North Dakota Office of State Tax Commissioner

Form 40X Amended Corporation Income Tax Return

L02
(Rev. 2008)

Calendar Year or Fiscal Year beginning _____, and ending ➤ _____, _____

Name ➤ _____

Federal employer identification no.* ➤ _____

Mailing address ➤ _____

Name the original Form 40 was filed under _____

City, State, Zip Code ➤ _____ Phone number _____

Reason for changes: ◯ RAR ◯ NOL ◯ Other

Income and deductions

		A As originally reported or as adjusted		B Net change increase or (decrease)		C Correct amount
1	Income Fill in the circle for the original tax return filing method a. ◯ b. ◯ b1. ◯ b2. ◯ c. ◯ c1. ◯ d. ◯	**1**		**(M)**		
2	Total additions	**2**		**(N)**		
3	Total subtractions	**3**		**(P)**		
4	North Dakota apportionable income (subtract line 3 from the sum of lines 1 and 2)	**4**				
5	North Dakota apportionment factor	**5**			**(R)**	
6	Multiply line 4 by line 5 for income apportioned to North Dakota	**6**				
7	Income, less related expenses, allocated to North Dakota	**7**		**(S)**		
8	North Dakota income (add lines 6 and 7)	**8**				
9	Federal tax deduction (tax years prior to January 1, 2004)	**9**		**(O)**		
10	Exempt income for new and expanding business (attach supporting sch.)	**10**		**(A)**		
11	Exempt income for renaissance zone activity (attach Schedule RZ)	**11**		**(U)**		
12	Subtract lines 9, 10 and 11 from line 8	**12**				
13	North Dakota net operating loss deduction	**13**		**(T)**		
14	Subtract line 13 from line 12	**14**				
15	Recapture of federal alternative minimum tax (tax years prior to January 1, 2004)	**15**		**(E)**		
16	Subtotal (subtract line 15 from line 14)	**16**			**(F)**	
17	Gross proceeds allocated to North Dakota from sale of North Dakota tax credits (see instructions)	**17**		**(V)**		
18	North Dakota taxable income (see instructions)	**18**				

Payment or refund

19	Income tax due for amount on line 18, Column C (use tax brackets and rates for year being amended; see below)	**(C)**	**19**	
20	North Dakota alternative minimum tax (tax years 1989 and 1990 only)	**(B)**	**20**	
21	Surtax on water's edge method election (3.5% of amount on line 18-**water's edge filers only**)	**(Z)**	**21**	
22	North Dakota income tax due (add lines 19, 20 and 21)		**22**	
23	Tax credits	**(Y)**	**23**	
24	North Dakota net income tax liability (subtract line 23 from line 22)	**(G)**	**24**	
25	North Dakota net income tax liability previously paid after credits	**(H)**	**25**	
26	If line 24 is greater than line 25, enter difference as balance due *(enter $0 if less than $5)*	**(J)**	**26**	
26a.	Interest and penalty for balance due line 26	**(I)**	**26a**	
26b.	Add lines 26 and 26a for total payment due		**26b**	
27	If line 25 is greater than line 24, enter difference as overpayment	**(D)**	**27**	
27a.	Interest on overpayment on line 27	**(I)**	**27a**	
27b.	Add lines 27 and 27a for amount to be refunded *(no refund under $5)*		**27b**	

I declare under the penalties of North Dakota Century Code § 12.1-11-02, which provides for a Class A misdemeanor for making a false statement in a governmental matter, that I have filed an original return and that this amended return, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

***Privacy Act Notice - See instructions**

◯ I authorize the North Dakota Office of State Tax Commissioner to discuss this tax return with the preparer.

Date: _____ Signature of Officer: _____ Title: _____

Date: _____ Signature of Preparer: _____ Address: _____

Mail to: Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, North Dakota 58505-0599

See tax return for year being amended for correct tax rates; or visit our web site at www.nd.gov/tax. Click on Corporate Income, Corporate Income Tax Rates.

➤ **PLEASE DO NOT WRITE IN THIS SPACE**

General instructions

Who must file
A North Dakota Amended Corporation Income Tax Return, Form 40X, must be filed if:
- An amended federal income tax return is filed;
- Federal taxable income or federal income tax liability is changed as a result of a federal audit;
- A corporation's North Dakota income is changed as a result of a North Dakota loss carryback (see instruction for line 13);
- The corporation wishes to correct an error discovered on a previously filed return; or
- The corporation receives a refund of federal income tax which was deducted on a previously filed return.

Information relating to an amended return can be found in North Dakota Century Code §§ 57-38-38 and 57-38-40.

How to prepare an amended return
In order to file a complete Form 40X, a corrected Form 40, page 1 and supporting schedules, for the year being amended must be prepared. Complete Form 40X using specific instructions below and attach the corrected Form 40, Page 1, and ONLY the North Dakota Schedules FACT, FACT-1, SA, CR, FTD, TC, WE, WW, AMT-C and/or AMT-R which have been corrected. Use forms and schedules from the tax booklet for the year being amended.

Preparer authorization
If the corporation wants to allow the North Dakota Office of State Tax Commissioner to discuss its 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 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. Click on Corporate Income and then Forms.

The authorization will automatically end 6 months from the date the amended return is filed.

Where to obtain forms
Forms, schedules and instructions may be obtained by e-mailing us at corptax@nd.gov, visiting our web site at www.nd.gov/tax, or calling 701.328.1249.

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

Federal attachments required
A complete copy of the amended federal return or Federal Form 1139 or Federal Revenue Agent Report, must be attached to the Form 40X.

In addition, if the corporation is included in a consolidated federal return, the following must be attached:
- A copy of the corporation's amended pro forma separate company federal return;
- Pages 1-4 of the amended consolidated federal return; and
- The schedule of gross income and deductions, by company, which supports the amended consolidated taxable income.

Where to file
Completed returns should be mailed to the Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599.

Payment of tax
If tax due is less than $5.00, payment need not be made. If tax is due, the total payment due must be paid when the return is filed.

Payment may be made by check or money order to the North Dakota State Tax Commissioner. Payment for estimated income tax may be made electronically using an ACH credit, electronic check, debit card, or credit card. To make an electronic payment or for information regarding an ACH credit, go to the department's web site at www.nd.gov/tax.

Privacy Act Notification. In compliance with the Privacy Act of 1974, disclosure of a social security number or Federal Employer Identification Number (FEIN) on this form is required under N.D.C.C. §§ 57-01-15 and 57-38-32, and will be used for tax reporting, identification, and administration of North Dakota tax laws. Disclosure is mandatory. Failure to provide the social security number or FEIN may delay or prevent the processing of this form.

This return is incomplete without all required state and federal attachments

Specific line instructions

Line 13
The North Dakota net operating loss deduction allowed on the Form 40X is the amount of the accumulated net operating loss less any previously deducted loss carryback or carryforward. Only a state net operating loss which occurs when a corporation does business in North Dakota is allowed as a state carryback or carryforward. Additional information is contained in N.D.C.C. § 57-38-01.3(3) and North Dakota Administrative Code § 81-03-05.1-07.

The state loss is carried back or forward as follows:
For taxable years beginning after December 31, 2002.
- Effective for a North Dakota net operating loss incurred in a taxable year beginning after December 31, 2002, a corporation may not carry the loss back to a previous tax year.

For taxable years beginning on or after January 1, 1993, and before January 1, 2003.
- A state net operating loss must be carried back and carried forward for the same period as a federal loss. However, a corporation may elect to forego the carryback period and carryforward the entire state loss. To elect to forego the carryback period for a North Dakota loss, a corporation must make the election on the original return that was timely filed for the year in which the loss was incurred. If an election is not made, the loss **must** be carried back.

For taxable years beginning before January 1, 1993.
- If a corporation incurs a state loss, in the same year it incurs a federal loss, the loss must be carried back and carried forward in the same manner as elected for federal purposes.

  Consequently, a federal election to forego the carryback period also applies to the state loss.
- If a corporation incurs a state loss, but **no** federal net operating loss, the loss may be carried back and carried forward for the same period as a federal loss. The corporation may elect to forego the carryback period and carry forward the entire state loss. A corporation must make an election to carryforward the loss with an original return that is timely filed for the year in which the loss was incurred. If an election is not made, the loss **must** be carried back.

Line 17
Enter on this line the gross proceeds from the sale, assignment or transfer of unused North Dakota tax credits from the Credit for Research and Experimental Expenditures or from the Geothermal, Solar, Wind or Biomass energy tax credit. Refer to the corporation income tax booklet for the year being amended for instructions.

Line 18
If line 17 is zero enter the amount from line 16.
If line 16 is zero or less and line 17 is greater than zero, enter the amount from line 17.
If line 16 is greater than zero, enter the total of line 16 and line 17.

Line 23
North Dakota law provides for certain tax credits to a corporation. These credits may have limits and carryback/carryforward provisions. Refer to the corporation income tax booklet for the year being amended for instructions pertaining to these credits. Attach an explanation for all changes to credits.

Lines 26a and 27a
The current provisions for interest and penalty are outlined on the back page of this form.

Form
40X
(Revised Dec. 2008)

North Dakota
Amended Corporation Income Tax Return

(Please detach this sheet and keep for future reference)
(See Reverse side for Interest and Penalty Provisions)

The following **"Time for Filing"** requirements have been summarized from the North Dakota Century Code. We have attempted to discuss the most common situations where an amended return would be necessary. However, if a situation arises that is not discussed below, refer to the North Dakota Century Code for the year being amended or contact the Office of State Tax Commissioner at 701.328.1249.

For Taxable Years Beginning After December 31, 1990.

- Form 40X must be filed within three years after the due date of the return or within three years after the return was filed, whichever period expires later, if a refund is requested.
- The time period for assessment of a taxpayer whose principal place for managing or directing a business is **inside** North Dakota is three years after the due date of the return or three years after the return was filed, whichever period expires later.
- The time period for assessment or refund of North Dakota corporation income tax of an **out-of-state** taxpayer is as follows:

For taxable years or periods beginning after:	Time period
December 31, 1990	Five Years
December 31, 1992	Four Years
December 31, 1994	Three Years

- If North Dakota taxable income or North Dakota income tax liability changes by an amount in excess of twenty-five percent, any refund may be claimed within six years after the due date of the return, or six years after the return was filed, whichever period expires last. *(A similar provision related to assessments was not changed and may be found in N.D.C.C. § 57-38-38).*
- The filing of an amended return before the expiration of the time limitations provided for in N.D.C.C. ch. 57-38 allows the tax commissioner two years after the amended state income tax return is filed to audit the state income tax return and assess any additional state income tax found to be due, even though other time periods prescribed in N.D.C.C. ch. 57-38 for the assessment of tax may have expired. This time period does not limit or restrict any other time period prescribed in N.D.C.C. ch. 57-38 for the assessment of tax that has not expired at the end of the two-year period.
- Where a loss is being carried back from a taxable year beginning **after** December 31, 1986, Form 40X must be filed within three years after the original due date for the taxable year in which the loss occurred, including extensions.
- The time period for reporting a change in federal taxable income or federal income tax liability to the Office of State Tax Commissioner is extended from thirty (30) to ninety (90) days from the final determination.

  If the federal change results in additional state income tax due and:
  - ➤ the change is reported within ninety (90) days of final determination, the time period for issuing an assessment is limited to two (2) years from the date the change is reported, provided all other time periods for assessment have expired.
  - ➤ the change is **not** reported within ninety (90) days of final determination, the time period for issuing an assessment is unlimited.

  If the federal change results in an overpayment of state income tax and:
  - ➤ the change is reported within ninety (90) days of final determination, the overpayment plus interest accrued through the date of payment will be refunded.
  - ➤ the change is **not** reported within ninety (90) days but is reported within two (2) years of final determination (or within any other unexpired time period for refund), the overpayment plus interest accrued through ninety (90) days after final determination will be refunded.
  - ➤ the change is **not** reported within ninety (90) days, is not reported within two (2) years after final determination, and provided all other time periods for refund have expired, the Office of State Tax Commissioner must deny any claim for credit or refund.
- If all other time periods for assessment or refund have expired, an assessment or claim for credit or refund based on a change in federal taxable income or federal income tax liability is limited to adjustments directly attributable to the federal change.
- If a taxpayer fails to file a return within three years after the due date of the return, no credit or refund of overpaid estimated income tax may be made.
- If a taxpayer consents to an extension of time for the assessment of North Dakota income tax, the period of time for filing a claim for refund is similarly extended.

For Taxable Years Beginning After December 31, 1984 And Before January 1, 1991

- Form 40X must be filed within three years after the due date of the return or within three years after the return was filed, whichever period expires later, if a refund is requested.
- The time period for assessment of a taxpayer whose principal place for managing or directing a business is **inside** North Dakota is three years after the due date of the return or three years after the return was filed, whichever period expires later.
- The time period for assessment of a taxpayer whose principal place for managing or directing a business is **outside** North Dakota is six years after the due date of the return or six years after the return was filed, whichever period expires later.
- If there is a change in North Dakota taxable income or adjusted federal income tax liability by an amount which is in excess of twenty-five percent of the amount of taxable income stated in the return as filed, any additional tax determined due may be assessed any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.
- The filing of an amended return before the expiration of the time limitation provided for in N.D.C.C. ch. 57-38 shall add an additional time period of two years for assessment of a deficiency or the issuance of a credit or refund to the time limitation still remaining as of the date of filing of the amended return.
- Where a loss is being carried back from a taxable year beginning before January 1, 1987, Form 40X must be filed within the period which ends with the fifteenth day of the fortieth month following the end of the taxable year in which the net operating loss occurred.
- Where a loss is being carried back from a taxable year beginning **after** December 31, 1986, Form 40X must be filed within three years after the original due date for the taxable year in which the loss occurred, including extensions.
- The time period for reporting a change in federal taxable income or federal income tax liability to the Office of State Tax Commissioner is thirty days after final determination of any change made by the Internal Revenue Service. Failure to file within this time frame will suspend the running of the statute of limitations for assessment.

North Dakota Amended Corporation Income Tax Return

Calculation of interest and penalty for income tax purposes: Comparison of rates and calculation methods for pre-'98 years with those for 1998 and subsequent years

This table shows (in the right hand column) the interest and penalty rates and calculation methods in effect for taxable years beginning after December 31, 1997, as a result of passage of Senate Bill 2102 by the 1999 North Dakota Legislative Assembly. Because the rates and calculation methods in effect for taxable years begining before January 1, 1998, remain in effect for those taxable years, you'll have to keep track of different rates and calculation methods. This table will help you do that. Please note that for refunds arising from loss years beginning after December 31, 1997, interest shall start accruing from the due date of the loss year to the date the refund is issued; however, no interest shall accrue if the refund is issued within forty-five days after the date the amended return is filed.

- **SECTION 1** *provides an overview of the rates and the general statutory authority*
- **SECTION 2** *shows the rates and calculation methods applicable to refunds and the specific statutory authority*
- **SECTION 3** *provides an overview of penalty provisions and the general statutory authority*

	Pre-'98 years Taxable years beginning before January 1, 1998	1998 and subsequent years Taxable years beginning after December 31, 1997
SECTION 1: Interest rates at-a-glance		
Refunds [Generally, N.D.C.C. § 57-38-35.2]	10% per annum (.000277/day)	1% per month (or fraction of a month)
Payment of tax after due date, or additional tax due because of audit or other reason [Generally, N.D.C.C. § 57-38-45(1)]	1% per month (or fraction of a month)	1% per month (or fraction of a month)
Extension of time to file [Generally, N.D.C.C. § 57-38-45(1)]	12% per annum (.000333/day)	12% per annum (.000333/day)
Nonpayment, late payment or underpayment of estimated tax [Generally, N.D.C.C. §§ 57-38-45(1) and 57-38-62(3)]	12% per annum (.000333/day)	12% per annum (.000333/day)

SECTION 2: Interest on a refund

Description of provision	Rate	Calculation	Rate	Calculation
Refund on original return attributable to an overpayment of withholding or estimated tax [N.D.C.C. § 57-38-35.2(1)(a)]	10% per annum (.000277/day)	Starts accruing after **60 days** from the later of (1) the due date (without extension) of the original return or (2) the date the original return is filed, and stops accruing on the date the refund is issued.	1% per month or fraction of a month	Starts accruing after **45 days** from the later of (1) the due date (without extension) of the original return or (2) the date the original return is filed, and stops accruing on the date the refund is issued.
Refund attributable to an amended return filed for reasons other than a net operating loss [N.D.C.C. § 57-38-35.2(1)(b)]	10% per annum (.000277/day)	Starts accruing after **60 days** from the later of (1) the due date (without extension) of the original return, (2) the date the original return was filed, or (3) the date the tax was fully paid, and stops accruing on the date the refund is issued.	1% per month or fraction of a month	Accrues from the due date (without extension) of the original return to the date the refund is issued, excluding the month in which the due date falls.
Refund attributable to an amended return filed for a net operating loss carryback or a capital loss carryback. [N.D.C.C. § 57-38-35.2(1)(c)]	10% per annum (.000277/day)	Starts accruing after **60 days** from the date the amended return is filed, and stops accruing on the date the refund is issued.	1% per month or fraction of a month.	If the refund is issued within 45 days of the date the amended return is filed, no interest accrues. If the refund is not issued within 45 days of the date the amended return is filed, interest accrues from the due date (without extension) of the original return for the year in which the loss was incurred to the date the refund is issued.

SECTION 3: Penalty

Description of provision	Rate	Calculation	Rate	Calculation
Penalty on late payments of tax due amounts [N.D.C.C. §§ 57-38-38 and 57-38-45]	5% of the tax or $5.00, whichever is greater	If the federal carryback of a net operating loss or investment tax credit results in additional income tax due for state purposes, the penalty may be waived.	5% of the tax or $5.00, whichever is greater	If the federal carryback of a net operating loss or investment tax credit results in additional income tax due for state purposes, the penalty may be waived.