North Dakota Office of State Tax Commissioner

Income tax guideline: Information returns

Requirements and procedures for filing information
returns for North Dakota income tax purposes

Form 1099, 1042-S and W-2G

Form W-2

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Information returns for payments other than wages

Form 1099, 1042-S and W-2G

Who must file

Every person making certain payments (*see Reportable payments below*) must file a North Dakota information return if both of the following conditions apply:

1. The person resides, owns property, or carries on a trade or business in North Dakota.
2. The person is required to file a Form 1099, 1042-S or W-2G to report the same payment for federal purposes. (Note: Other types of information returns, such as Form 1098, Form 1098-E, Form 1098-T, or Form 5498, are not required for North Dakota purposes.)

For this purpose, “person” includes a corporation, fiduciary, individual, limited liability company, partnership, and an officer or employee of the State of North Dakota or any of its political subdivisions.

Reportable payments.

Reportable payments include:

- Rents, royalties, crop insurance proceeds, taxable prizes and awards given to nonemployees (for example, corporate directors or independent contractors), payments for services performed by a nonemployee and any other payment for which a Form 1099-MISC must be filed.
- Gambling winnings (Form W-2G).
- Unemployment benefits, taxable grants, agricultural payments, and any other payment for which a Form 1099-G must be filed.
- Proceeds from real estate transactions (Form 1099-S).
- Proceeds from broker and barter exchange transactions (Form 1099-B).
- Gambling winnings, royalties, compensation for services, and any other payment to a nonresident alien, foreign partnership or corporation, or a foreign fiduciary of an estate or trust for which a Form 1042-S must be filed, but only if the recipient is subject to North Dakota income tax on the payment.

Nonresident payees. For the payments described in the first five bulleted items in the reportable payments listed above, if a payment is made to an individual who is a nonresident of North Dakota, or to a nonresident estate or trust, the payment is only reportable to North Dakota if the payment is subject to North Dakota income tax.

Nonreportable payments. Except where North Dakota income tax is withheld from the payment, the following payments do not have to be reported:

- Interest (Form 1099-INT or 1042-S).
- Original issue discount (Form 1099-OID).
- Dividends (Form 1099-DIV, 1042-S or 1099-PATR).
- Distribution from a retirement or profit-sharing plan, an IRA, a SEP, or an annuity contract (Form 1099-R or 1042-S).

Conditions and procedures applicable to payments from which North Dakota income tax is withheld. If North Dakota income tax is withheld from any payment under a voluntary agreement between the payor and payee, the requirements and procedures in this section (covering information returns for payments other than wages) apply with the following modifications:

1. The payor must register for income tax withholding purposes with the Office of State Tax Commissioner by completing and filing Application to Register for Income Tax Withholding and Sales and Use Tax Permit. This form, along with information on reporting and paying North Dakota income tax withheld, may be obtained from the Office of State Tax Commissioner.
2. The amount of North Dakota income tax withheld must be shown on the information return.
3. An annual transmittal form, ND Transmittal of Wage & Tax Statement (Form 307), which is automatically mailed to all persons registered for North Dakota income tax withholding, must be completed and filed with the information returns showing North Dakota income tax withheld. The due date for filing Form 307 and the information returns showing North Dakota income tax withheld is February 28 following the end of the calendar year in which the payments were made.
4. The Combined Federal/State Program *may not* be used to transmit information returns for payments from which North Dakota income tax is withheld. (*See page 3 for information on the Combined Federal/State Program.*)

What to file

A requirement to file a North Dakota information return for a payment other than wages is satisfied by filing a copy of the federal information return—Form 1099, 1042S, or W-2G—that is filed with the Internal Revenue Service. The copy of the federal information return must be filed with the Office of State Tax Commissioner in one of the following ways:

- **Method One (Preferred): Electronic Upload of Data (Form 1099 data only)**

Information on Form 1099 may be electronically uploaded using our upload system. Please see the Withholding W2/1099 Upload Instructions Guideline at www.nd.gov/tax/indwithhold/electfiling for additional information and registration requirements.

- **Method Two: Electronic media**

Information on Form 1099, 1042-S, or W-2G must be filed electronically if both of the following apply:

1. There is a requirement to file the information electronically for federal purposes.
2. The quantity of returns required to be filed with North Dakota is 250 or more.

Note: This requirement to file electronically for North Dakota purposes applies to 1999 and subsequent calendar years.

Waiver of North Dakota electronic filing requirement. If the Internal Revenue Service grants a hardship waiver of the requirement to file electronically, the federal waiver automatically applies for North Dakota purposes. A separate waiver does not need to be requested for North Dakota purposes.

Information from Form 1099, 1042-S, and W2-G that is filed electronically may be submitted to the Office of State Tax Commissioner using one of the following three options :

Option 1—Direct submission of electronic media

Under this option, data is sent directly to the North Dakota Office of State Tax Commissioner. If this option is chosen, the following requirements and procedures apply:

- Electronic Filing Options:
 - CD
 - 3½ floppy

- Not accepted:
 - tape cartridges
 - reel tapes
 - zip disks (100 or 250)
- Format the information according to the specifications contained in Internal Revenue Service Publication 1220.
- Data must be recorded in the ASCII character set. The use of record delimiters is preferred.
- The A, B, and T records must be included in the information provided.
- Media should be labeled with the
 - company name
 - type of data
 - the calendar year it is for
 - contact name
 - contact phone number
- After processing the information, the diskette/CD will *not* be returned and will be destroyed unless a written return request and mailing label are submitted with it. However, if there is an error in the information or specifications, the diskette/CD will be returned for correction.

Option 2—E-mail with text file attachment

As an alternative to using electronic media, the information may be submitted by e-mail with a text file attachment. The attachment may be a plain text file or a text file that is compressed with WinZip or PKZip, and it must be formatted according to the specifications in IRS Publication 1220. Zip files must be renamed with a .zpp extension in order for attachments to be received. Use the ASCII character set; the use of record delimiters is preferred. In the body of the e-mail, include the following:

- Sender's name
- Company name
- Company telephone number
- Type of data
- Calendar year it is for

An acknowledgement by e-mail will be sent after the e-mail is received by us. Send the e-mail to: magmedia@nd.gov. If there is an error in the information or specifications, the e-mail will be returned for correction.

Please note that this information is not secure until it reaches our E-mail server.

Option 3—Combined Federal/State Program (Form 1099 data only)

North Dakota participates in the Combined Federal/State Program offered by the Internal Revenue Service (IRS). Rather than submitting Form 1099 information electronically to both the IRS and North Dakota, the payor can request that the IRS provide a copy of the information to North Dakota.

If this option is chosen, the following requirements and procedures apply:

1. The payor must notify the Office of State Tax Commissioner in writing that the IRS has granted permission to file Form 1099 information electronically, and that the payor intends to satisfy part or all its North Dakota information return filing requirement through the Combined Federal/State Program.
2. The payor must complete Form 6847, *Consent for Internal Revenue Service to Release Tax Information*, received from the IRS and file it with the IRS. This authorizes the IRS to provide the Form 1099 information to the state. The IRS will not provide the information to North Dakota without this consent form.
3. This option may not be used to report any payment from which North Dakota income tax is withheld. See **Conditions and procedures applicable to payments from which North Dakota income tax is withheld** on page 1 of this guideline for more information.

- **Method Three: Paper document**

Important: *This method may not be used if there is a requirement to file the Form 1099, 1042-S or W-2G information electronically.*

Unless there is a requirement to use electronic media, a copy of Form 1099, 1042-S or W-2-G may be filed in paper document form. Federal information returns obtained from the U.S. Government Printing Office or other provider of approved federal tax forms may or may not include a copy that may be furnished to the state. If there is no state copy, a legible photocopy of the payor's copy will satisfy this requirement.

Corrections

Corrections to 1099 forms should be made using Federal Form 1099 with the box marked corrected. Paper forms can be obtained by calling the Internal Revenue Service

at 1-800-829-3676. A paper copy of the corrected Federal Form 1099 with state income tax withheld should be submitted with the state Form 307 to the Office of State Tax Commissioner.

Transmittal form for paper documents. A separate transmittal form is not provided for purposes of filing these information returns in paper form with North Dakota. A copy of the Form 1096 filed for federal purposes may be provided with the information returns filed for North Dakota purposes, but it is not required.

If you withhold North Dakota state income tax under a voluntary agreement you may submit paper copies of 1099 forms with Form 307 Transmittal of Wages and Tax Statement.

When to file

Information returns must be filed with the Office of State Tax Commissioner on or before the due date for filing Form 1099, 1042-S or W-2G with the Internal Revenue Service. In the case of Form 1099 information filed through the Combined Federal/State Program, the North Dakota information returns are considered timely filed if the federal information returns are timely filed with the Internal Revenue Service.

Where to file

Paper documents must be mailed/shipped to:

Withholding Section
Office of State Tax Commissioner
PO Box 5624
Bismarck, ND 58506-5624

CDs or diskettes must be mailed/shipped to:

Electronic Media Coordinator
Information Technology Section
Office of State Tax Commissioner
600 E. Boulevard Ave., Dept. 127
Bismarck, ND 58505-0550

E-mail file attachments must be sent to **magmedia@nd.gov**.

Failure to file

A penalty of \$10 per information return, up to a maximum amount of \$2,000, may be assessed for failure to file North Dakota information returns. This penalty may be assessed if information returns are not filed within thirty days after the Office of State Tax Commissioner provides written notice of the failure to file.

Information returns for wages

Form W-2

Who must file

Every employer must file a North Dakota information return for the payment of wages to an employee if all of the following apply:

1. The employer is located in or carries on a trade or business in North Dakota.
2. The employer pays wages to an employee who performs services:
 - a. In North Dakota, regardless of the employee's legal residence, or
 - b. Outside North Dakota, if the employee is a legal resident of North Dakota.
3. The employer is required to file a Federal Form W-2 for federal purposes to report the wages.

For this purpose, “employer” includes the State of North Dakota and any of its political subdivisions.

Exceptions. A North Dakota information return does not have to be filed to report wages paid to the following persons:

- A resident of Minnesota or Montana whose wages qualify for exemption from North Dakota income tax under reciprocity, provided the employee has completed and given to the employer a Form NDW-R, *Affidavit of Residency*.
- A Native American who (1) is an enrolled member of a federally-recognized Indian tribe, (2) lives on an Indian reservation, and (3) performs the services for which the wages are paid on an Indian reservation.
- An employee engaged in agricultural labor, provided the employer is either a farmer or rancher.
- A nonresident of North Dakota who performs regularly assigned duties in more than one state for an interstate motor, rail, air, or water carrier company, but only to the extent exempted under federal interstate commerce law in Title 49 of the United States Code.

What to file

A requirement to file a North Dakota information return for a payment of wages is satisfied by filing a copy of the federal information return—Form W-2—that is filed with the Social Security Administration. The amount of North Dakota wages paid to the employee and the amount of North Dakota income tax withheld from the wages must be shown on the Form W-2. The copy of the Form W-2 must be filed with the Office of State Tax Commissioner in one of the following ways:

- **Method One (Preferred): Electronic Upload of Data**

Information on Form W2 may be electronically uploaded using our upload system. Please see the Withholding W2/1099 Upload Instructions Guideline at www.nd.gov/tax/indwithhold/elecfile for additional information and registration requirements.

- **Method Two: W-2 Online Entry**

W-2 information is keyed into our system over the internet through our website. Please see the Withholding W-2 Online Entry Instructions Guideline at www.nd.gov/tax/indwithhold/elecfile for additional information and registration requirements.

- **Method Three: Electronic media**

Information on Form W-2 must be filed on electronic media if:

- There is a requirement to file the information electronically for federal purposes, and the quantity of returns required to be filed with North Dakota is 250 or more;

OR

- The information is submitted by a payroll service provider, regardless of the number of returns. A “payroll service provider” means any person who files and pays the federal and North Dakota withholding taxes on behalf of an employer *and* uses electronic means to file and pay the federal withholding taxes.

If neither of the above conditions apply, the use of electronic media for North Dakota purposes is optional.

Waiver of North Dakota electronic media requirement. If the Internal Revenue Service (IRS) grants a hardship waiver of the requirement to file electronically for federal purposes, the federal waiver automatically applies for North Dakota purposes. A separate waiver does not have to be requested for North Dakota purposes.

Information from Form W-2 that is filed on electronic media may be submitted to the Office of State Tax Commissioner using one of the following two options:

Option 1—Direct submission of electronic media

Under this option, data is sent directly to the North Dakota Office of State Tax Commissioner. The following requirements and procedures apply:

- Electronic Filing Options:
 - CD
 - 3½ floppy
- Not accepted:
 - tape cartridges
 - reel tape
 - zip disks (100 or 250)
- Format the information according to the specifications contained in the Social Security Administration’s publication *Specifications for Filing Forms W-2 Electronically (EFW2)*.
- Data must be recorded in the ASCII character set. The use of record delimiters is preferred.
- The RA, RE, RW, RS, RT, and RF records must be included in the information provided.
- State Code for North Dakota = 38.
- Media should be labeled with:
 - company name
 - type of data
 - calendar year it is for
 - contact name
 - contact phone number
- After processing the information, the diskette/CD will **not** be returned and will be destroyed unless a written return request and mailing label are submitted with it. However, if there is an error in the information or specifications, the diskette/CD will be returned for correction.

Option 2—E-mail with text file attachment

As an alternative to using electronic media, the information may be submitted by e-mail with a text file attachment. The attachment may be a plain text file or a text file that is compressed with WinZip or PKZip, and it must be formatted according to the specifications in the SSA’s publication *Specifications for Filing Forms W-2 Electronically (EFW2)*. Zip files must be renamed with a .zpp file extension. Use the ASCII character set; the use of record delimiters is preferred. In the body of the e-mail, include the following:

- Sender’s name
- Company name
- Company telephone number
- Type of data
- Calendar year it is for

An acknowledgement by e-mail will be sent after the e-mail is received. Send the e-mail to magmedia@nd.gov. If there is an error in the information or specifications, the e-mail will be returned for correction.

Please note that this information is not secure until it reaches our e-mail server.

Form 307, North Dakota Transmittal Of Wage And Tax Statements Return. Employers and other persons required to register for North Dakota income tax withholding purposes must complete and submit Form 307 with the Form W-2 information that is filed with the Office of State Tax Commissioner. This applies only when the information is filed on paper. If the Form W-2 information is submitted on electronic media, by e-mail with text file attachment, electronic upload or Online entry system, do not send in a paper copy of the 307.

• **Method Four: Paper document**

*Note: This method may not be used if there is a requirement to file the Form W-2 information on electronic media for North Dakota purposes. A payroll service provider must use magnetic or electronic media to submit the information. See **Method Three: Electronic media** for more information.*

Unless there is a requirement to use electronic media, a copy of Form W-2 may be filed in paper document form. W-2 forms obtained from the U.S. Government Printing Office or other provider of approved federal tax forms generally includes a copy that may be furnished to the state. If there is no state copy, a legible photocopy of the payor’s copy will satisfy this requirement.

Corrections

Corrections to W-2 forms should be made using Federal Form W-2C. Instructions can be found on the Social Security Administration website at www.socialsecurity.gov/employer/w2cinfo.htm. Paper forms can be obtained by calling the Internal Revenue Service at 1-800-829-3676. A paper copy of Federal Form W-2C should be submitted with the state Form 307 to the Office of State Tax Commissioner.

When to file

Information returns for wage payments must be filed with the Office of State Tax Commissioner on or before the due date for filing Form W-2 with the Social Security Administration.

Where to file

Paper documents must be mailed/shipped to:
Withholding Section
Office of State Tax Commissioner
PO Box 5624
Bismarck, ND 58506-5624

All magnetic media should be mailed/shipped to:
Electronic Media Coordinator
Information Technology Section
Office of State Tax Commissioner
600 E. Boulevard Ave. Dept. 127
Bismarck, ND 58505-0550

E-mail file attachments must be sent to magmedia@nd.gov.

Failure to file

A penalty of \$10 per information return, up to a maximum amount of \$2,000, may be assessed for failure to file North Dakota information returns. This penalty may be assessed if information returns are not filed within thirty days after the Office of State Tax Commissioner provides written notice of the failure to file.

Where to get assistance

Phone numbers	Address	Internet web site
Call <ul style="list-style-type: none">(701) 328-1248TDD/TTY users—call Relay ND at 1-800-366-6888		Write to Withholding Section Office of State Tax Commissioner 600 E. Boulevard Ave., Dept. 127 Bismarck, ND 58505-0599
Web site You may obtain forms and guidelines, submit questions and comments via e-mail, and find other useful information on our web site at: www.nd.gov/tax		Come in to see us You may also stop in and see us in person at our main office in Bismarck, North Dakota. You'll find us in the— Income Tax Withholding Tax Section State Capitol, 16th Floor Monday thru Friday (except state holidays) 8:00 a.m. to 5:00 p.m.
E-mail withhold@nd.gov		