

Who must use this form

This form must be used to report the transfer of the research income tax credit under N.D.C.C. § 57-38-30.5.

There are eligibility and reporting requirements that must be satisfied before the credit may be transferred to another taxpayer—see "Transfer eligibility and reporting requirements" below for details.

This form must be completed jointly by the taxpayer transferring the credit (transferor) and the taxpayer receiving the credit (transferee).

Transfer eligibility and reporting requirements

A taxpayer that is certified as a qualified research and development company by the North Dakota Commerce Department's Division of Economic Development and Finance (ED&F) may elect to transfer the research income tax credit.

For more information about certification as a qualified research and development company, go to ED&F's website at www.business.nd.gov, or call 701-328-5300.

A partnership, S corporation, or a limited liability company (LLC) treated like a partnership or S corporation is not eligible to transfer the research income tax credit. An LLC is eligible to transfer the credit if it is:

- treated like a "C" corporation for income tax purposes, or
- treated as a disregarded entity and is owned by an individual, estate, trust, or "C" corporation.

The transfer is subject to the following conditions:

- A taxpayer may transfer no more than \$100,000 of credits over the taxpayer's lifetime.
- If the credit is transferred for value, the entire gross proceeds must be assigned to North Dakota by the transferor for income tax purposes—see "Reporting of gross proceeds by transferor" later in these instructions for more information.

- The first tax year in which the transferee must claim the credit is the tax year in which the transfer (or purchase) agreement is executed. If the entire credit cannot be used in the first tax year, the unused credit may be carried over to subsequent tax years, limited to the number of carryover tax years still available to the transferor at the time of the transfer. A transferee may not carry an unused credit back to any prior tax year.
- The transferee may not transfer the credit to another taxpayer.

Reporting of gross proceeds by transferor

In general, a transfer of a state income tax credit for value is a taxable sale of property, and the gross proceeds are includable in gross income for federal income tax purposes. See, for example, *Tempel, George H.*, 136 TC No. 15 (2011) and IRS Chief Counsel Advice 201147024.

If the credit is transferred for value, the entire gross proceeds from the sale are assignable to North Dakota and are subject to income tax on the transferor's North Dakota income tax return. No part of the proceeds may be apportioned outside North Dakota, and the proceeds may not be reduced by any loss or deduction allowed for North Dakota income tax purposes. The transferor must report the gross proceeds as follows:

- If the transferor is an individual, report the proceeds on Schedule ND-1CS.
- If the transferor is a C corporation, report the proceeds on the applicable line of Form 40.
- If the transferor is an estate or trust, contact the Office of State Tax Commissioner for instructions.

Change in amount of transferred credit

The tax commissioner has four years after the date the transfer (or purchase) agreement is executed in which to audit the returns of the transferor and transferee to verify the correctness of the transferred credit and assess any tax due; however, this does not limit any other statutory time period for assessment that has not expired.

If the credit amount calculated by the transferor is changed as a result of an amended return or audit, the transferor must inform the transferee about the revised credit amount within 30 days of filing the amended return or the final audit determination. Subject to the statutory time periods, the transferee must file an amended return for each affected tax year to pay any additional tax due or to claim a refund resulting from the changed credit. Notwithstanding the statutory time periods for assessment or refund that apply to the transferee, the Office of State Tax Commissioner may audit the amended returns and either assess tax due or issue a refund.

How to complete this form

The transferor must complete Part 1 and the transferee must complete Part 2 of Form CTS.

SSN or FEIN

Enter the social security number or federal employer identification number that will be used on the taxpayer's North Dakota income tax return.

Type of taxpayer

Fill in the applicable circle to indicate the type of taxpayer. If the taxpayer is a limited liability company (LLC) that is treated like a disregarded entity for income tax purposes, enter the name and social security number or FEIN of the LLC's owner. (**Note:** In Part 1 of the form, identify the owner of an LLC treated like a disregarded entity only if the owner is an individual, estate, trust, or "C" corporation.)

Tax year credit was earned

Enter the tax year in which the credit was earned by the transferor.

If more than one year's credit is being transferred, attach a statement listing each year and the amount of each year's credit that is being transferred.

Amount of credit transferred

Enter the portion of the total allowable credit that is being transferred.

If more than one year's credit is being transferred, attach a statement listing each year and the amount of each year's credit that is being transferred.

Date of transfer

Enter the date on which the transfer (or purchase) agreement was executed.

Gross proceeds received

If the credit was transferred for value, enter the total gross proceeds received (or to be received). See "Reporting of gross proceeds by transferor" earlier in these instructions for more information.

Signatures and confidentiality waiver

Both the transferor and the transferee must sign Form CTS. Their signatures on the form constitute their authorization of the Office of State Tax Commissioner to disclose to either party information contained in their respective North Dakota income tax returns that is considered necessary to administer the tax credit and its transfer. This confidentiality waiver is a required condition for eligibility to transfer the credit.

Filing instructions

The following documents must be attached to Form CTS:

- A copy of the transfer (or purchase) agreement executed by the transferor and transferee.
- A copy of the letter from the North Dakota Commerce Department's Division of Economic Development and Finance certifying the transferor as a qualified research and development company.

When and where to file

The completed Form CTS and required attachment(s) must be mailed within 30 days after the date the transfer (or purchase) agreement was executed to:

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

Where to get help**Phone**

Individuals	701-328-1247
C corporations	701-328-1249
Partnerships, S corporations, trusts, and estates	701-328-1258

Speech or hearing impaired—call Relay ND at 1-800-366-6888

Email

Individuals, estates, trusts, partnerships, and S corporations—

individualtax@nd.gov

C corporations—

corptax@nd.gov

Website

tax.nd.gov