



2021
NORTH DAKOTA
FIDUCIARY INCOME TAX
FORM 38

Includes: Form 38 (Pages 1-3)
Schedule K-1

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ND Tourism

Tax forms, guidelines, FAQs, and more
are available at www.nd.gov/tax.

Email questions to individualtax@nd.gov.

ND 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-TC	Tax credits
Form 38-EXT	Fiduciary extension payment voucher
Schedule 38-UT	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.

Need help?

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

www.nd.gov/tax

Email

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

Walk-in or appointment service

State Capitol Building, 8th Floor
600 E. Boulevard Ave., Bismarck, ND

Monday through Friday
8:00 a.m. to 5:00 p.m.
(except holidays)

Walk-ins are welcome. To assure availability and promptness of service, call in advance to make an appointment.

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.

Taxpayer Bill of Rights

Obtain a copy of the North Dakota Taxpayer Bill of Rights on the Office of State Tax Commissioner's website at www.nd.gov/tax

Changes affecting estates and trusts

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

New Form 38 e-filing requirement

House Bill 1082 passed by the 2021 North Dakota Legislature requires a partnership, S corporation, trust, or other passthrough entity with 10 or more owners (or beneficiaries, if a trust) to file its North Dakota income tax return and pay any tax due on it by electronic means. This new requirement applies to returns filed for tax years 2022 and after; it does not apply to the 2021 tax year. For more information about electronic filing of the North Dakota partnership return (Form 58), S corporation return (Form 60), or fiduciary return (Form 38), go to www.nd.gov/tax and click on For Businesses>E-File.

Change to e-filing requirement for W-2s and 1099s

House Bill 1082 passed by the 2021 North Dakota Legislature changed the law governing the electronic filing of Forms W-2 and 1099 by businesses. For calendar years 2019 through 2021, businesses that are required to file Forms W-2 and 1099 must file them electronically if filing 10 or more. Starting with Forms W-2 and 1099 filed for the 2022 calendar year, which are due January 31, 2023, all Forms W-2 and 1099 must be filed electronically.

Electronically filing these forms can easily be done in one of the following ways:

- **Taxpayer Access Point (TAP)**
File them online through the Office of State Tax Commissioner's website by going to ND TAP and following the instructions. If a business does not already have a TAP account, select "Sign Up For Access."
- **Third-party accounting software**
A business may be able to electronically file Forms W-2 and 1099 with North Dakota through a third-party software, such as Quickbooks. A business should check its accounting software or contact the accounting software provider to see if it provides this feature.

For questions and assistance, contact the Office of State Tax Commissioner by

sending an email to withhold@nd.gov or calling 701-328-1248.

Changes to employer withholding return and payment requirements

House Bill 1082 passed by the 2021 North Dakota Legislature made the following changes affecting the income tax withholding return and payment requirements for employers:

- Effective for calendar years 2022 and after, an employer may file Form 306, Income Tax Withholding Return, on an annual basis instead of quarterly if the amount of North Dakota income tax withheld in the previous calendar year was less than \$1,000. This is a \$500 increase in the threshold applicable to calendar years before 2022.
- Effective for calendar years 2022 and after, Form 306, Income Tax Withholding Return, and the tax due on it must be submitted electronically on a quarterly basis if the amount of North Dakota income tax withheld in the previous calendar year was \$1,000 or more.

For questions and assistance, contact the Office of State Tax Commissioner by sending an email to withhold@nd.gov or by calling 701-328-1248.

2-year extension of 2019 changes to disabled employment credit

In 2019, the North Dakota Legislature expanded the income tax credit for hiring a qualifying developmentally disabled or mentally ill individual. Eligibility for the credit was extended to all taxpayers (not just C corporations), the credit rate was increased from 5% to 25%, and the wages on which the credit is allowed was changed from the first \$6,000 paid in the first 12 months of employment to the first \$6,000 paid annually. The 2019 changes were effective only for the 2019 and 2020 tax years.

House Bill 1405 passed by the 2021 North Dakota Legislature reinstated the 2019 changes for two additional tax years—2021

and 2022—after which the changes will expire, and the law will revert to how it read prior to 2019.

To qualify for the credit, an employer must apply for and obtain from the North Dakota Department of Human Services, Vocational Rehabilitation Division, a letter certifying that the individual has a severe developmental or mental disability, is eligible for the agency's services, and requires customized or supported employment to become employed. See Schedule 38-TC, line 19.

Permanent extension of 2019 changes to nonprofit private school credits

In 2019, the North Dakota Legislature expanded the income tax credits for making a contribution to nonprofit private primary schools, high schools, and colleges in North Dakota. Eligibility for the credit was extended to individuals who make direct contributions (under pre-2019 law, individuals could only claim the credits if received from an estate, trust or other passthrough entity). In addition, the amount of the tax liability that could be reduced by the credits was increased from 20% to 25%. The 2019 changes were effective only for the 2019 and 2020 tax years.

House Bill 1137 passed by the 2021 North Dakota Legislature reinstated the 2019 changes on a permanent basis, making them effective for tax years 2021 and after. In addition, the amount of the tax liability that may be reduced by the credits was increased from 25% to 50%. See Schedule 38-TC, lines 15, 16 and 17.

Staying on top of developments

Businesses or other interested persons may sign up to receive email notifications when a newsletter or other important information is issued by the Office of State Tax Commissioner. There is a separate update list for each tax type administered by the Tax Commissioner. To sign up, go to www.nd.gov/tax and click on "Subscribe" under "Email Updates" in the lower left-hand side of the web page.

Form 38 Instructions

2021

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 2021 Form 38, *Fiduciary Income Tax Return*, if the fiduciary is required to file a 2021 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 2021 Form 38, *Fiduciary Income Tax Return*, if both of the following apply:

- The fiduciary is required to file a 2021 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 2021 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 2021 Form 38, *Fiduciary Income Tax Return*, if the grantor is required to file a 2021 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 2021 Form 38 if (1) the fiduciary is required to file a 2021 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 2021 Form 38 for a bankruptcy estate must file it in a manner similar to how the 2021 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.

Disaster recovery tax exemptions

Exemptions from state and local tax filing and payment obligations are available to out-of-state businesses and their employees who are in North Dakota on a temporary basis for the sole purpose of repairing or replacing natural gas, electrical, or telecommunication transmission property that is damaged, or under threat of damage, from a state- or presidentially-declared disaster or emergency. For more information, go to www.nd.gov/tax.

When and where to file

The 2021 Form 38 must be filed on or before (1) April 15, 2022, if filing for the 2021 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 2021 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 2020 Form 38 if filing for a fiscal year beginning in the 2020 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 2021 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) estate's or trust's FEIN; (3) fiduciary's name, address and phone number; and (4) statement that the payment is a 2021 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 all of the tax due is not paid by the due date (or extended date), a penalty equal to 5% of the unpaid 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), and there is an unpaid tax due on it, a penalty equal to 5% of the unpaid tax due or \$5.00, whichever is greater, for the month the return was due plus 5% of the unpaid 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 return's due date.

Estimated tax requirement (for 2022)

A fiduciary for an estate or trust must pay estimated North Dakota income tax for the 2022 tax year if all four of the following conditions apply:

1. The fiduciary is required to pay estimated federal income tax for the 2022 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 2021 tax year (as shown on the 2021 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 2021 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 2022 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 2022 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 2022 tax year. *Note: Substitute 66 2/3% if a qualified farmer. See instructions for 2022 Form 38-ES.*
 - b. 100% of the North Dakota net income tax liability on fiduciary's taxable income for the 2021 tax year (as shown on the 2021 Form 38, page 1, line 4). *Note: If the estate or trust was not in existence for the entire 2021 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 2022 tax year must be paid by April 15, June 15, and September 15, 2022, and January 15, 2023. For more information, including payment options, obtain the 2022 Form 38-ES.

Withholding from nonresident beneficiary

If a trust is required to file Form 38, the 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.

Nonresident beneficiary. For this purpose, a nonresident beneficiary is defined as:

- 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.

A nonresident beneficiary includes the grantor of a grantor trust if the grantor meets the definition of a nonresident beneficiary.

Exemption from withholding. This withholding requirement does not apply to a nonresident beneficiary if:

- the beneficiary's distributive share of North Dakota income is less than \$1,000,
- the beneficiary elects to include the distributive share of North Dakota income in a composite filing (see "Composite filing" on this page), 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. 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 and pays the tax with Form 38. The tax is calculated at the highest individual income tax rate (which is 2.90% for the 2020 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 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. A nonresident beneficiary (as defined under "Withholding from nonresident beneficiary" on page 3) is eligible to be included in a composite filing if both of the following apply:

- The beneficiary'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 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 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 2021 return" below.

If a fiduciary paid too much tax because of an error on the 2021 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 2021 return

1. Obtain a blank 2021 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 2021 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 2021 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 guideline *Income Tax Withholding* and see "Annual Filing Requirements—W-2 and 1099."

Disclosure notification

Upon written request from the chairman of a North Dakota legislative standing committee or Legislative Management, the law requires the Office of State Tax Commissioner to disclose the amount of any deduction or credit claimed on a tax return. Any other confidential information, such as a taxpayer's name or federal employer identification number, may not be disclosed.

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 6 of these instructions.
4. Complete Schedule BI on page 3 of Form 38—see page 8 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 10 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 2021 Form 38 if the estate's or trust's taxable year began in the 2021 calendar year. *Note: Use the 2020 Form 38 if the taxable year began in the 2020 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 2021 Form 38 only if the estate's or trust's tax year began in the 2021 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. If filing an amended return, enter the most current address.

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 *only if* (1) the trust has one or more nonresident beneficiaries eligible to be included in a composite filing and (2) *all* of them 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 2021 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 3 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 net amount of 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. If the net amount is a loss, enter as a negative number.
- Amount of contribution on which the fiduciary claims a North Dakota endowment fund tax credit under N.D.C.C. § 57-38-01.21, but only to the extent the contribution reduced the fiduciary's federal taxable income. If a fiduciary receives the credit 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 U.S. obligations or federally-exempted securities.

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

Worksheet for calculating net long-term capital gain exclusion

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

- Enter amount from 2021 Schedule D (Form 1041), line 18a, column (2).
If zero or less, stop here; no exclusion is allowed **1** _____
- Enter amount from 2021 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 2021 Schedule D (Form 1041), line 17, column (2) **4a** _____
 - North Dakota net long-term capital gain (loss) included on 2021 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** _____

not eligible for the exclusion. Complete the worksheet on page 6 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, page 1, line 2b(2).

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, page 1, 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

Enter the following items on this line to the extent they are 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.
- 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 statement received from the entity.**
- Income exempted under N.D.C.C. ch. 40-63 (Renaissance Zone Act). **Attach Schedule RZ. Also see "Property tax clearance" below.**
- Income exempted under N.D.C.C. ch. 40-57.1 (new or expanding business income exemption). **Attach supporting statement showing calculation. Also see "Property tax clearance" below.**

- 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.

Also enter on this line 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.

Property tax clearance. If a renaissance zone income exemption or a new or expanding business income exemption is claimed on this line, the fiduciary must attach the following to Form 38:

- A statement in which the fiduciary states whether or not the estate or trust holds a 50 percent or more interest in real property in North Dakota. If it does, the fiduciary must also provide in the statement the name of each North Dakota county in which the estate or trust holds a 50 percent or more interest in real property.
- A copy of a property tax clearance record obtained from each North Dakota county in which the estate or trust holds a 50% or more interest in real property. This may be obtained by completing the form *Property Tax Clearance Record* available on the Office of State Tax Commissioner's website.

Instructions for Part 2

All estates and trusts—Enter the amounts from the 2021 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

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 apportionable and allocable 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 apportionable and allocable 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 additional Schedule BI forms. 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. For this purpose, a nonresident beneficiary is defined as:

- 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.

A nonresident beneficiary includes the grantor of a grantor trust if the grantor meets the definition of a nonresident beneficiary.

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" 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)

A credit is allowed to a resident estate or trust for income tax paid to another state or local jurisdiction on income that is also taxable by North Dakota.

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. This includes an estate's or trust's share of income tax paid on a composite return filed by a partnership or other passthrough entity in which the estate or trust owns an interest. 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

For other credits that may apply, see Schedule 38-TC and its instructions. Enter on this line the total credits retained by the estate or trust from Schedule 38-TC, line 21a. ***Do not include on this line any credit(s) allocated to the beneficiaries. Attach Schedule 38-TC.***

Line 8

Income tax withholding

Enter the North Dakota income tax withholding shown on a 2021 Form W-2, Form 1099, or North Dakota Schedule K-1. Also enter North Dakota income tax withholding shown on a 2020 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 2021 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 2021 Forms 38-ES and 38-EXT. Also enter the amount of an overpayment from the 2020 Form 38 that was applied as an estimated tax payment for the 2021 tax year.

Line 12

Application of overpayment to 2022

If there is an overpayment on line 11, part or all of it may be applied as an estimated payment toward the 2022 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 an electronic check or a debit or credit card. The electronic check option is free. North Dakota contracts with a national payment service to provide the debit or credit card option. There is a fee for the debit or credit option, none of which goes to the State of North Dakota. To pay online, go to www.nd.gov/tax/payment.

- **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, go to our website at www.nd.gov/tax.

If paying with a paper check or money order, complete a 2021 Form 38-PV payment voucher and enclose it with the payment. Make the check or money order payable to “ND State Tax Commissioner,” and write the last four digits of the federal employer identification number and “2021 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 2021, 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.

For purposes of completing Schedule K-1 (Form 38), a beneficiary includes an owner 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 Form 38, the fiduciary must issue amended North Dakota Schedule K-1 forms 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 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 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 21
Tax credits
 If the estate or trust qualified for a North Dakota income tax credit (see instructions to Form 38, page 1, line 3), and part or all of the credit was allocated to its beneficiaries, enter the beneficiary's share of the credit on the applicable line.

Line 14a. Enter on this line the beneficiary's share of an endowment fund tax credit from Schedule 38-TC, line 12a.

Line 14b. Enter on this line the beneficiary's share of a contribution amount from Schedule 38-TC, line 12b.

Line 14c. Enter on this line the beneficiary's share of an endowment fund tax credit (ND Schedule K-1) from Schedule 38-TC, line 12c.

Line 14d. Enter on this line the beneficiary's share of a contribution amount (ND Schedule K-1) from Schedule 38-TC, line 12d.

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 22 through 32, 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 all nonresident beneficiaries for which an amount was required to be entered on Form 38, Schedule BI, Column 5.

Line 33
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 34
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 35
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
 A fiduciary may authorize the North Dakota Office of State Tax Commissioner (Tax Department) to discuss matters pertaining to the 2021 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 2021 return and automatically expires on the due date (including extensions) for filing the 2022 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. Schedule 38-TC
5. All other required North Dakota schedules and forms (except North Dakota Schedule K-1 forms).
6. North Dakota Schedule K-1 forms.
7. Required supporting statements.
8. Complete copy of Form 1041, including Federal Schedule K-1 forms.

A balance due may be paid electronically (see page 10 of these instructions). If paying with a paper check, enclose the check and a Form 38-PV payment voucher with the return.