

FORM 38

INCLUDES:
FORM 38 (PAGES 1-3)
SCHEDULE K-1



2016 NORTH DAKOTA FIDUCIARY INCOME TAX



NORTH DAKOTA
RYAN RAUSCHENBERGER
TAX COMMISSIONER

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Required forms

The following forms are needed to complete Form 38:

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

The following forms may be needed:

Form 38-EXT	Fiduciary extension payment voucher
Schedule 38-UT	Calculation of interest on underpayment or late payment of estimated income tax
Form 101	Application for extension of time to file a North Dakota income tax return
Form PWA	Passthrough entity withholding adjustment
Form PWE	Nonresident passthrough entity member exemption and certification

Download these forms from our website at **www.nd.gov/tax**.



Taxpayer Bill of Rights

You may get a copy of the North Dakota Taxpayer Bill of Rights by contacting the Office of State Tax Commissioner or by going to our website at **www.nd.gov/tax**

Need help?

You can download forms and find other information on our website at:

www.nd.gov/tax

E-mail

Individual, estate and trust income tax—

individualtax@nd.gov

Call

Questions **(701) 328-1258**

Forms **(701) 328-1243**

Speech/hearing impaired

TDD **(800) 366-6888**

Write

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

Office

State Capitol, 16th Floor
Monday through Friday
8:00 a.m. to 5:00 p.m.
(except holidays)

Privacy Act 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 57-38-31, 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.

Changes affecting estates and trusts

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

April 18 filing deadline for 2016 return

North Dakota income tax filers with an April 15 due date will have until Tuesday, April 18, 2017, to file their 2016 North Dakota income tax returns and pay any tax due on them. The April 18 deadline also applies for purposes of paying the estimated income tax installment normally due on April 15, 2017.

The extra time for filing the state return recognizes the movement of the federal income tax filing deadline to April 18, 2017, because of the Emancipation Day holiday in the District of Columbia. This holiday falls on April 16 of each year. Because April 16 falls on Sunday in 2017, the holiday will be observed on Monday, April 17, which pushes the federal due date to Tuesday, April 18.

Extension of time to file

Federal legislation passed in 2015 directs the Internal Revenue Service to revise the income tax regulations to increase the maximum extension period from five months to five and a half months for trusts that file Form 1041, U.S. Income Tax Return for Estates and Trusts. For calendar year filers, the new extension ends on September 30. This change applies to returns filed for tax years beginning on or after January 1, 2016. (See Surface Transportation and Veterans Health Care Choice Improvement Act of 2015; P.L. 114-41, Sec. 2006.)

North Dakota recognizes the longer federal extension period for trusts. Therefore, if a trust obtains a federal extension of time to file its Form 1041, the extended due date for filing Form 38, North Dakota Fiduciary Income Tax Return, will be the same as the federal extended due date.

Note: The federal legislation did not specifically mention estates in its directive to the IRS to modify the regulations relating to the maximum extension period. Because the regulation that applies to trusts also applies to estates, it is presumed that the longer extension period also will apply to estates; however, until the IRS formally acts, this is only a presumption. It also is uncertain how the IRS will apply the directive in the case of Form 1041-N and Form 1041-QFT, for which a six month maximum extension period has been available.

Electronic filing of Form 38

The North Dakota Fiduciary Income Tax Return, Form 38, may be filed electronically through the Modernized E-File (MeF) system. Through a partnership with the Internal Revenue Service, the MeF system allows both the federal and North Dakota fiduciary income tax returns to be submitted at the same time. For a list of the software vendors who support the electronic filing of the 2016 North Dakota Form 38, go to the North Dakota Office of State Tax Commissioner's website at www.nd.gov/tax.

Grantor trust changes

The instructions to Form 38 have been revised to provide that the term "beneficiary" includes the owner of a grantor trust. This has the following effects:

- If a grantor trust owner is a nonresident of North Dakota, the passthrough entity withholding requirement and composite filing option apply to the owner. See page 3 (passthrough withholding) and page 4 (composite filing) of these instructions.
- The grantor trust owner must be included with any other beneficiary on Schedule BI of Form 38. See page 7 of these instructions.
- A Schedule K-1 (Form 38) must be provided to the grantor trust owner, if applicable. See page 11 of these instructions.

In addition to the above, the instructions to the Tax Computation Schedule (on page 2 of Form 38) have been revised to clarify that the schedule should be completed only if there is a non-grantor portion of the trust for which federal taxable income was reported on federal Form 1041. See page 5 of these instructions.

Federal Form 990-T filers

The instructions relating to the filing requirement for a tax-exempt trust with unrelated business taxable income have been revised to provide that the requirement applies to a federal Form 990-T filer as well as a federal Form 1041 filer. See page 2 of these instructions.

Schedule K-1 changes

On Schedule K-1 (Form 38), line 17 (endowment fund tax credit) and line 20 (Housing Incentive Fund tax credit) have been split into two lines. The credit amount is to be entered on lines 17a and 20a. The amount of the contribution on which the credit is based must be entered on the new lines 17b and 20b. The instructions for completing Schedule K-1 (Form 38) have been revised accordingly. These changes were made because a beneficiary may have to add part or all of the contribution amount to taxable income on the beneficiary's North Dakota income tax return. For more information on the addback adjustment, see the instructions to the beneficiary's North Dakota income tax return.

Schedule BI

Every estate or trust that is required to file Form 38 must complete Schedule BI, Beneficiary Information, to provide certain information about each of its beneficiaries (including an owner of a grantor trust). To ensure that the data on Schedule BI is properly read and processed, only use the officially-prescribed form; non-prescribed forms are not acceptable. See page 7 of these instructions.

Endowment tax credit

If an estate or trust claims a North Dakota income tax credit on Form 38, page 1, line 3, the officially-prescribed form or other documentation must be attached to the return to support the claimed credit. In the case of a credit for making a contribution to a qualified endowment fund or a nonprofit private school, the supporting documentation must include a letter or statement from the fund or school that identifies the entity, shows the date and amount of the contribution received, and states that it is a qualifying entity for purposes of the credit. See page 9 of these instructions.

Form 38 Instructions

2016

North Dakota Fiduciary Income Tax Return

"N.D.C.C." references are to the North Dakota Century Code, which contains North Dakota's statutes.

"N.D. Admin. Code" references are to the North Dakota Administrative Code, which contains North Dakota's administrative rules.

General instructions

Who must file

Resident estate or trust

A fiduciary for a resident estate or trust must file a 2016 Form 38, *Fiduciary Income Tax Return*, if the fiduciary is required to file a 2016 Form 1041, *U.S. Income Tax Return for Estates and Trusts*.

A fiduciary for a resident estate or trust is generally subject to the same law provisions that apply to a resident individual. The entire income (loss) of a resident estate or trust is reportable to North Dakota regardless of its source. An estate or trust is considered a resident if it has a relationship to North Dakota that is sufficient to create nexus for income tax purposes. See N.D. Admin. Code § 81-03-02.1-04 for more information.

Nonresident estate or trust

A fiduciary for a nonresident estate or trust must file a 2016 Form 38, *Fiduciary Income Tax Return*, if both of the following apply:

- The fiduciary is required to file a 2016 Form 1041, *U.S. Income Tax Return for Estates and Trusts*.
- The estate or trust derived any gross income from North Dakota sources during the 2016 tax year.

A fiduciary for a nonresident estate or trust is generally subject to the same law provisions that apply to a nonresident individual. Only the portion of the nonresident estate's or trust's gross income from North Dakota sources is reportable to North Dakota.

For a nonresident estate or trust, gross income from North Dakota sources includes the following:

- Compensation, including unemployment compensation, received by an estate based on services performed in North Dakota by a decedent.

- Rental income from real and tangible personal property located in North Dakota.
- Royalties, bonus or lease payments, and other income from an interest in oil, gas, coal, or other minerals located in North Dakota.
- Gain from the sale, exchange, or other disposition of real and tangible personal property located in North Dakota.
- Income from a sole proprietorship, partnership, S corporation, or other trade or business carried on in North Dakota. This includes farming and ranching operations.
- Income from gambling activity carried on in North Dakota.
- Income from another estate or trust consisting of the same kinds of income listed above.

For a nonresident estate or trust, gross income from North Dakota sources generally does not include interest, dividends, pensions, annuities, or income and gain from intangible property. However, interest, dividends, gains, and other income from intangible property are included in gross income from North Dakota sources if derived from a trade or business carried on in North Dakota.

Grantor trust

A grantor trust is required to file a 2016 Form 38, *Fiduciary Income Tax Return*, if the grantor is required to file a 2016 Form 1041, *U.S. Income Tax Return for Estates and Trusts*. This applies even if a grantor trust elects to use an alternative filing method under the federal income tax regulations in lieu of filing a Form 1041. See the specific line instructions for Form 38 (page 1), Schedule BI, and Schedule K-1 for special instructions that apply to a grantor trust.

Tax-exempt trust

A fiduciary for a trust that is tax-exempt under Internal Revenue Code § 501(a) must file a 2016 Form 38 if (1) the fiduciary is required to file a 2016 Form 1041 or Form 990-T to report the trust's unrelated business taxable income, (2) the federal income tax is calculated using the tax rates applicable to a trust, and (3) the unrelated business taxable income is reportable to North Dakota.

The unrelated business taxable income is reportable to North Dakota if the trust is a North Dakota resident trust or, in the case of a nonresident trust, the unrelated business taxable income has a source in North Dakota.

Bankruptcy estate

A fiduciary that is required to file a 2016 Form 38 for a bankruptcy estate must file it in a manner similar to how the 2016 Form 1041 is filed. Use Form 38 only as a transmittal form for Form ND-1, *Individual Income Tax Return*. In the top margin of Form ND-1, write "Attachment to Form 38." Complete and attach Form ND-1 to Form 38. Complete Items A through H at the top of Form 38. Enter on Form 38, page 1, line 7, the net tax liability from Form ND-1, page 2, line 25. Then complete lines 8 through 17 on page 1 of Form 38 as required.

When and where to file

The 2016 Form 38 must be filed on or before (1) April 15, 2017, if filing for the 2016 calendar year, or (2) the 15th day of the 4th month following the end of the tax year, if filing for a fiscal year beginning in the 2016 calendar year. If the due date falls on a Saturday, Sunday, or holiday, the return may be filed on or before the next day that is not a Saturday, Sunday, or holiday.

Note: Use the 2015 Form 38 if filing for a fiscal year beginning in the 2015 calendar year.

Mail Form 38 and all required attachments to:

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

Extension of time to file

An extension of time to file Form 38 may be obtained in one of the following ways:

- Obtain a federal extension.
- Separately apply for a North Dakota extension.

Federal extension. If an extension of time to file Form 1041 is obtained, it is automatically accepted as an extension of time to file Form 38. The extended due date for North

Dakota purposes is the same as the federal extended due date. A separate North Dakota extension does not have to be applied for, nor does the Office of State Tax Commissioner have to be notified that a federal extension has been obtained prior to filing Form 38.

North Dakota extension. If a federal extension is not obtained, but additional time is needed to complete and file Form 38, a separate North Dakota extension may be applied for by filing Form 101, *Application for Extension of Time to File a North Dakota Tax Return*. This is not an automatic extension—there must be good cause to request a North Dakota extension. Form 101 must be postmarked on or before the due date of Form 38. Notification of whether the extension is accepted or rejected will be provided by the Office of State Tax Commissioner.

Extension interest. If Form 38 is filed on or before the extended due date, and any tax due is paid with the return, no penalty will be charged. Interest on the tax due will be charged at the rate of 12% per year from the original due date of the return to the earlier of the date the return is filed or the extended due date.

Prepayment of tax due. If an extension of time to file Form 38 is obtained, any tax expected to be due may be paid on or before the regular due date to avoid paying extension interest. For more information, including payment options, obtain the 2016 Form 38-EXT. Alternatively, a check or money order may be sent with a letter containing the following: (1) name of estate or trust; (2) last four digits of the estate's or trust's FEIN; (3) fiduciary's name, address and phone number; and (4) statement that the payment is a 2016 Form 38-EXT payment.

Penalty and interest

The tax due must be paid by the due date (without extension) of Form 38 to avoid penalty and interest charges. However, if an extension of time to file Form 38 was obtained, the tax due may be paid by the extended due date of the return without penalty, but extension interest will apply—see “Extension interest” and “Prepayment of tax due” on this page.

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

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

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

Estimated tax requirement (for 2017)

A fiduciary for an estate or trust must pay estimated North Dakota income tax for the 2017 tax year if all four of the following conditions apply:

1. The fiduciary is required to pay estimated federal income tax for the 2017 tax year. This condition applies whether or not the fiduciary actually makes the required payment(s) of estimated tax to the Internal Revenue Service.
2. The North Dakota net income tax liability on the fiduciary's taxable income for the 2016 tax year (as shown on the 2016 Form 38, page 1, line 4) was equal to or more than \$1,000. *Note: If the fiduciary was not required to file a North Dakota income tax return for the 2016 tax year, the fiduciary's net tax liability is zero for purposes of this condition.*
3. The fiduciary expects to owe (after subtracting any estimated North Dakota income tax withholding) North Dakota income tax equal to or more than \$1,000 for the 2017 tax year. *Note: Do not include income tax withholding from nonresident individual beneficiaries or composite income tax in this estimation.*
4. The fiduciary expects North Dakota income tax withholding (other than income tax withholding from nonresident individual beneficiaries) for the 2017 tax year to be less than the smaller of:
 - a. 90% of the North Dakota net income tax liability on the fiduciary's taxable income for the 2017 tax year. *Note: Substitute 66 2/3% if a qualified farmer. See instructions for 2017 Form 38-ES.*

- b. 100% of the North Dakota net income tax liability on fiduciary's taxable income for the 2016 tax year (as shown on the 2016 Form 38, page 1, line 4). *Note: If the estate or trust was not in existence for the entire 2016 tax year, this part does not apply; the 90% threshold in part a must be applied.*

In general, one-fourth (25%) of the total estimated tax required to be paid for the 2017 tax year must be paid by April 15, June 15, and September 15, 2017, and January 15, 2018. For more information, including payment options, obtain the 2017 Form 38-ES.

Withholding from nonresident beneficiary and grantor trust owner

A trust must withhold North Dakota income tax at the rate of 2.90% from the year-end distributive share of North Dakota income of a nonresident beneficiary. If the trust is a grantor trust, this also applies to the North Dakota income distributable to a nonresident grantor or other owner of the trust. Only a trust required to file Form 38 is subject to this requirement.

Nonresident beneficiary or grantor trust owner. A beneficiary or grantor trust owner is a nonresident of North Dakota if the beneficiary or owner is:

- an individual domiciled outside North Dakota,
- a trust legally organized outside North Dakota, or
- a partnership, S corporation, or other passthrough entity with a commercial domicile outside North Dakota.

Exemption from withholding. This withholding requirement does not apply to a nonresident beneficiary or grantor trust owner if:

- the beneficiary's or owner's distributive share of North Dakota income is less than \$1,000,
- the beneficiary or owner elects to include the distributive share of North Dakota income in a composite filing (see “Composite filing” on page 4), or
- the beneficiary is a passthrough entity that elects exemption from the withholding requirement. Obtain Form PWE for more information.

Withholding procedure. This withholding requirement applies to the year-end distributive share of North Dakota income, which is determined at the end of the trust's tax year and reported on Form 38, Schedule BI, Column 5. The requirement does not apply to actual distributions made during the tax year. The withholding amount is calculated and reported on Schedule BI, Column 6. If certain conditions are met, an amount less than the amount calculated at the 2.90% tax rate may be withheld. For the qualifying conditions, see Form PWA. A payment for the total amount of withholding reported on Schedule BI, Column 6, must be submitted with Form 38 when it is filed.

Composite filing

A composite filing method is available to a trust with one or more eligible nonresident beneficiaries and grantor trust owners. Under this method, a trust calculates the North Dakota income tax on the year-end distributive share of North Dakota income of an eligible nonresident beneficiary or grantor trust owner and pays the tax with Form 38. The tax is calculated at the highest individual income tax rate (which is 2.90% for the 2016 tax year), and no adjustments, deductions, or tax credits are allowed in calculating the tax. A composite filing satisfies the North Dakota income tax filing and payment obligations of the eligible nonresident beneficiaries and grantor trust owners included in it, which means they do not have to separately file their own North Dakota income tax returns. The composite filing method is optional and does not require prior approval from the Office of State Tax Commissioner, and a choice to use it may be made on a year-to-year basis.

Eligible nonresident beneficiary or grantor trust owner. A nonresident beneficiary or grantor trust owner (as defined under "Withholding from nonresident beneficiary and grantor trust owner" on page 3) is eligible to be included in a composite filing if both of the following apply:

- The beneficiary's or owner's only source of income within North Dakota is one or more passthrough entities. A passthrough entity includes a trust, partnership, S corporation, limited liability company treated like a partnership or S corporation, and any other similar entity.
- The beneficiary or owner elects to be included in a composite filing. An election is indicated by the trust's

calculation and reporting of a tax amount for the beneficiary or owner on Form 38, Schedule BI, Column 7. If the distributive share is a loss, the tax is zero.

The distributive share of North Dakota income included in a composite return is subject to tax even if it is under \$1,000.

Composite filing method procedure.

The tax under the composite filing method is calculated and reported on Form 38, Schedule BI, Column 7. A payment for the total tax amount reported on Schedule BI, Column 7, must be submitted with Form 38 when it is filed.

Correcting a previously filed return

If a fiduciary needs to correct an error on Form 38 after it is filed, the fiduciary must file an amended return. There is no special form for this purpose. See "How to prepare an amended 2016 return" below.

If a fiduciary paid too much tax because of an error on the 2016 Form 38, the fiduciary generally has three years from the due date (excluding extensions) of the return or the date the return was actually filed, whichever is later, in which to file an amended return to claim a refund of the overpayment. See N.D.C.C. § 57-38-40 for other time periods that may apply.

How to prepare an amended 2016 return

1. Obtain a blank 2016 Form 38.
2. Enter the name of the estate or trust, and the fiduciary's name, current address, FEIN, etc., in the top portion of page 1 of Form 38.
3. Fill in the "Amended return" circle at the top of page 1 of Form 38.
4. Complete the Tax Computation Schedule and Schedule BI using the corrected information. However, unless there is an increase in the amount reported on Schedule BI, Column 5, of the amended return, enter on Schedule BI, Column 6, the same amount reported on the previously filed return. Also complete Schedule CR, if applicable. Then complete lines 1 through 7 on page 1 of Form 38.
5. Leave line 8 on page 1 of Form 38 blank unless claiming an additional amount not previously claimed.

6. On line 9 of page 1 of Form 38, enter the total taxes due from the previously filed 2016 Form 38, page 1, line 7. If the total taxes due have not been fully paid, only enter the amount paid.
7. Complete lines 10 through 16 of page 1 of Form 38. If there is an overpayment on line 11, enter the full amount on line 13. On an amended return, the amount credited to the next year's estimated tax (line 12) may not be increased or decreased.
8. Attach a statement explaining the reason(s) for filing the amended return. If it is because of changes the fiduciary or the Internal Revenue Service (IRS) made to the 2016 Federal Form 1041, attach a copy of the amended federal return or IRS notice.
9. Complete and provide a corrected North Dakota Schedule K-1 to the beneficiaries, as required.

Reporting federal changes

If the Internal Revenue Service (IRS) changes Federal Form 1041, or if a fiduciary files an amended Federal Form 1041, an amended North Dakota Form 38 must be filed within ninety days after the final determination of the IRS changes or the filing of the amended federal return. Enclose a copy of the IRS audit report or the amended federal return with the amended North Dakota Form 38.

W-2/1099 reporting requirement

Every fiduciary that is required to file Federal Form 1099 or W-2 may also have to file one with the Office of State Tax Commissioner. For more information, obtain the document *Income Tax Guideline: Information Returns*.

Use of information

All of the information on Form 38 and its attachments is confidential by law and cannot be given to others except as provided by state law. Information about the beneficiaries is required under state law so the Office of State Tax Commissioner can determine the beneficiary's correct North Dakota taxable income and verify if the beneficiary has filed a return and paid the tax.

General instructions for completing Form 38

Complete Form 38 as follows:

1. Complete Federal Form 1041 in its entirety.
2. Complete Items A through H at the top of page 1 of Form 38—see page 5 of these instructions.
3. Complete the Tax Computation Schedule on page 2 of Form 38—see page 5 of these instructions.
4. Complete Schedule BI on page 3 of Form 38—see page 7 of these instructions.
5. Complete lines 1 through 17 on page 1 of Form 38—see page 9 of these instructions.
6. Complete Schedule K-1, if required, for the beneficiaries—see page 11 of these instructions.

Rounding of numbers. Numbers may be entered on the return in dollars and cents, or they may be rounded to the nearest whole dollar. If rounding, drop the cents if less than 50 cents and round up to the next whole dollar amount if 50 cents or higher. For example, \$25.36 becomes \$25.00, and \$25.50 becomes \$26.00.

Fiscal year filers. The tax year for North Dakota income tax purposes must be the same as the tax year used for federal income tax purposes. Use the 2016 Form 38 if the estate's or trust's taxable year began in the 2016 calendar year. *Note: Use the 2015 Form 38 if the taxable year began in the 2015 calendar year.*

Specific line instructions for page 1 of Form 38, Items A-H

Complete Items A through H at the top of page 1 of Form 38. Then complete the Tax Computation Schedule and Schedule BI before completing lines 1 through 17 on page 1 of Form 38.

Item A Tax year

The same tax year used for federal income tax purposes (as indicated on the federal return) must be used for North Dakota income tax purposes. Fill in the applicable circle. If the estate or trust has a fiscal year, enter the beginning and ending dates of the fiscal year. Use the 2016 Form 38 only if the estate's or trust's tax year began in the 2016 calendar year.

Item B Name and address

Enter the legal name of the estate or trust, the name and title of the fiduciary, and the fiduciary's mailing address on the applicable lines.

Item C Federal EIN

North Dakota uses the federal employer identification number (FEIN or federal EIN) for identification purposes. Enter the federal employer identification number from page 1 of Federal Form 1041.

Important: Do not enter the fiduciary's own federal employer identification number. A fiduciary for an estate or trust must obtain a separate federal employer identification number for the estate or trust.

Item D Date created

Enter the date the estate or trust was created from page 1 of Federal Form 1041.

Item E Number of beneficiaries

Enter the total number of beneficiaries and the number of each type of beneficiary.

Item F Residency status

Fill in the applicable circle to indicate the residency status of the estate or trust. See "Resident estate or trust" under "Who must file" on page 2 for more information.

Item G Entity type

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

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

Item H Check off items

Fill in all applicable circles.

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

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

Composite return. Fill in this circle if the trust has one or more nonresident beneficiaries or grantor trust owners that have elected to include their distributive shares of North Dakota source income in a composite filing. See "Composite filing" on page 4 for more information.

Amended return. Fill in this circle if this return is being filed to correct a previously filed 2016 Form 38. See "Correcting a previously filed return" on page 4 for more information.

Extension. Fill in this circle if a federal or state extension of time to file the return was obtained. See "Extension of time to file" on page 2 for more information.

Instructions for completing Tax Computation Schedule (Form 38, page 2)

Grantor trust. If all of a trust is a grantor trust, do not complete the Tax Computation Schedule. However, if a trust is part grantor trust and part other type of trust (e.g., simple or complex), complete the Tax Computation Schedule to the extent it applies to the nongrantor part of the trust.

Instructions for Part 1

Line 2 Additions

The following items must be entered on this line if taxable to the fiduciary:

- Taxable portion of a lump-sum distribution from Federal Form 4972, line 6 plus line 10. This adjustment does not apply to a fiduciary for a nonresident estate or trust.
- Loss adjustment reported to the fiduciary by an S corporation that elected taxation under N.D.C.C. § 57-38-01.35. For details, obtain the *Income Tax Guideline*:

Adjustment For Income (Loss) From An S Corporation electing to be taxed as a C corporation. Attach a copy of the statement received from the entity.

- For an electing small business trust (ESBT), the separate S corporation items of income, gain, loss, etc., that would have been included had they not been removed for purposes of the separate tax calculation on Federal Form 1041.
- Amount of contribution on which the fiduciary claims a North Dakota endowment fund tax credit under N.D.C.C. § 57-38-01.21 or a housing incentive fund tax credit under N.D.C.C. § 57-38-01.32, but only to the extent the contribution reduced the fiduciary's federal taxable income. If a fiduciary receives either or both credits from a passthrough entity, include on this line the fiduciary's share of the related contribution from the passthrough entity to the extent it reduced the fiduciary's federal taxable income.

Line 4a

Interest from U.S. obligations

Enter the following on this line if included in the amount on line 1:

- Interest income from U.S. obligations.
- Interest income from other securities that is specifically exempted from state income tax by federal statute.
- The portion of dividend income from a mutual fund attributable to the fund's investment in the same kinds of securities listed above.

Common sources of interest income that may be entered on this line include U.S. savings bonds, Treasury bills and notes, and securities issued by the Banks for Cooperatives, Commodity Credit Corporation, Federal Deposit Insurance Corporation, Federal Farm Credit System, Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal Land Banks, Federal Savings & Loan Insurance Corporations, and Student Loan Marketing Association.

Do not enter on this line interest income from securities of the Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), and Government National Mortgage Association (Ginnie Mae), nor from a federal income tax refund or repurchase agreement. **Attach a statement specifically identifying the securities and the interest income from them. For a mutual fund, identify the fund, the qualifying securities, and the percentage of income from qualifying securities.**

Line 4b

Net long-term capital gain exclusion

If the amount on line 1 includes a net long-term capital gain, 40 percent of the gain is excludable from North Dakota taxable income. For a nonresident estate or trust, the exclusion is allowed only for a net long-term capital gain based on the capital gains and losses reportable to North Dakota. A net long-term capital gain included in an amount

entered on line 4d (Other subtractions) is not eligible for the exclusion. Complete the worksheet on this page to calculate the amount to enter on this line.

Line 4c

Qualified dividend exclusion

Resident estate or trust—A fiduciary for a resident estate or trust may enter on this line 40 percent of the qualified dividends allocated to the estate or trust and reported on Form 1041, line 2b(2). **Do not** include qualified dividends that were allocated to the beneficiaries.

Nonresident estate or trust. A fiduciary for a nonresident estate or trust may enter on this line 40 percent of the portion of the qualified dividends allocated to the estate or trust and reported on Form 1041, line 2b(2), **that are reportable to North Dakota.** Qualified dividends allocated to the estate or trust that are reportable to North Dakota must be included in the fiduciary's share of total income reported on Form 38, Tax Computation Schedule, Part 2, Column B, line 11.

Line 4d

Other subtractions

The following items may be entered on this line, but only to the extent the income is included in the amount on line 1:

- Income earned or received by a Native American while living and working on any Indian reservation in North Dakota.

Worksheet for calculating net long-term capital gain exclusion

(for Form 38, Tax Computation Schedule, Part 1, line 4b)

- Enter amount from 2016 Schedule D (Form 1041), line 18a, column (2).
If zero or less, stop here; no exclusion is allowed **1** _____
- Enter amount from 2016 Schedule D (Form 1041), line 19, column (2).
If zero or less, stop here; no exclusion is allowed **2** _____
- Enter the smaller of line 1 or line 2. This is the fiduciary's federal net long-term capital gain **3** _____
 - If a **resident estate or trust**, enter the amount from line 3 on line 5 and go to line 6.
 - If a **nonresident estate or trust**, go to line 4.
- Complete lines 4a through 4d using only the capital gains and losses reportable to North Dakota by the fiduciary:
 - North Dakota net short-term capital gain (loss) included on 2016 Schedule D (Form 1041), line 17, column (2) **4a** _____
 - North Dakota net long-term capital gain (loss) included on 2016 Schedule D (Form 1041), line 18a, column (2). If zero or less, stop here; no exclusion is allowed **4b** _____
 - Combine lines 4a and 4b. If zero or less, stop here; no exclusion is allowed **4c** _____
 - Enter the smaller of line 4b or line 4c. This is the North Dakota net long-term capital gain **4d** _____
- If resident estate or trust, enter amount from line 3. Otherwise, enter smaller of line 3 or line 4d **5** _____
- Portion of line 5, if any, included in an amount that will be entered on Form 38, Tax Computation Schedule, Part 1, line 4d. .. **6** _____
- Subtract line 6 from line 5. **7** _____
- Multiply line 7 by 40% (.40). Enter this amount on Form 38, Tax Computation Schedule, Part 1, line 4b **8** _____

- Taxable part of a retirement, sick pay, or unemployment payment from the U.S. Railroad Retirement Board. **Attach a copy of Form RRB-1099 or RRB-1099-R (or both, if applicable).**
- Income adjustment reported to the fiduciary by an S corporation that elected taxation under N.D.C.C. § 57-38-01.35. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From An S Corporation electing to be taxed as a C corporation*. **Attach a copy of the statement received from the entity.**
- Income exempted under N.D.C.C. ch. 40-63 (Renaissance Zone Act). **Attach Schedule RZ.**
- Income exempted under N.D.C.C. ch. 40-57.1 (new or expanding business income exemption). **Attach statement showing calculation of exempt income.**
- Compensation received by a National Guard or U.S. armed forces member activated for federal active duty service under Title 10 of United States Code. Compensation received for annual training, basic military training, or professional military education is not eligible. **Attach a copy of the mobilization orders.**
- Compensation received by a nonresident individual for active duty in the U.S. armed forces.
- Contributions made during the tax year to a College SAVE account administered by the Bank of North Dakota. The maximum deduction allowed is \$5,000.

Instructions for Part 2

All estates and trusts—Enter the amounts from the 2016 Federal Form 1041, page 1, lines 1 through 8, on the corresponding lines in Column A. Then complete lines 9 through 11 in Column A.

Nonresident estate or trust only—Enter in Column B (North Dakota) the portion of the amount in Column A that is reportable to North Dakota. See below for the instructions to lines 1 through 8 of Column B. Then complete lines 9 through 11 in Column B. Complete lines 1 through 11 in Column C by entering the difference between Column A and Column B.

Instructions for Column B only— North Dakota portion

If part or all of a North Dakota income amount reportable in Column B was entered in Part 1, line 4a and line 4d because it is exempt from North Dakota income tax, only enter the taxable portion in Column B.

Line 1, Column B Interest income

Enter the fiduciary's share of interest received from a partnership, S corporation, or limited liability company doing business in North Dakota, to the extent the interest is apportioned or allocated to North Dakota by that entity. Do not include any interest from U.S. obligations.

Line 2, Column B Ordinary dividends

Enter the fiduciary's share of dividend income received from a partnership, S corporation, or limited liability company doing business in North Dakota, to the extent the dividend income is apportioned or allocated to North Dakota by that entity.

Line 3, Column B Business income or (loss)

Enter the net income or loss from a sole proprietorship doing business in North Dakota as reported on Federal Schedule C (Form 1040), to the extent the net income or loss is apportioned and allocated to North Dakota.

Line 4, Column B Capital gain (loss)

Enter net capital gains and losses from the sale or exchange of real and tangible personal property located in North Dakota. Also enter the fiduciary's share of net capital gains and losses from a partnership, S corporation, or limited liability company doing business in North Dakota, to the extent they are apportioned or allocated to North Dakota by that entity.

Line 5, Column B Rents, royalties, partnerships, other estates and trusts, etc.

Enter the net income or loss from real and tangible personal property located in North Dakota. This includes net income or loss from leasing the property, and royalties and other income from interests in oil, coal, or other mineral property located in North Dakota.

Enter the fiduciary's share of income or loss from a partnership, S corporation, or limited liability company doing business in North Dakota (that is not reported on the other lines of Part 2), to the extent the income is apportioned and allocated to North Dakota by that entity.

Enter the fiduciary's share of North Dakota source income and losses from another estate or trust.

Line 6, Column B Farm income or (loss)

Enter the net income or loss from a farm or ranch operation doing business in North Dakota as reported on Federal Schedule F (Form 1040), to the extent the net income or loss is apportioned and allocated to North Dakota.

Line 7, Column B Ordinary gain or (loss)

Enter the ordinary gain or loss from the sale or exchange of real and tangible personal property located in North Dakota.

Line 8, Column B Other income

Enter the amount of any other income having its source in North Dakota that is not included on lines 1 through 7 of Part 2.

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

Schedule BI must be completed to provide information about each beneficiary. If the estate or trust has more than four beneficiaries, complete and attach as many Schedules BI needed to list all beneficiaries. If more than one Schedule BI is needed, complete lines 1 through 4 on only one of them, and include the combined amount for all of the schedules on that one schedule.

Note: Only the North Dakota prescribed Schedule BI will be accepted. Taxpayer prepared substitutes are not acceptable.

Grantor trust. For purposes of completing Schedule BI, "beneficiary" includes the owner(s) of a grantor trust.

All Beneficiaries (Columns 1 through 4)

Columns 1 and 2

Enter the name, mailing address, and federal identification number of each beneficiary.

Column 3

Identify the entity type of the beneficiary by entering the applicable code letter as follows:

Entity type	Code letter
Individual.....	I
C corporation	C
S corporation.....	S
Partnership	P
Estate.....	E
Trust	T
Exempt organization	O

Note: A "C corporation" is a corporation that files Federal Form 1120; an "S corporation" is a corporation that files Federal Form 1120S; and the "Trust" entity type only applies to a trust that files Federal Form 1041 or, in lieu of filing Federal Form 1041, elects an alternative reporting method under the federal income tax regulations.

If the beneficiary is a limited liability company (LLC) that is a disregarded entity for federal income tax purposes or a nominee on Federal Schedule K-1, enter the code letter for the type of entity of the entity's owner. If the LLC is treated like a C corporation, partnership, or S corporation, enter the code letter for that particular entity type.

Column 4

Enter the sum of the following items from the beneficiary's Federal Schedule K-1 (Form 1041), Part III:

- Box 1** Interest income
- Box 2a** Ordinary dividends
- Box 3** Net short-term capital gain
- Box 4a** Net long-term capital gain
- Box 5** Other portfolio and nonbusiness income
- Box 6** Ordinary business income
- Box 7** Net rental real estate income
- Box 8** Other rental income
- Box 9** Directly apportioned deductions
- Box 11** Final year deductions *(Only include deductions that are allowed as a deduction from gross income in calculating adjusted gross income for federal income tax purposes.)*

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

Grantor trust owner. For a grantor trust owner (who does not receive a federal Schedule K-1), enter the sum of the income and deduction items reportable for federal income tax purposes that are attributable to the owner.

Nonresident beneficiaries only (Columns 5 through 7)

Columns 5 through 7 only apply to a nonresident beneficiary. A beneficiary is a nonresident of North Dakota if the beneficiary is:

- an individual domiciled outside North Dakota,
- a trust legally organized outside North Dakota, or
- a partnership, S corporation, or other passthrough entity with a commercial domicile outside North Dakota.

Column 5

Nonresident beneficiary only

Complete Column 5 for each nonresident beneficiary. Include in this column the portion of each item of income, loss, and deduction included in the amount in Column 4 that is derived from sources in North Dakota. For this purpose, this includes the same kinds of items that would be reportable to North Dakota had they been directly received by the nonresident beneficiary. These items include:

- Compensation for services performed in North Dakota.
- Net income (loss) from the rental or lease of real and tangible personal property located in North Dakota.
- Net income (loss) attributable to royalties and other income from oil, coal, or other mineral interests located in North Dakota.
- Gain or loss from the sale, exchange, or other disposition of real and tangible personal property located in North Dakota.
- Net income (loss) from a sole proprietorship doing business in North Dakota.
- Net income (loss) from a partnership, S corporation, or other trade or business carried on in North Dakota, to the extent it is apportioned and allocated to North Dakota.

- Income from gambling activity carried on in North Dakota.
- Income, gain, or loss from sources in North Dakota received from another estate or trust.

For a nonresident beneficiary, income from North Dakota sources generally does not include interest, dividends, pensions, annuities, or income and gain from intangible property. However, if any of these income items were derived from a partnership, S corporation, or limited liability company doing business in North Dakota, they must be included in Column 5 to the extent they are apportioned or allocated to North Dakota by that entity.

Column 6

Nonresident beneficiary only

If a nonresident beneficiary's distributive share of North Dakota income in Column 5 is \$1,000 or more, multiply the amount in Column 5 by 2.90% (.029) and enter the result in Column 6. However, the following exceptions apply:

- If the nonresident beneficiary provides the fiduciary with a completed Form PWA, enter the amount from line 6 of Form PWA in Column 6 and fill in the circle under "Form PWA or Form PWE."
- If the nonresident beneficiary provides the fiduciary with a completed Form PWE, leave Column 6 blank and fill in the circle under "Form PWA or Form PWE."
- If the nonresident beneficiary elected to be included in a composite filing, leave Column 6 blank and see the instructions to Column 7.

See "Withholding from nonresident beneficiary and grantor trust owner" on page 3 for more information.

Column 7

Nonresident beneficiary only

Note: Leave Column 7 blank if Column 6 was completed for the nonresident beneficiary.

Complete Column 7 for each nonresident beneficiary electing to be included in a composite filing. Multiply the amount in Column 5 by 2.90% (.029) and enter the result in Column 7. If the amount in Column 5 is zero or less, enter zero in Column 7. See "Composite filing" on page 4 for more information.

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

The fiduciary for an estate or trust may be eligible for a credit for income tax paid to another state or local jurisdiction if both of the following apply:

- It is a resident estate or trust.
- The fiduciary paid income tax for the tax year to North Dakota and to the other state or local jurisdiction on the same income.

A “state” means any of the other 49 U.S. states, the District of Columbia, and a U.S. territory. A “local jurisdiction” means a city, township, county, etc., within a state.

Qualifying taxes—The credit is allowed for income taxes paid to another state and any local jurisdictions in that state. The credit is not allowed for income tax paid to a foreign country or its local jurisdictions, nor is it allowed for any tax that is not an income tax (e.g., property or sales taxes).

Other state’s return—The credit is allowed only if the fiduciary files an income tax return with the other state or local jurisdiction. The credit is not allowed for income tax withheld or estimated income tax paid to the other state. *A copy of the income tax return filed with the other state and/or local jurisdiction must be attached to Form 38.*

Payment of income tax to more than one other state—If the fiduciary pays income tax to more than one other state for the tax year, a separate Schedule CR must be completed for each state. If the fiduciary also paid income tax to a local jurisdiction in another state, include the income tax paid to the local jurisdiction on the Schedule CR filed for the state in which the local jurisdiction is located. Fill in the total of the separately calculated credit amounts on Form 38, page 1, line 2.

Line 2

Enter only those items of income, gain, loss, and adjustments to income (included in the fiduciary’s share of total income on line 1) that have their source in the other state. Generally they have their source in the other state if they are taxable or deductible under the other state’s tax laws. Disregard any adjustment to the fiduciary’s total federal income allowed or required by the other state’s tax laws.

Line 6

Enter the amount of the income tax less any income tax credits (except withholding and estimated tax) shown on the other state’s income tax return. If the fiduciary also paid income tax to a local jurisdiction in the other state, include the income tax shown on the local jurisdiction’s income tax return (or, if applicable, the other state’s return).

Specific line instructions for page 1 of Form 38, lines 1-17

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

Line 2

Credit for income tax paid to another state or local jurisdiction

A fiduciary for a resident estate or trust may be eligible for a credit if the fiduciary pays income tax to another U.S. state, the District of Columbia, a U.S. territory, or any of their local jurisdictions, on income that is also taxed to the fiduciary in North Dakota. See the instructions to Schedule CR on this page. **Attach a copy of the income tax return filed with the other state and/or local jurisdiction.**

Line 3

Other credits

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

Renaissance zone historic property preservation tax credit. Enter on this line the amount from Schedule RZ, Part 7, line 4. **Attach Schedule RZ.**

Renaissance fund organization investment tax credit. Enter on this line the amount from Schedule RZ, Part 7, line 5. **Attach Schedule RZ.**

Renaissance zone nonparticipating property owner tax credit. Enter on this line the amount from Schedule RZ, Part 7, line 6. **Attach Schedule RZ.**

Seed capital investment tax credit. If the estate or trust invested in a qualified business for purposes of the seed capital investment tax credit, as evidenced by receipt of a Qualified Seed Capital Business Investment Reporting Form, multiply the total amount invested during the 2016 tax year by 45% and enter the result on this line.

Ag commodity investment tax credit. If the estate or trust invested in a qualified business for purposes of the agricultural commodity processing facility investment tax credit, as evidenced by receipt of an Ag Commodity Processing Facility Investment Reporting Form, multiply the total amount invested during the 2016 tax year by 30% and enter the result on this line.

Biodiesel or green diesel fuel blending tax credit. A North Dakota-licensed fuel supplier may be eligible for a tax credit for blending biodiesel or green diesel fuel. See N.D.C.C. § 57-38-01.22.

Biodiesel or green diesel fuel sales equipment tax credit. A North Dakota-licensed fuel seller may be eligible for a tax credit for adapting or adding equipment to its facility to enable it to sell biodiesel or green diesel fuel. See N.D.C.C. § 57-38-01.23.

Geothermal energy device tax credit. An estate or trust may be eligible for a tax credit for installing a geothermal energy device on or after January 1, 2009, and before January 1, 2015, on property it owns or leases in North Dakota. See N.D.C.C. § 57-38-01.8.

Employer internship program tax credit. A tax credit is allowed for hiring an eligible college student under a qualifying North Dakota internship program. See N.D.C.C. § 57-38-01.24.

Microbusiness tax credit. A tax credit is allowed to a business certified as a microbusiness by the North Dakota Commerce Department that purchases additional tangible personal property and/or hires additional employees. See N.D.C.C. § 57-38-01.27.

Research expense tax credit. A tax credit is allowed for conducting qualified research in North Dakota. See N.D.C.C. § 57-38-30.5.

Endowment fund tax credit. A tax credit is allowed for making a charitable contribution to a qualified endowment fund in North Dakota. The credit is equal to 40% of the contribution, up to a maximum credit of \$10,000. The allowable credit must be apportioned to the estate or trust and its beneficiaries based on the amount of income allocable to the estate or trust and its beneficiaries. The estate or trust must increase its North Dakota taxable income by the amount of the contribution on which its portion of the credit is based, but only to the extent the contribution reduced the federal taxable income of the estate or trust. The estate or trust may carry over any unused part of its apportioned share of a 2016 credit to the following 3 tax years. See N.D.C.C. § 57-38-01.21. **Attach copy of a receipt or other documentation from the fund stating that it is a qualified endowment fund under N.D.C.C. § 57-38-01.21.**

Workforce recruitment tax credit. A tax credit is allowed for employing extraordinary recruitment methods to hire an employee to fill a hard-to-fill position in North Dakota. See N.D.C.C. § 57-38-01.25.

Credit for wages paid to a mobilized employee. Enter on this line the amount from Schedule ME, line 13. **Attach Schedule ME.**

Angel fund investment tax credit. A tax credit is allowed for making a qualified investment in a North Dakota angel fund, as evidenced by the receipt of an Angel Fund Investment Reporting Form. See N.D.C.C. § 57-38-01.26.

Housing incentive fund tax credit. A tax credit is allowed under N.D.C.C. § 57-38-01.32 for making a qualified contribution to the North Dakota Housing Incentive Fund. Enter on this line the credit amount shown on the credit certificate received from the North Dakota Housing Finance Agency.

Automation tax credit. A tax credit is allowed under N.D.C.C. § 57-38-01.33 to a primary sector business for purchasing new or used automation machinery or equipment. Application must be made to the North Dakota Commerce Department for approval of the purchases. Enter on this line the amount of the credit shown on the credit approval letter received from the Office of State Tax Commissioner.

Nonprofit private school tax credits. Tax credits are allowed under N.D.C.C. § 57-38-01.7 for making charitable contributions to qualifying nonprofit private primary, secondary, and higher education schools located in North Dakota. A separate credit is allowed for each of the three categories of school—primary, secondary, and higher education. For each category of school, the credit equals 50% of the contributions made to all eligible schools within the category. *(Note: Except for a beneficiary that is a partnership or other passthrough entity, additional limitations on the allowable credit apply at the beneficiary level.)* The estate or trust may elect, on a contribution by contribution basis, to treat the contribution as having been made during the 2016 tax year if it is made on or before the due date, including extensions, for filing the 2016 Form 38. **For a list of the eligible schools within each of the three categories of schools, see the table on page 13 of this booklet.**

To qualify, a contribution must be made directly to, or specifically designated for the exclusive use of, a qualifying school. If a contribution is made to an account or fund that benefits both qualifying and nonqualifying schools, the contribution will qualify only if the donor specifically designates it for the exclusive use of a qualifying school and the account or fund separately accounts for the funds on behalf of the qualifying school. The donor must obtain a statement from the administrator of the account or fund that identifies the qualifying school and shows the amount contributed to it.

If a contribution is made to a qualifying school that provides education in one or more grades in both the primary school category (kindergarten through 8th grades) and the secondary school category (9th through 12th grades), a separate credit is allowed for the portion of the contribution designated for the exclusive use of each school category. The donor must obtain a statement from the qualifying school that identifies the qualifying school and shows the amount contributed to each category of school. If the donor does not obtain a statement showing how the contribution is allocated to each category of school, one-half of the total contribution will be deemed to have been made to each category of school.

A credit based on a contribution made by an estate or trust must be passed through to its beneficiaries according to their respective interests in the estate or trust. If an estate or trust receives a North Dakota Schedule K-1 showing a nonprofit private primary school, high school, or college credit, for each type of credit received enter the lesser of (1) the credit from the North Dakota Schedule K-1, (2) 20% of the tax on Form 38, page 1, line 1, or (3) \$2,500.

Line 8 Income tax withholding

Enter the North Dakota income tax withholding shown on a 2016 Form W-2, Form 1099, or North Dakota Schedule K-1. Also enter North Dakota income tax withholding shown on a 2015 North Dakota Schedule K-1 if the tax year of the partnership, S corporation, estate, or trust shown on the Schedule K-1 is a fiscal year ending in your 2016 tax year. Be sure the state identified on the Form W-2 or Form 1099 is North Dakota. Do not enter on this line North Dakota extraction or production taxes withheld from mineral interest income, such as an oil or gas royalty, because they are not income taxes. **Attach a copy of the Form W-2, Form 1099, or North Dakota Schedule K-1.**

Line 9 Estimated tax payment

Enter North Dakota estimated income tax paid on 2016 Forms 38-ES and 38-EXT. Also enter the amount of an overpayment from the 2015 Form 38 that was applied as an estimated tax payment for the 2016 tax year.

Line 12 Application of overpayment to 2017

If there is an overpayment on line 11, part or all of it may be applied as an estimated payment toward the 2017 tax liability. Enter on this line the amount to be applied. The amount applied may not be changed after the return is filed. If this is an amended return, do not make an entry on this line.

Line 14 Tax due

A tax due must be paid in full with the return when it is filed. See the instructions to line 16 for payment options. A late payment of tax may be subject to penalty and interest charges—see “Penalty and interest” on page 3.

Line 15**Penalty and interest**

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

Line 16**Balance due**

The balance due must be paid in full with the return. The payment may be made electronically in one of the following ways.

- **Online**—A payment may be made online with a debit or credit card or electronic check. North Dakota contracts with a national payment service to provide this option. There is a fee for this service, none of which goes to the State of North Dakota.
- **Electronic funds transfer**—A payment may be made by means of an Automated Clearing House (ACH) credit transaction that the taxpayer initiates through its banking institution.

For more information and to make an electronic payment, go to our website at www.nd.gov/tax.

If paying by check or money order, make it payable to “ND State Tax Commissioner,” and write the last four digits of the federal employer identification number and “2016 Form 38” on the check or money order. A check must be drawn on a U.S. or Canadian bank, be in U.S. dollars, and use a standard 9-digit routing number. A check drawn on a foreign bank (except one in Canada) cannot be accepted.

Line 17**Interest on underpaid estimated tax**

If the fiduciary for an estate or trust was required to pay estimated North Dakota income tax for 2016, but the fiduciary did not pay enough or paid it late, interest is charged on the underpayment or late payment. To determine if interest is owed, obtain and complete Schedule 38-UT.

Instructions for completing Schedule K-1

North Dakota Schedule K-1 (Form 38) must be used to provide beneficiaries with information they will need to complete a North Dakota income tax return. The information to be included in the schedule will depend on the type of beneficiary.

Grantor trust. For purposes of completing Schedule K-1 (Form 38), “beneficiary” includes the owner(s) of a grantor trust.

North Dakota Schedule K-1 (Form 38) must be completed and given to:

- each beneficiary to whom the fiduciary distributes a share of a North Dakota adjustment or tax credit (which is reportable in Part 3 of North Dakota Schedule K-1), or
- each nonresident individual, estate, or trust beneficiary for which the fiduciary is required to report an amount on Schedule BI, Column 5.

A North Dakota Schedule K-1 does not have to be provided to a partnership, corporation, or North Dakota resident individual, estate, or trust beneficiary if there are no North Dakota adjustments or tax credits distributable to the beneficiary.

In addition to the North Dakota Schedule K-1, the fiduciary must provide the beneficiary with a copy of the *Beneficiary's Instructions to North Dakota Schedule K-1 (Form 38)*.

A copy of all North Dakota Schedule K-1 forms must be enclosed with Form 38 along with any required supplemental statements.

Amended schedule. If a fiduciary files an amended Federal Form 1041, or if the IRS makes any changes to the federal fiduciary return, the fiduciary must file an amended Form 38 for the same tax year and issue amended North Dakota Schedules K-1 to its beneficiaries. Fill in the “Amended” circle at the top of the North Dakota Schedule K-1.

Final schedule. Fill in the “Final” circle at the top of the North Dakota Schedule K-1 if it is the last one that the fiduciary is required to issue to a beneficiary.

Part 2**Beneficiary information****Item F**

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

Item G

If the beneficiary is an individual, estate, or trust, fill in the applicable circle to indicate the legal residency status of the beneficiary for North Dakota income tax purposes. If an individual beneficiary changed his or her legal residency to or from North Dakota during the tax year, check the part-year resident status. In the case of an estate or trust beneficiary, only the full-year resident or full-year nonresident status will apply.

Item H

For a nonresident beneficiary, fill in the applicable circle to indicate whether the beneficiary elected to be included in a composite filing by the fiduciary.

Part 3

All beneficiaries— North Dakota adjustments and tax credits

Complete this part for a beneficiary only if the income, deduction, or tax credit is allocated to the beneficiary.

Line 1**Federally-exempt income from non-North Dakota bonds and securities**

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

For all other beneficiaries, enter the beneficiary's share of interest and dividend income from bonds and securities that is exempt from federal income tax. Do not include income from bonds and securities of North Dakota and any of its political subdivisions.

Line 2**State and local income taxes**

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

For all other beneficiaries, enter the portion of any state or local income taxes deducted in calculating ordinary income (loss) that was allocated to the beneficiary.

Line 3**Interest from U.S. obligations**

Enter the portion of any interest from U.S. obligations allocated to the beneficiary. Include interest income from other securities if the interest is specifically exempted from state income tax by federal statute. Also include the portion of dividend income from a mutual fund attributable to the fund's investment in the same kinds of securities.

Line 4**Renaissance zone income exemption**

If the estate or trust qualified for the renaissance zone business or investment income exemption (see instructions to the Tax Computation Schedule, Part 1, line 4d), enter on the appropriate line the portion of the exemption amount allocated to the beneficiary. This applies only if the income qualifying for the exemption is allocated to the beneficiary.

Line 4a. Enter the income exemption amount on this line only if it relates to a zone project approved *before August 1, 2013*.

Line 4b. Enter the income exemption amount on this line only if it relates to a zone project approved *after July 31, 2013*.

Line 5**New or expanding business income exemption**

If the estate or trust qualified for the new or expanding business income exemption (see instructions to the Tax Computation Schedule, Part 1, line 4d), enter on this line the portion of the exemption amount allocated to the beneficiary. This applies only if the income qualifying for the exemption is allocated to the beneficiary.

Line 6**College SAVE deduction**

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

Lines 7 through 24**Tax Credits**

If the estate or trust qualified for one or more North Dakota income tax credits (see instructions to Form 38, page 1, line 3), enter the portion of the credit allocated to the beneficiary on the corresponding line. For line 17 (endowment fund tax credit) and line 20 (HIF tax credit), also enter the amount of the contribution on which the beneficiary's share of the tax credit is based.

Part 4**Nonresident individual, estate, or trust beneficiary only—North Dakota income (loss)**

Complete Part 4 for a nonresident individual, estate, or trust beneficiary. Enter on the corresponding line of Part 4, lines 25 through 35, each item of North Dakota income, gain, loss, deduction, etc., included in the amount reported on Form 38, Schedule BI, Column 5.

Part 5**Nonresident beneficiary only**

Complete Part 5 for a nonresident beneficiary for which an amount was required to be entered on Form 38, Schedule BI, Column 5.

Line 36**ND distributive share of income (loss)**

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

Line 37**ND income tax withheld**

Enter the amount of North Dakota income tax withheld from the nonresident beneficiary's North Dakota distributive share of income from Form 38, Schedule BI, Column 6.

Line 38**ND composite income tax**

Enter the amount of North Dakota composite income tax on the nonresident beneficiary's North Dakota distributive share of income from Form 38, Schedule BI, Column 7.

Before you file Form 38

Signatures

The return must be signed and dated by the fiduciary, or an authorized representative of the fiduciary.

If the fiduciary pays someone (other than an employee) to prepare the return, the paid preparer also must sign and date the return.

Preparer authorization check-off

An estate or trust may authorize the North Dakota Office of State Tax Commissioner (Tax Department) to discuss matters pertaining to its 2016 Form 38 with the preparer who signed it by filling in the circle to the right of the signature area.

This allows the Tax Department to contact the preparer if any questions arise during the processing of the return. It also allows the preparer to respond to the questions and to provide any information missing from the return, to contact the Tax Department to inquire about the status of the return's processing and related refund or payment, and to respond to Tax Department notices that the fiduciary shares with the preparer pertaining to math errors or return preparation. *(Tax Department notices will be sent only to the fiduciary.)*

This authorization applies only to the individual whose signature and printed name appears in the paid preparer section of the signature area. It does not apply to the firm, if any, shown in that section. It only applies to the 2016 return and automatically expires on the due date (including extensions) for filing the 2017 Form 38.

This authorization does not authorize the preparer to receive a refund check, bind the fiduciary in any way (including any additional tax liability), or represent the fiduciary before the Tax Department for any other purpose.

Assembling a paper return

Please assemble Form 38 and its required attachments in the following order:

1. Form 38.
2. Tax Computation Schedule
3. Schedule BI.
4. North Dakota Schedule K-1 forms.
5. Required supporting statements.
6. Complete copy of Form 1041, including Federal Schedule K-1 forms.

A balance due may be paid electronically (see page 11 of these instructions). If paying by check or money order, enclose it with the return. Do not staple documents together.

Qualified nonprofit private schools
(for nonprofit private school tax credits on Form 38, page 1, line 3)

For purposes of the nonprofit private school tax credits on Form 38, page 1, line 3, the following lists the qualifying schools in each school category. (Note: These lists are subject to change.)

Primary Schools (Grades K through 8)

Academy for Children (Fargo)	Nativity Elementary School (Fargo)
Anne Carlsen Center (Jamestown)	New Testament Baptist Christian School (Larimore)
Bishop Ryan Catholic School (Minot)	Oak Grove Lutheran Elementary School (Fargo)
Brentwood Adventist Christian School (Bismarck)	Ojibwa Indian School (Belcourt)
Cathedral of the Holy Spirit Elementary School (Bismarck)	Our Redeemer's Christian School (Minot)
Children's Montessori Center (Fargo)	Prairie Learning Education Center (Raleigh)
Christ the King Elementary School (Mandan)	Prairie Voyager Adventist School (Grand Forks)
Dakota Memorial School (Minot)	Red River Adventist Elementary School (Fargo)
Dakota Montessori School (Fargo)	Shanley High-Sullivan Middle School (Fargo)
Dickinson Adventist Christian School (Dickinson)	Shiloh Christian School (Bismarck)
Dickinson Trinity Jr/High School (Dickinson)	St Alphonsus Elementary School (Langdon)
Forest River School (Fordville)	St Anne Elementary School (Bismarck)
Grace Lutheran Elementary School (Fargo)	St Ann's Catholic School (Belcourt)
Grand Forks Montessori Academy (Grand Forks)	St Bernard Mission School (Fort Yates)
Hillcrest SDA School (Jamestown)	St Catherine Elementary School (Valley City)
Holy Family – St. Mary's Elementary School (Grand Forks)	St John's Academy (Jamestown)
Holy Spirit Elementary School (Fargo)	St John's Elementary School (Wahpeton)
Hope Christian Academy (Dickinson)	St Joseph Elementary School (Mandan)
Johnson Corners Christian Academy (Watford City)	St Joseph Elementary School (Devils Lake)
Light of Christ 7th and 8th Grade Academy (Bismarck)	St Joseph's Elementary School (Williston)
Little Flower Elementary School (Rugby)	St Mary's Elementary School (Bismarck)
Martin Luther School (Bismarck)	St Michael's Elementary School (Grand Forks)
Missouri Valley Montessori School (Bismarck)	Trinity Christian School (Williston)
	Trinity Elementary East School (Dickinson)
	Trinity Elementary School (West Fargo)
	Trinity Elementary West School (Dickinson)
	Victory Christian School (Jamestown)

High Schools (Grades 9 through 12)

Anne Carlsen Center (Jamestown)	New Testament Baptist Christian School (Larimore)
Bishop Ryan Catholic School (Minot)	Oak Grove Lutheran High School (Fargo)
Dakota Adventist Academy (Bismarck)	Our Redeemer's Christian School (Minot)
Dakota Memorial School (Minot)	Prairie Learning Education Center (Raleigh)
Dickinson Trinity Jr/High School (Dickinson)	Shanley High-Sullivan Middle School (Fargo)
Hope Christian Academy (Dickinson)	Shiloh Christian School (Bismarck)
Johnson Corners Christian Academy (Watford City)	St Mary's Central High School (Bismarck)
	Trinity Christian School (Williston)

Colleges (Education above 12th grade)

- Jamestown College (Jamestown)
- Trinity Bible College (Ellendale)
- United Tribes Technical College (Bismarck)
- University of Mary (Bismarck)
- ND Independent College Fund (Bismarck)