



# NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER

## GUIDELINE - INCOME TAX WITHHOLDING & INFORMATION RETURNS

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## SECTION 1: INCOME TAX WITHHOLDING FROM WAGES

- This section explains the requirements for withholding North Dakota income tax from wages paid by employers to employees.
- See Section 3 for year-end information return filing requirements.

### WITHHOLDING REQUIREMENT

An employer is subject to North Dakota's income tax withholding requirement and must register for a withholding account if both of the following apply:

- The wages are subject to federal income tax withholding.
- The employer pays wages to either (a) an employee for services performed in North Dakota or (b) a North Dakota resident for services performed outside North Dakota (including outside the United States).

**Exception for North Dakota resident working outside North Dakota.** A North Dakota-based employer does not have to withhold North Dakota income tax from wages paid to a North Dakota resident who works outside North Dakota if the employer is required to withhold another state's income tax from the wages.

Unless otherwise stated, the terms used in Section 1 of this guideline have the same meaning as defined in the Internal Revenue Code of 1986, as amended, for purposes of federal income tax withholding from wages. An "employer" includes the State of North Dakota and any of its political subdivisions. North Dakota Century Code (N.D.C.C.) §§ 57-38-01(10) and 57-38-59(1)(2)

### Nonresident alien of United States working in North Dakota

Wages paid to a nonresident alien of the United States for services performed within North Dakota are subject to North Dakota income tax withholding if they are subject to federal income tax withholding. Even if wages paid to a nonresident alien are exempt from federal income tax withholding because of an income tax treaty between the United States and a foreign country, they are subject to North Dakota income tax withholding. Unless an income tax treaty between the United States and a foreign country specifically exempts wages from taxation by a U.S. state, the treaty exemption is not recognized for North Dakota income tax purposes.

To determine the amount of North Dakota income tax to withhold from the wages paid to a nonresident alien for services performed in North Dakota, do the following:

- Complete a separate Federal Form W-4 for North Dakota withholding purposes. Write "North Dakota only— nonresident alien" at the top of the form.
- Fill in the name and address of the nonresident alien. For the address, provide the permanent address in the home country of the nonresident alien. If there is no permanent address in the home country, provide the address used in the United States.
- Fill in the social security number if one is available. If the nonresident alien does not have to obtain a social security number for any federal purpose, one does not have to be obtained just for North Dakota withholding purposes, in which case write "Not required" in the space for the social security number.
- Check the "Single" box.
- Calculate the North Dakota income tax withholding based on the Federal Form W-4 as filled out above.  
(Note: The "Exempt" status may not be claimed.)

## WAGES SUBJECT TO WITHHOLDING

Except as provided under “Exceptions” below, “wages” means any remuneration includable in wages as defined under I.R.C. § 3401 for purposes of federal income tax withholding from wages. Any payment excluded from wages under I.R.C. § 3401, such as compensation paid for domestic service in a private home, is not subject to the North Dakota withholding requirement, even if an employer and employee voluntarily agree to withhold federal income tax from the compensation. N.D.C.C. § 57-38-01(10)

### Exceptions

The following wage payments are exempt from North Dakota income tax withholding:

- Wages paid to a nonresident of North Dakota for performing regularly assigned duties in more than one state for an interstate motor, rail, air, or water carrier company, to the extent the wages are exempt from state income tax or state income tax withholding under federal interstate commerce law. See U.S. Code, title 49, sections 11502 (rail carrier), 40116(f)(2) (air carrier), 14503(a) (motor carrier), and 14503(b)(2) (water carrier).
- Wages paid to a Minnesota or Montana resident that are exempt from North Dakota income tax under reciprocity, provided the employee completes and gives a Form NDW-R, Reciprocity Exemption From Withholding For Qualifying Minnesota and Montana Residents Working in North Dakota, to the employer. (Note: Under the agreement with Minnesota, the employee must return to his or her home in Minnesota at least once every month to qualify for the exemption.) The employee must renew the exemption from withholding at the beginning of each year by completing and giving a new Form NDW-R to the employer on or before February 28. The employer is responsible for making Form NDW-R available to employees. N.D.C.C. § 57-38-59.1
- Wages paid to a Native American Indian who (1) is an enrolled member of a federally recognized Indian tribe, (2) lives on an Indian reservation, and (3) performs the services for which the wages are paid on an Indian reservation.
- Wages paid by a farmer or rancher to an employee solely for agricultural labor. N.D.C.C. § 57-38-60(10)
- Wages paid to an eligible civilian spouse of a U.S. armed forces service member for services performed in North Dakota if (1) both the civilian spouse and service member are nonresidents of the state, (2) the service member’s permanent duty station is in the state, and (3) the civilian spouse is residing and working in the state only because the civilian spouse wants to be with the service member. If a civilian spouse working in North Dakota meets these conditions, the civilian spouse may claim exemption from North Dakota income tax withholding on the North Dakota wages by completing and filing Form NDW-M with the civilian spouse’s employer. This exemption must be renewed each year by completing and filing a new Form NDW-M with the employer by January 31 of the new year. Service Members Civil Relief Act, 50 U.S.C. 4001.
- Wages paid to a nonresident of North Dakota under North Dakota’s nonresident mobile workforce exclusion. Subject to exception for certain employees, the exclusion applies if all of the following conditions are met (1) the nonresident has no other income from sources in North Dakota for the tax year; (2) the nonresident is present in North Dakota to perform employment duties for not more than twenty days during the tax year; and (3) the nonresident’s state of residence provides a substantially similar exclusion or does not impose an individual income tax, or the nonresident’s income is exempt from state taxation under the United States Constitution or federal statute. N.D.C.C. § 57-38-59.3

### **Severance pay**

Severance pay granted to an employee upon termination that is based on past services is included in wages. Severance pay to a former employee who is a North Dakota resident at the time of payment are taxable and subject to North Dakota income tax withholding whether the employer is based inside or outside North Dakota. Severance pay to a former employee who is a nonresident of North Dakota at the time of payment are taxable and subject to North Dakota income tax withholding to the extent the payment is based on past services in North Dakota. For example, if a former employee is an Arizona resident at the time of payment, and if the employee had worked in North Dakota for nine years and one year in Arizona, 90% of the payment is taxable and subject to withholding in North Dakota. N.D.C.C. §§ 57-38-03 and 57-38-04(1)

### **Voluntary withholding**

In certain cases where wages are not subject to North Dakota income tax withholding, an employee may request the employer to voluntarily withhold North Dakota income tax from the wages. If an employer agrees to voluntarily withhold North Dakota income tax for an employee's convenience, the employer must register for a North Dakota withholding account and comply with the reporting and payment requirements. N.D.C.C. § 57-38-61

## **EMPLOYER REGISTRATION**

Every employer subject to the requirement to withhold North Dakota income tax from wages paid to employees must register with the Office of State Tax Commissioner by applying for an income tax withholding account. The application is submitted through Taxpayer Access Point (TAP), the online tax filing and account access portal on the Office of State Tax Commissioner's website. North Dakota Administrative Code (N.D. Admin. Code) § 81-03-03.1-02

### **Cash deposit or bond**

If required by the Office of State Tax Commissioner, an employer must make a cash deposit or post a bond or undertaking executed by a surety company authorized to do business in North Dakota. The amount of the cash deposit, bond, or undertaking must be reasonably calculated to ensure the payment of North Dakota income tax withheld from wages by the employer. N.D.C.C. § 57-38-60(9)

### **Funds held in trust**

North Dakota income tax withheld from employees' wages are held by the employer in trust for the State of North Dakota for payment to the Office of State Tax Commissioner in the manner and at the time prescribed by law, subject to the lien provided by law. N.D.C.C. § 57-38-60(8)

### **Personal liability**

The president, vice president, secretary, or treasurer of a corporation; or the governors, managers, or members of a limited liability company (LLC); or the general partners of a limited liability limited partnership (LLLLP) who, jointly or severally, are charged with the responsibility for the filing of the withholding returns and payment of the tax due are personally liable for the failure of the business to file any return or pay any tax due. Dissolution of the business does not discharge this personal liability. N.D.C.C. §§ 57-38-60.1(1), 57-38-60.2(1), and 57-38-60.3(1)

### **Election to make cash deposit or bond or undertaking in lieu of personal liability**

The persons personally liable for the failure to file or pay may elect to not be personally liable, provided the corporation, LLC, or LLLP makes a cash deposit or posts a bond or undertaking executed by a surety company authorized to do business in North Dakota. The amount of the cash deposit, bond or undertaking must be equal to the estimated annual income tax withholding liability of the corporation, LLC, or LLLP. The business must contact the Office of State Tax Commissioner to make this election. N.D.C.C. §§ 57-38-60.1(2), 57-38-60.2(2), and 57-38-60.3(2)

### **Change in federal employer identification number (FEIN)**

If an employer's FEIN is changed for any reason, the employer must register the change by completing a new application for an income tax withholding account.

### **Payroll service provider**

If an employer contracts with a payroll service provider to manage the employer's wage withholding, filing, and payment duties, the employer must complete the appropriate part of the registration form to designate and identify the provider. The designation of the provider on the registration form will constitute the employer's consent for the Office of State Tax Commissioner to communicate directly with the provider about the employer's wage withholding returns and payments. An employer may revoke the provider designation and consent by completing and filing a new registration application in which the employer requests the revocation.

### **Closing an account**

If an employer ceases to conduct business in North Dakota or permanently ceases to pay wages subject to North Dakota withholding, the employer must notify the Office of State Tax Commissioner to close the withholding account. This can be done through Taxpayer Access Point (TAP) at [www.tax.nd.gov/tap](http://www.tax.nd.gov/tap), by letter, sending an email to [taxregistration@nd.gov](mailto:taxregistration@nd.gov), or on the final paper Form 306. Note: Form 307 (if required), Form W-2, and any Form 1099 and 1042-S reporting non-wage payments (other than oil and gas royalties) must be filed for the year the account is closed.

N.D.C.C. § 57-38-61

## **AMOUNT TO WITHHOLD**

The amount of North Dakota income tax to withhold is based on the employee's federal Form W-4 on file with the employer. There are two methods available to employers for calculating the amount to withhold—the Percentage Method and the Wage Bracket Method—which are similar to the federal income tax withholding methods. For complete details, see the separate document Income Tax Withholding Rates & Instructions at [www.tax.nd.gov/withholding](http://www.tax.nd.gov/withholding). N.D.C.C. § 57-38-59

## **REPORTING AND PAYMENT OF TAX WITHHELD**

### **FORM 306 - INCOME TAX WITHHOLDING RETURN**

Form 306, North Dakota Income Tax Withholding Return, must be filed to report and remit the amount of North Dakota income tax withheld during the period for which it is filed. Form 306 must be filed on a calendar quarter basis, or if eligible, on an annual basis—see "When to file Form 306" later in this section. Form 306 must be filed even if no wages were paid during the period covered by the return.



## FILING AND PAYMENT METHODS FOR FORM 306

Form 306 and the tax due on it must be submitted electronically if either of the following apply:

- The amount required to be withheld from wages paid during the previous calendar year is \$1,000 or more.
- The employer contracts with a third-party payroll service provider to file and remit North Dakota income tax withheld on the employer's behalf, and the third-party payroll service provider electronically files and remits the employer's withholding taxes for federal tax purposes.

If an employer can show good cause, the employer may request a waiver of the electronic filing requirement. N.D.C.C. § 57-38-60(2)

### Electronic filing and payment options

Form 306 and the tax due on it can be submitted electronically in the same transaction using either of the following two methods:

- **Taxpayer Access Point (TAP)** - If an employer has a TAP account with the Office of State Tax Commissioner, Form 306 and any tax due on it can be electronically submitted through the account. If there is a tax due, it can be paid through an ACH Debit transaction, which authorizes the Office of State Tax Commissioner to withdraw the funds from the employer's checking or savings account.

**Don't have a TAP account?** To set up a TAP account, go to [www.tax.nd.gov/tap](http://www.tax.nd.gov/tap) and click on "Sign Up For Access."

**ACH Debit block:** If an employer has placed an ACH Debit block on the employer's bank account, the employer must contact the financial institution to authorize an ACH Debit payment prior to the transaction to prevent rejection of the payment. The financial institution will need the Office of State Tax Commissioner's Customer ID number for this purpose. Use the applicable Originator ID below:

- To authorize the Office of State Tax Commissioner to debit a savings or checking account, use Originator ID number **1450309764**.
- To pay with a debit card, use Originator ID number **1621868563**.
- **ACH Credit** – If there is a tax due on Form 306, both the return and the tax due can be electronically submitted through an ACH credit transaction, which is an electronic transfer of funds from the employer's bank to the Bank of North Dakota. The employer initiates this through its own bank and is responsible for any fees to make the transfer. The ACH Credit transaction satisfies the Form 306 filing requirement.

To use this method, complete and submit Form 301-EF, ACH Credit Authorization, to the Office of State Tax Commissioner. For more information, go to [www.tax.nd.gov/tap](http://www.tax.nd.gov/tap) and click on "**Make A Payment**," then select "**ACH Credit Information**." **Note: The addenda record layout specified for "Income Tax Withholding" must be used.**

### Paper filing and payment options

Form 306 may be filed on paper **only if** an employer is not required to file it electronically or has obtained a waiver of the electronic filing requirement. Form 306 can be obtained on the Office of State Tax Commissioner's website at [www.tax.nd.gov/forms](http://www.tax.nd.gov/forms). N.D.C.C. § 57-38-60(2)

## Payment options

If filing a paper Form 306, payment of the tax due on the form can be electronically submitted through the employer's TAP account or through the Make A Payment feature on the Office of State Tax Commissioner's website at [www.tax.nd.gov/tap](http://www.tax.nd.gov/tap). If paying with a paper check, complete Part III of Form 306 and submit the check with Form 306.

## When to file Form 306

Except as provided under "Annual filing" below, Form 306 must be filed for each calendar quarter on or before the following due dates:

Calendar Quarter	Due Date
January, February and March	April 30
April, May and June	July 31
July, August and September	October 31
October, November and December	January 31 N.D.C.C. § 57-38-60(1)

## Annual filing

In lieu of filing and paying on a quarterly basis, an annual filing and payment option is available to eligible employers under which one Form 306 is filed for the entire calendar year on or before January 31 following the end of the calendar year. An employer is eligible to file an annual Form 306 for a calendar year if all the following apply:

- The employer filed Form 306 for all four quarters of the preceding calendar year.
- The employer filed and paid the full amount of North Dakota income tax due on Form 306 on or before the due date for all four quarters of the preceding calendar year.
- The total North Dakota income tax withheld by the employer during the preceding calendar year was less than \$1,000.

For eligible employers who wish to file Form 306 on an annual basis, contact the Office of State Tax Commissioner at [withhold@nd.gov](mailto:withhold@nd.gov) prior to filing the first quarter's withholding income tax return. N.D.C.C. § 57-38-60(1)

## Failure To Timely File Or Pay

If Form 306 is not filed, or if full payment is not remitted, on or before the due date, penalty and interest applies as follows:

- **Penalty**
  - Late filed return—If an original return is not filed by the due date, the penalty is 5% of the tax due or \$5.00, whichever is greater, for the month in which the return is due, plus an additional 5% for each additional month (or fraction of a month) during which the tax remains unpaid, not to exceed 25% of the tax due.
  - Late payment—If an original return is filed on or before the due date, but the full amount of tax due on it is not paid by the due date, the penalty is 5% of the tax due or \$5.00, whichever is greater.
  - Amended return—If an amended return is filed after the due date of the original return, and there is a tax due on the amended return, a penalty of 5% of the tax due on the amended return or \$5.00, whichever is greater, applies.
  - Paper return - If you meet the electronic filing requirements and do not file electronically by the due date, your return will be considered late and a late filed return penalty will apply. N.D.C.C. §§ 57-38-45(2) and 57-38-61

- **Interest**

- Interest accrues at the rate of 1% of the tax due for each month (or fraction of a month) the tax remains unpaid, starting with the month following the month in which the original return was due. This also applies to tax due on an amended return filed after the due date of the original return. N.D.C.C. §§ 57-38-45(1) and 57-38-61

### **Amended return**

An amended Form 306 can be filed electronically in TAP, or on paper if the employer is not required to file it electronically.



## SECTION 2: VOLUNTARY INCOME TAX WITHHOLDING FROM NON-WAGE PAYMENTS

- This section explains the requirements and procedures that apply if North Dakota income tax is voluntarily withheld from non-wage payments reportable on Forms 1099, 1042-S, and W-2G.
- See Section 3 of this guideline for the requirements and procedures for filing Forms 1099, 1042-S, and W-2G reporting non-wage payments from which North Dakota income tax is withheld.

### GENERAL RULE FOR NON-WAGE PAYMENTS

Non-wage payments **are not** subject to North Dakota income tax withholding, except for the three types listed below. North Dakota income tax may be voluntarily withheld from non-wage payments otherwise exempt from withholding—see “Voluntary Withholding” below.

- **North Dakota oil and gas royalty payments**—Certain oil and gas royalty payments reportable on Forms 1099-MISC and 1042-S are subject to North Dakota income tax withholding. See Section 5 of this guideline for the requirements and procedures. N.D.C.C. § 57-38-59.4
- **North Dakota lottery prize payments**—A North Dakota lottery prize payment reportable on Form W-2G is subject to North Dakota income tax withholding at the highest marginal rate for individuals if the prize is over \$5,000. Currently, the withholding rate is 2.5%. North Dakota lottery prize payments and the withholding of income taxes from them are administered by the North Dakota Lottery, a division of the Office of Attorney General. N.D.C.C. § 57-38-59.2
- **North Dakota unemployment benefit payments**—North Dakota unemployment compensation payments reportable on Form 1099-G are subject to North Dakota income tax withholding, but only if the benefit recipient elects have both federal income tax and North Dakota income tax withheld. North Dakota unemployment payments and the withholding of income taxes from them are administered by Job Service North Dakota. N.D.C.C. § 52-06-30(2)

### VOLUNTARY WITHHOLDING

For non-wage payments other than the three identified above, North Dakota income tax may be voluntarily withheld if the payment recipient requests it and the payor agrees to withhold. If a payor agrees to voluntarily withhold North Dakota income tax, the following procedures apply:

1. Register for a withholding account with the Office of State Tax Commissioner. The application is made through Taxpayer Access Point (TAP), an online tax filing and account access application on the Office of State Tax Commissioner’s website at **[www.tax.nd.gov/tap](http://www.tax.nd.gov/tap)**.
2. Calculate the amount to withhold as explained under “Amount to withhold” below.
3. Report and pay the North Dakota income tax withheld in the same manner as wage payments, as provided under “Filing And Payment Methods For Form 306” in Section 1 of this guideline.

4. File the information returns—Forms 1099, 1042-S, or W-2G—in the same manner as wage payments, as provided in Section 3 of this guideline.
  - Complete the state information boxes on the Form 1099, 1042-S, or W-2G to identify the state, provide the payor's state identification number, and show the state income tax withheld. **Note:** The state identification number for North Dakota purposes consists of the payor's federal employer identification number (FEIN) with the suffix "01" at the end.
  - The Combined Federal/State Program may not be used to satisfy the requirement to file a Form 1099 information return with North Dakota if North Dakota income tax is withheld from the payment.

### **Amount to withhold**

Because the withholding is voluntary, the payment recipient may choose the amount to withhold. This may be a percentage of the payment or a specific dollar amount. If the recipient does not specify a percentage or amount to withhold, or is uncertain about the amount to withhold, multiply the payment by 2.5%.

## SECTION 3: INFORMATION RETURNS FOR WAGES AND NON-WAGE PAYMENTS WITH VOLUNTARY WITHHOLDING

- This section explains the year-end filing requirements for the following information returns:
  - Form W-2.
  - Forms 1099, 1042-S, and W-2G reporting non-wage payments (other than oil and gas royalty payments) **from which North Dakota income tax was withheld**.
- **IMPORTANT**—The procedures in this section **do not apply** to the following information returns:
  - Forms 1099 and 1042-S reporting oil and gas royalty payments from which North Dakota income tax is required to be withheld under North Dakota Century Code § 57-38-59.4. Instead, see Section 5.
  - Forms 1099, 1042-S, and W-2G reporting non-wage payments (other than oil and gas royalty payments) without North Dakota income tax withholding. Instead, see Section 4.

### WHO MUST FILE

#### Information return for wages (Form W-2)

Every employer who pays wages must file an information return to report the wages and any North Dakota income tax withheld if all the following apply:

- The employer is located, or carries on a trade or business, in North Dakota. “Employer” includes the state of North Dakota and its political subdivisions.
- The employer pays wages to (a) an employee for services performed in North Dakota or (b) a North Dakota resident for services performed outside North Dakota (including outside the United States).
- The employer is required to file a Form W-2 for federal purposes to report the wages.

This filing requirement applies even if the employer is not required to register for a withholding account or no North Dakota income tax was withheld during the calendar year. N.D.C.C. § 57-38-60(3)(4)

#### Third-party sick pay—Reconciliation statement

If a third-party payer of sick pay withholds and remits North Dakota income tax using the third-party payer’s name and federal employer identification number (FEIN), but the withheld taxes are reported on the Forms W-2 filed by the employer, the employer or third party must provide a written statement with the Forms W-2 when filed to reconcile the amounts paid with Form 306 and the amounts reported on Form W-2. If the employer electronically files the Forms W-2, the statement may be submitted through the employer’s TAP account, by letter, or as an email attachment to **withhold@nd.gov**. The statement must contain the following:

- The heading: **Third-Party Sick Pay Reconciliation Statement For Withholding Purposes**.
- Calendar year in which the sick pay payments from which North Dakota income tax was withheld were made to the employees.
- Third party name, FEIN, and North Dakota withholding account number.

- Employer's name, FEIN, and North Dakota withholding account number.
- For each employee who received sick pay from which North Dakota income tax was withheld:
  - Name
  - Social security number
  - Amount of sick pay
  - Amount of North Dakota income tax withheld

N.D.C.C. §§ 57-38-56, 57-38-60, and 57-38-61

### **Information return for non-wage payments with voluntary withholding (Forms 1099, 1042-S, and W-2G)**

If an employer or other person voluntarily withholds North Dakota income tax from non-wage payments reportable to North Dakota on Forms 1099, 1042-S, and W-2G, the information returns must be filed with North Dakota using the procedures explained in this Section 3 of the guideline. N.D.C.C. § 57-38-42(1)

## **HOW AND WHEN TO FILE**

For North Dakota purposes, the requirement to file information returns is satisfied by filing with North Dakota a copy of the Form W-2, 1099, 1042-S, or W-2G filed with the Social Security Administration or Internal Revenue Service. The state information section on the information return must be completed for North Dakota purposes to show the North Dakota wages or income paid and North Dakota income tax withheld for the calendar year. N.D.C.C. §§ 57-38-42(1) and 57-38-60(3)(4)

### **How to file**

Forms W-2, and any Forms 1099, 1042-S, and W-2G showing North Dakota income tax withholding, must be filed electronically. If an employer or payor can show good cause, a request for a waiver of the electronic filing requirement may be requested. N.D.C.C. § 57-38-60(12), effective for calendar years 2022 and after.

Either of the following two electronic filing methods may be used:

- **Method 1: Taxpayer Access Point (TAP)**

The information returns can be filed in TAP, the Office of State Tax Commissioner's online tax filing and account access system for businesses. In TAP, the data can be uploaded or manually keyed from the returns. To do so:

1. Go to **[www.tax.nd.gov/tap](http://www.tax.nd.gov/tap)**.
2. If new to TAP, select **Sign Up for Access** to create an account. If an existing user, select **Log On**.
3. After logging into TAP, select **Upload/Enter W-2s or W-2c** and follow the online instructions.

**Tip:** If using TAP only to file information returns, select **Third party access**.

**Need help?** Step-by-step instructions on how to file the information returns in TAP can be found at **[www.tax.nd.gov/withholding](http://www.tax.nd.gov/withholding)** in the "Need Help With Filing?" section. These instructions also apply to filing Forms 1099, 1042-S, and W-2G reporting North Dakota income tax withholding.

- **Method 2: Electronic upload web service through accounting software**

If an employer or other person uses accounting software that supports the transmission of information returns via an upload web service, the information returns can be submitted directly through the software. The software streamlines filing and provides confirmation that the information returns were successfully submitted.

Anyone interested in incorporating the upload web service into their software or system can find technical information at **[www.tax.nd.gov/SoftwareDevelopers](http://www.tax.nd.gov/SoftwareDevelopers)** under the Technical Guidance section.

**Please note:**

A Form 1099 reporting a payment from which North Dakota income tax was withheld must be filed separately using the procedures in this Section 3 of the guideline. This applies even if it was included in the information filed with the IRS under the Combined Federal/State Program. **If possible, do not include a Form 1099 reporting North Dakota income tax withholding in a filing under the Combined Federal/State Program.**

**BULK FILING INFORMATION**

Taxpayer Access Point (TAP) can accommodate both W-2 and 1099 bulk files. To electronically bulk file a zero annual reconciliation and report zero W-2s to our office, a file must be submitted using TAP and include the FEIN of the company and the calendar year. Only .txt and .csv files are valid formats to upload. You file must match the following format:

Field name	Type	Length
EIN	Numeric	9
Year	Numeric	4

Seperator = comma

Example file with two submission:

123456789, 2022

987654321, 2022

**Formatting Form W-2, 1099, 1042-S, and W-2G Data Files**

**Form W-2** files must be formatted according to the specifications in SSA Publication 42-007 (EFW2).

**Forms W-2c** files must be formatted according to the specifications in SSA Publication 42-014 (EFW2C).

**Form 1099** and **W-2G** files must be formatted according to the specifications in IRS Publication 1220.

**Form 1042-S** files must be formatted using the formatting specifications contained in IRS Publication 1187.

For additional technical information on file specifications specific to North Dakota, go to [www.tax.nd.gov/SoftwareDevelopers](http://www.tax.nd.gov/SoftwareDevelopers).

**Testing Form W-2 and 1099 Data Files**

The following two secure processes are available for testing W-2 and 1099 file formatting:

**Option 1—Submit file through TAP account**

If filer has access to a TAP account—whether as owner, employee, or third party—a test file can be securely submitted through the account's messaging feature. Log into TAP account and click "Send message" under the "I Want To" section. Then choose Message Type "10. W2 1099 Test File." Enter a subject and message, attach the file, and click "Submit." The test file will be reviewed, and a response message will be sent to the TAP account. The response will either confirm the file passed validation with zero errors or identify any errors in the file and explain how to correct them.

**Option 2—Submit file using "Test W-2 & 1099 Files" feature in TAP**

A test file can also be submitted without having, or logging into, a TAP account. In TAP, under Resources, click on "Test W-2 & 1099 Files" and follow the instructions for uploading the file. Unlike Option 1 above, this feature is limited to providing an immediate response that either confirms zero errors or identifies any errors; it does not explain how to correct the errors.



**Don't have a TAP account?** To set up a TAP account, go to [www.tax.nd.gov/tap](http://www.tax.nd.gov/tap) and click on "Sign Up For Access."

## When To File

All Forms W-2 and any Forms 1099, 1042-S, and W-2G showing North Dakota income tax withholding must be filed electronically with North Dakota on or before the due date for filing Form W-2 with the Social Security Administration. N.D.C.C. §§ 57-38-42 and 57-38-60(3)(4)

## Failure To File

A penalty of \$10 per information return, up to a maximum amount of \$2,000, may be assessed for failure to file North Dakota information returns. This penalty may be assessed if information returns are not filed within thirty days after the Office of State Tax Commissioner provides written notice of the failure to file. N.D.C.C. §§ 57-38-42(1) and 57-38-60(5)

## Corrections To Form W-2

If a Form W-2c is filed with the Internal Revenue Service to report a correction, a copy of the corrected form must be filed electronically with North Dakota. This includes any correction, including a change to the name or federal identification number of the employee or payee. If a correction needs to be made only to the state information on the form, and a corrected form is not going to be filed for federal purposes, report the correction electronically to North Dakota using Taxpayer Access Point (TAP). If an employer can show good cause, a request for a waiver of the electronic filing requirement may be requested. N.D.C.C. § 57-38-60(12).

The corrected forms can be filed in ND TAP, the data can be uploaded or manually keyed from the returns.

1. Go to [www.tax.nd.gov/tap](http://www.tax.nd.gov/tap).
2. If new to ND TAP, select **Sign up for Access** to create an account. If an existing user, select **Log In**.
3. After logging into account, under the "I want to" tab select **Upload / Enter W-2s or W-2c**.

**Tip:** If using ND TAP only to file information returns, select **Third party access** when signing up for access.

**Need help?** Step-by-step instructions on how to file the information returns in TAP can be found at [www.tax.nd.gov/withholding](http://www.tax.nd.gov/withholding) in the "Need Help With Filing?" section.

## Corrections To Forms 1099, 1042-S, And W-2G With Withholding

If a Form 1099, 1042-S, or W-2G with North Dakota income tax withholding, is filed with the Internal Revenue Service to report a correction, a copy of the corrected form must be filed with North Dakota. This includes any correction, including a change to the name or federal identification number of the employee or payee.

If a correction needs to be made only to the state information on the form, and a corrected form is not going to be filed for federal purposes, report the correction to North Dakota using a Form 1099, 1042-S, or W-2G (with the "CORRECTED" box checked). For state-only corrections, the forms can be marked "For State Purposes Only."

For North Dakota purposes, correction forms cannot be electronically filed but must be filed on paper. North Dakota Form 307, Transmittal Of Wage And Tax Statement, must be completed and filed with the corrected Forms 1099, 1042-S, and W-2G.

## SECTION 4: INFORMATION RETURNS FOR NON-WAGE PAYMENTS WITH NO WITHHOLDING

### IMPORTANT

- This section explains the general year-end information return filing requirements for Forms 1099, 1042-S, and W-2G reporting non-wage payments **without North Dakota income tax withholding**.
- **IMPORTANT**—The procedures in this section **do not apply** to the following information returns:
  - Forms 1099, 1042-S, and W-2G reporting non-wage payments (other than oil and gas royalty payments) from which North Dakota income tax was withheld. See Section 3.
  - Forms 1099 and 1042-S reporting oil and gas royalty payments from which North Dakota income tax is required to be withheld under North Dakota Century Code § 57-38-59.4. See Section 5.

### WHO MUST FILE

Every person making certain payments—see “Reportable Payments” below—must file an information return to report the payment to North Dakota if both of the following apply:

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

For this purpose, “person” includes an individual, partnership, fiduciary, corporation, limited liability company, and an officer or employee of the state of North Dakota or any of its political subdivisions. N.D.C.C. §§ 57-38-01(9) and 57-38-42(1)

### Reportable Payments

For North Dakota purposes, reportable payments include the following:

- Rents, royalties, crop insurance proceeds, taxable prizes and awards, and any other income reportable on Form 1099-MISC.

**Exception:** For payments of North Dakota-sourced oil and gas royalties subject to North Dakota income tax withholding, do not use the procedures in this Section 4; instead, see Section 5 for how to report these payments. If North Dakota oil or gas royalty payments and any other reportable payments are reported on the same Form 1099-MISC, the submission of the Form 1099-MISC under the procedures in Section 5 satisfies the North Dakota information return reporting requirements under this Section 4 for the other reportable payments.

- Payment of compensation for services performed by a nonemployee reportable on Form 1099-NEC.
- Gambling winnings reportable on Form W-2G.
- Unemployment benefits, taxable grants, agricultural payments, and any other income reportable on Form 1099-G.

- Proceeds from real estate transactions, including sales of mineral rights, reportable on Form 1099-S.
- Proceeds from broker and barter exchange transactions reportable on Form 1099-B.
- Gambling winnings, royalties, lease bonuses, compensation for services, and any other income paid to a nonresident alien, foreign partnership or corporation, or a foreign fiduciary of an estate or trust that is reportable on Form 1042-S, provided that the income is sourced, and is subject to income tax, in North Dakota.

**Exception:** For payments of North Dakota-sourced oil and gas royalties subject to North Dakota income tax withholding, do not use the procedures in this Section 4; instead, see Section 5 for how to report these payments. If North Dakota oil or gas royalty payments and any other reportable payments are reported on the same Form 1042-S, the submission of the Form 1042-S under the procedures in Section 5 satisfies the North Dakota information return reporting requirements under this Section 4 for the other reportable payments.

N.D.C.C. § 57-38-42(1)

### Nonreportable payments

Except where North Dakota income tax is withheld from the payment, an information return **does not** have to be filed to report the following payments:

- Interest income reportable on Form 1099-INT or 1042-S.
- Original issue discount reportable on Form 1099-OID.
- Dividend income reportable on Form 1099-DIV, 1042-S or 1099-PATR.
- Distribution from a retirement or profit-sharing plan, an IRA, a SEP, or an annuity contract reportable on Form 1099-R or 1042-S.
- Payment card transactions and third-party network transactions reported on Form 1099-K.

**Note:** If North Dakota income tax is withheld from any of the above payment types, an information return must be filed using the procedures in Section 3 of this guideline.

N.D.C.C. § 57-38-42(1)

### Resident and nonresident individual payees

In the case of an individual payee, this information return reporting requirement applies regardless of whether the individual is a resident or nonresident of North Dakota; however, in the case of a nonresident, the requirement applies only if the income is sourced in North Dakota. In general, income is sourced in North Dakota if it meets any of the following:

- It is attributable to services performed in North Dakota.
- It is derived from tangible property in North Dakota, such as rents, oil and gas royalties, and gain from the sale or exchange of the property.
- It is derived from a trade or business carried on in North Dakota, whether as a sole proprietorship, partnership, S corporation, or limited liability company.
- It is from an estate or trust, but only to the extent the income is derived from tangible property or a trade or business in North Dakota.
- It is derived from gambling activity carried on in North Dakota.

N.D.C.C. §§ 57-38-03, 57-38-04, and 57-38-42(1)

## State information section on information return

If the information return has a section for providing state information, please complete that section, particularly the state abbreviation code ("ND" in the case of North Dakota), to indicate the state in which the income is sourced. This is very helpful to both the payee and the Office of State Tax Commissioner.

## HOW AND WHEN TO FILE

For North Dakota purposes, the requirement to file information returns is satisfied by filing with the Office of State Tax Commissioner a copy of the Form 1099, 1042-S, or W-2G filed with the Internal Revenue Service. N.D.C.C. § 57-38-42(1)(4)

### How to file

All Forms 1099, 1042-S, and W-2G must be filed electronically. If an employer or payor can show good cause, a waiver of the electronic filing requirement may be requested. N.D.C.C. § 57-38-42(7)

The following electronic filing methods are available:

- **Method 1: Taxpayer Access Point (TAP)**

The information returns can be filed in TAP, the Office of State Tax Commissioner's online tax filing and account access system for businesses. In TAP, the data can be uploaded or manually keyed from the returns. To do so:

1. Go to [www.tax.nd.gov/tap](http://www.tax.nd.gov/tap).
2. If new to TAP, select **Sign Up for Access** to create an account. If an existing user, select **Log On**.
3. After logging into account, under the "I want to" tab select **Upload / Enter 1099s, 1042-S, or W-2G** and follow the online instructions.

**Tip:** If using TAP only to file information returns, select **Third party access**.

**Need help?** Step-by-step instructions on how to file the information returns in TAP can be found at [www.tax.nd.gov/IncomeTaxWithholding](http://www.tax.nd.gov/IncomeTaxWithholding) in the "Need Help With Filing?" section.

- **Method 2: Electronic upload web service through accounting software**

If an employer, payor or other person uses accounting software that supports the transmission of information returns via an upload web service, the information returns can be submitted directly through the software. The software streamlines filing and provides confirmation that the information returns were successfully submitted.

Anyone interested in incorporating the upload web service into their software or system can find technical information at [www.tax.nd.gov/SoftwareDevelopers](http://www.tax.nd.gov/SoftwareDevelopers) under the Technical Guidance section.

- **Method 3: Combined Federal/State Program**

North Dakota participates in the Combined Federal/State Program offered by the IRS. Rather than submitting Form 1099 information separately to the IRS and North Dakota, the payor can request the IRS to provide a copy of the information to North Dakota. Only Form 1099 information can be submitted under this program. N.D.C.C. § 57-38-42(5)

If this option is chosen, please note the following:

- The payor does not need to notify the Office of State Tax Commissioner that Form 1099 information will be filed through the Combined Federal/State Program.
- Format Forms 1099 using the specifications in the most current version of IRS Publication 1220.  
**Be sure to provide the state data in the "B" record.**

- Forms 1042-S and W-2G cannot be filed through the Combined Federal/State Program and must be filed with North Dakota using Method 1 (TAP) or Method 2 (upload web service).
- A Form 1099 reporting a payment from which North Dakota income tax was withheld must be filed separately with North Dakota using the procedures in Section 3 of this guideline. This applies even if it was included in the information filed with the IRS under the Combined Federal/State Program. **If possible, please do not include a Form 1099 reporting North Dakota income tax withholding in a filing under the Combined Federal/State Program.**

#### Formatting Form 1099, 1042-S, and W-2G Data Files

**Form 1099** and **W-2G** files must be formatted according to the specifications in IRS Publication 1220.

**Form 1042-S** files must be formatted using the formatting specifications contained in IRS Publication 1187.

For additional technical information on file specifications specific to North Dakota, go to **[www.tax.nd.gov/SoftwareDevelopers](http://www.tax.nd.gov/SoftwareDevelopers)**.

#### Testing Form 1099 Data Files

The following two secure processes are available for testing 1099 file formatting:

##### **Option 1—Submit file through TAP account**

If filer has access to a TAP account—whether as owner, employee, or third party—a test file can be securely submitted through the account's messaging feature. Log into TAP account and click "Send message" under the "I Want To" section. Then choose Message Type "10. W2 1099 Test File." Enter a subject and message, attach the file, and click "Submit." The test file will be reviewed, and a response message will be sent to the TAP account. The response will either confirm the file passed validation with zero errors or identify any errors in the file and explain how to correct them.

##### **Option 2—Submit file using "Test W-2 & 1099 Files" feature in TAP**

A test file can also be submitted without having, or logging into, a TAP account. In TAP, under Resources, click on "Test W-2 & 1099 Files" and follow the instructions for uploading the file. Unlike Option 1 above, this feature is limited to providing an immediate response that either confirms zero errors or identifies any errors; it does not explain how to correct the errors.

**Don't have a TAP account?** To set up a TAP account, go to **[www.tax.nd.gov/tap](http://www.tax.nd.gov/tap)** and click on "Sign Up For Access."

#### When To File

Whether filing electronically or on paper, the information returns must be filed with the Office of State Tax Commissioner on or before the due date for filing Forms 1099, 1042-S or W-2G with the Internal Revenue Service. Forms 1099 filed through the Combined Federal/State Program are considered timely filed with North Dakota if timely filed with the IRS. N.D.C.C. § 57-38-42(3)



### **Failure To File**

A penalty of \$10 per information return, up to a maximum amount of \$2,000, may be assessed for failure to file North Dakota information returns. This penalty may be assessed if information returns are not filed within 30 days after the Office of State Tax Commissioner provides written notice of the failure to file.  
N.D.C.C. § 57-38-42(6)

### **Corrections To Forms 1099, 1042-S, And W-2G**

If a corrected Form 1099, 1042-S, or W-2G is filed with the Internal Revenue Service, a copy of the corrected form must be filed with North Dakota. This includes any correction, including a change to the recipient's name or federal identification number.

If a correction needs to be made only to the state information on the form, and a corrected form is not going to be filed for federal purposes, report the correction to North Dakota using a Form 1099, 1042-S, or W-2G (with the "CORRECTED" box checked). For state-only corrections, the forms can be marked "For State Purposes Only."

For North Dakota purposes, corrected Forms 1099, 1042-S, and W-2G cannot be electronically filed but must be filed on paper. There is no state transmittal form to be submitted with the corrected forms.

## SECTION 5: INCOME TAX WITHHOLDING FROM OIL AND GAS ROYALTY PAYMENTS

- This section applies to persons responsible for making oil and gas royalty payments to owners of royalty interests in oil and gas produced in North Dakota.
- Part 1 of this section explains the requirements and procedures for withholding North Dakota income tax from royalty payments made to nonresident individuals and non-North Dakota domiciled business entities under N.D.C.C. § 57-38-59.4.
- Part 2 of this section explains the year-end information return filing requirements for Forms 1099 and 1042-S reporting North Dakota oil and gas royalty payments subject to North Dakota income tax withholding.

### PART 1 - WITHHOLDING REQUIREMENT

#### DEFINITIONS

Unless otherwise stated, the following definitions of terms used in this section apply:

**Non-North Dakota domiciled business entity** means a business entity with a commercial domicile outside North Dakota. Commercial domicile is the principal place from which the trade or business is directed or managed. A business entity includes a partnership, corporation, and any person other than an individual.

**Nonresident individual** means an individual who is not a legal resident of North Dakota for the entire year. This includes an individual who is a legal resident of a foreign country. Legal residence refers to an individual's place of permanent residence to which an individual always returns whenever absent from it. Absences attributable to employment, vacation, military service, attending college, etc., do not affect an individual's place of legal residence if the individual intends on returning to it when the activity is completed.

**North Dakota oil or gas royalty** means a payment to a royalty owner that represents the royalty owner's share of receipts from the sale of oil or gas extracted from within the boundaries of North Dakota. The amount that is subject to North Dakota income tax withholding is the gross amount of the North Dakota oil or gas royalty reported in Box 2 of the federal or state-only Form 1099-MISC or 1042-S.

**Person** means an individual, estate, trust, partnership, corporation, limited liability company, and any other type of entity recognized under North Dakota law. N.D.C.C. § 57-38-01(9)

**Remitter** means a person responsible for issuing a royalty payment to a royalty owner. A remitter may be the person that produces the oil or gas or the person that distributes the royalty on behalf of a producer. In all cases, the remitter is the person whose name and federal employer identification number (FEIN) are required to be entered in the payer boxes on the federal or state-only Form 1099-MISC or 1042-S. N.D.C.C. § 57-38-59.4(1)(b)

**Royalty owner** means a person entitled to receive periodic royalty payments for a nonworking interest in the production of oil or gas, and the person to whom a remitter is required to issue a federal or state-only Form 1099-MISC or 1042-S to report the royalty payments. If a royalty owner is a single-member limited liability company (LLC) that is a disregarded entity for federal income tax purposes, the owner of the

single-member LLC is the royalty owner, and the federal or state-only Form 1099-MISC or 1042-S must be issued in the name and taxpayer identification number (social security number or FEIN) of the LLC's owner. (Note: If a remitter receives a federal Form W-9 on which it is indicated that the royalty owner is a single-member LLC that is disregarded, the name and taxpayer identification number on the Form W-9 should be that of the LLC's owner instead of the LLC itself.) N.D.C.C. § 57-38-59.4(1)(c)

**State-only Form 1099-MISC or 1042-S** means a federal Form 1099-MISC or 1042-S prepared on a pro forma basis for North Dakota income tax purposes for a royalty owner with North Dakota oil or gas royalty payments for whom a Form 1099-MISC or 1042-S is not required to be issued for federal income tax purposes. See "Information returns for royalty owners" later in this guideline for more information.

## WHO MUST WITHHOLD

A remitter is required to withhold North Dakota income tax from North Dakota oil or gas royalty payments made to nonresident individuals and non-North Dakota domiciled business entities. N.D.C.C. § 57-38-59.4(2)

### Determining residency or commercial domicile status of a royalty owner

A remitter needs to know the residency or commercial domicile status of a royalty owner. The remitter may use any reasonable means to determine the status. This may include reliance on the address to which a royalty payment is mailed or the address provided by the royalty owner on a federal Form W-9. In some cases, a remitter may need to contact the royalty owner to obtain the information.

### Nonresident alien

This withholding requirement applies to an individual royalty owner who is a nonresident alien of the United States. It applies even if the royalty income is exempt from U.S. income tax because of an income tax treaty between the United States and a foreign country. Except where an income tax treaty between the United States and foreign country specifically exempts oil or gas royalty income from taxation by a U.S. state, income tax treaties between the United States and foreign countries are not recognized for North Dakota income tax purposes, and North Dakota oil or gas royalty income is subject to North Dakota income tax.

### Voluntary agreement to withhold

A remitter and a royalty owner other than a nonresident individual or non-North Dakota domiciled business entity may mutually agree to have North Dakota income tax withheld on a voluntary basis from the royalty owner's North Dakota oil or gas royalty payments. If North Dakota income tax is voluntarily withheld, the remitter must comply with the registration, reporting, and payment requirements explained in this section of the guideline.

### Accounting service provider

A remitter may arrange with a third-party accounting service to manage the withholding, reporting, and payment duties on behalf of the remitter. However, the remitter remains responsible for any failure to comply with any of the withholding requirements. See "Registration requirement" later in this guideline for more information.

## EXEMPTIONS FROM WITHHOLDING REQUIREMENT

A remitter does not have to withhold North Dakota income tax if any of the following exemptions apply:

### **Exemption 1: Qualifying Small Producer**

A remitter does not have to withhold North Dakota income tax from North Dakota oil and gas royalty payments during the calendar year if the remitter is an oil or gas producer whose production in North Dakota during the preceding calendar year was less than 350,000 barrels of oil or 500 million cubic feet of gas. However, the remitter must still file an annual report—see “Annual reporting requirement” below. This exemption does not prohibit a remitter from voluntarily withholding income tax from the royalty payments made to royalty owners. N.D.C.C. § 57-38-59.4(4)(a)

### **Measuring the production threshold**

The volume of production used to determine whether the threshold is exceeded is the amount reported by a well operator to the North Dakota Industrial Commission, Oil and Gas Division, on Forms 5 and 5B for the preceding calendar year. If the production data reported to the Industrial Commission by the remitter includes production attributable to other producers, only use the production data for the remitter’s respective interest in the production for purposes of the production threshold. If the remitter acquired or disposed of production interests during the calendar year, only use the production attributable to the period the remitter had an interest in the production.

### **Annual reporting requirement**

Even though a remitter is not required to withhold tax because of this exemption, the remitter is still subject to the information return filing requirements—see “Information Returns For Oil and Gas Royalty Payments” in Part 2 of this section.

### **Exemption 2: Payments To Certain Types Of Royalty Owners**

A remitter is not required to withhold North Dakota income tax from North Dakota oil or gas royalty payments made to any of the following entities:

- The United States or any of its agencies, or any state and its political subdivisions.
- A federally recognized Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered under the Mineral Leasing Act of 1938 [25 U.S.C. 396a – 396g].
- The United States as trustee for individual Indians.
- A publicly traded partnership, as defined in Internal Revenue Code § 7704, that is not treated as a corporation. But see “Exempt status notification” below. Also see “Reporting by a publicly traded partnership” in Part 2 of this section.
- An organization that is exempt from North Dakota income tax under N.D.C.C. § 57-38-09. But see “Exempt status notification” below. This exemption does not affect the taxation of an entity’s unrelated business taxable income (UBTI), if any, under North Dakota income tax law.
- The same person or entity as the remitter.

N.D.C.C. § 57-38-59.4(3)

### Exempt status notification

A publicly traded partnership or an organization exempt from North Dakota income tax must complete Form RWT-EXM, Exemption Status For Royalty Withholding For Publicly Traded Partnership And Tax-Exempt Organization. A copy of Form RWT-EXM must be provided to each remitter and the Office of State Tax Commissioner to verify its exempt status. This form needs to be filed only one time; a new form does not have to be filed each year. If the entity receives North Dakota oil or gas royalty payments from more than one remitter, the entity should provide a copy of Form RWT-EXM to each remitter. If an entity fails to meet the definition of a publicly traded partnership or loses its exempt status under N.D.C.C. § 57-38-09, the entity must complete a new Form RWT-EXM on which it indicates that it is no longer exempt from withholding and provide a copy to the remitter and the Office of State Tax Commissioner. N.D.C.C. § 57-38-59.4(5)(b)

### Exemption 3: Payment Amount Below Statutory Threshold

Upon written request, the Office of State Tax Commissioner will allow a remitter to forego withholding North Dakota income tax from any North Dakota oil or gas royalty payment that is less than either of the following statutory thresholds:

- For royalty payments made on a quarterly basis, no withholding is required from a payment that is less than \$600.
- For royalty payments made on other than a quarterly basis—for example, monthly or semiannually—no withholding is required from a payment that, when annualized, is less than \$1,000.
  - o Example 1: If a remitter makes royalty payments monthly, no withholding is required if the amount of the payment is \$83.33 or less. \$83.33, when annualized, equals \$999.96 (\$83.33 x 12 months), which is less than \$1,000. Withholding would be required on a monthly payment that is more than \$83.33.
  - o Example 2: If a remitter makes royalty payments semiannually, no withholding is required if the amount of the payment is \$499.99 or less. \$499.99, when annualized, equals \$999.98 (\$499.99 x 2 semiannual periods), which is less than \$1,000. Withholding would be required on a semiannual payment that is \$500 or more.

### Making the written request

A remitter may request to use this exemption by completing the applicable part of the Application to Register for Royalty Withholding, the registration form that all remitters must complete and file with the Office of State Tax Commissioner. If a remitter has already filed the registration form without requesting the use of this exemption, the remitter may submit a letter to the Office of State Tax Commissioner to request the use of the exemption under N.D.C.C. § 57-38-59.4(6). For more information, see “Remitter Registration” later in this section. N.D.C.C. § 57-38-59.4(6)

### AMOUNT TO WITHHOLD

The amount to withhold is determined by multiplying the gross amount of the North Dakota oil or gas royalty by 1.75%.\* This applies to all types of royalty owners, regardless of whether the royalty owner is an individual, estate, trust, partnership, or other type of business entity. N.D.C.C. § 57-38-59.4(2)

- \* **The withholding rate is equal to the highest marginal individual income tax rate reduced by 0.75%. Currently, the highest marginal individual income tax rate is 2.5%. This rate is subject to change by the North Dakota Legislature.**



### **Funds held in trust**

Any North Dakota income tax withheld from royalty payments, whether or not properly withheld, is held by the remitter in trust for the State of North Dakota. All amounts withheld must be submitted to the Office of State Tax Commissioner in the manner and at the time prescribed by law, as explained in this guideline. N.D.C.C. §§ 57-38-59.4(2) and 57-38-60(8)

## **REMITTER REGISTRATION**

Every remitter must register with the Office of State Tax Commissioner by completing and filing an **Application to Register for Royalty Withholding**. A remitter must register even if any of the exceptions to the withholding requirement apply or the remitter does not withhold any tax for any reporting period. Every remitter is subject to reporting requirements regardless of whether the remitter is required to withhold any tax—see “Reporting and Payment of Tax Withheld” in Part 2 of this section for more information. N.D.C.C. § 57-38-59.4(2) and N.D. Admin. Code § 81-03-03.1-02

### **Accounting service provider**

A remitter that arranges with another party to manage the remitter’s royalty withholding filing and payment duties must complete the appropriate part of the registration form to designate and identify the provider. The designation of the provider on the registration form will constitute the remitter’s consent for the Office of State Tax Commissioner to communicate directly with the provider about the remitter’s royalty withholding returns and payments. A remitter may revoke the provider designation and consent by completing and filing a new Application to Register for Royalty Withholding on which the remitter requests the revocation.

### **Request to forego withholding from a payment below statutory threshold**

If a remitter qualifies for Exemption 3 under “Exemptions From Withholding Requirement,” the remitter may satisfy the written request requirement by completing the appropriate part of the registration form.

### **Change in FEIN**

If a remitter’s FEIN is changed for any reason, or the quarterly or annual return will be filed under a different FEIN, the remitter must complete and file a new Application to Register for Royalty Withholding to register the change.

### **Cash deposit or bond**

If required by the Office of State Tax Commissioner, a remitter must make a cash deposit or post a bond or undertaking executed by a surety company authorized to do business in North Dakota. The amount of the cash deposit, bond, or undertaking must be reasonably calculated to ensure the payment of the tax withheld by the remitter. N.D.C.C. §§ 57-38-59.4(2) and 57-38-60(9)

### **Closing an account**

If a remitter ceases activity as a remitter or will no longer be making North Dakota oil or gas royalty payments, the remitter must notify the Office of State Tax Commissioner to close the withholding account. This can be done through Taxpayer Access Point (TAP) at [www.tax.nd.gov](http://www.tax.nd.gov), by letter, sending an email to [taxregistration@nd.gov](mailto:taxregistration@nd.gov), or on the final paper Form RWT-941.

**Note:** Form RWT-1096, Royalty Withholding Annual Return and Transmittal, and Forms 1099-MISC and 1042-S must be filed for the year the account is closed. N.D.C.C. §§ 57-38-59.4(2) and 57-38-61

## PART 2: REPORTING AND PAYMENT OF TAX WITHHELD

### FORM RWT-941 - ROYALTY WITHHOLDING RETURN

Form RWT-941, North Dakota Royalty Withholding Return, must be filed to report and remit the amount of North Dakota income tax withheld during the period for which it is filed. Form RWT-941 must be filed on a calendar quarter basis or, if eligible, on a monthly or annual basis—see “When to file Form RWT-941” later in this section. Form RWT-941 must be filed even if a remitter did not pay any royalties or did not withhold any tax during the period covered by the return. N.D.C.C. §§ 57-38-59.4(2) and 57-38-60(1)(2)

In the case of a new remitter, or an existing remitter currently filing on paper, a paper Form RWT-941 is automatically mailed to the remitter prior to the end of each reporting period (quarterly, monthly, or annually, whichever applies). Failure to receive the form for any reason does not relieve the obligation to timely file or pay. Form RWT-941 can be obtained on the Office of State Tax Commissioner’s website at **[www.tax.nd.gov/forms](http://www.tax.nd.gov/forms)**. If a remitter is required to electronically file Form RWT-941, or a remitter chooses to file Form RWT-941 electronically, the paper Form RWT-941 will no longer be mailed to the remitter—see “Filing and Payment Methods For Form RWT-941” below.

### FILING AND PAYMENT METHODS FOR FORM RWT-941

Form RWT-941 and the tax due on it must be submitted electronically if the amount required to be withheld from North Dakota oil and gas royalty payments during the previous calendar year is \$1,000 or more. If a remitter can show good cause, the remitter may request a waiver of the electronic filing requirement. N.D.C.C. §§ 57-38-59.4(2) and 57-38-60(2)

#### Electronic filing and payment options

Form RWT-941 and the tax due on it can be submitted electronically in the same transaction using either of the following two methods:

- **Taxpayer Access Point (TAP)** - If a remitter has a TAP account with the Office of State Tax Commissioner, Form RWT-941 and any tax due on it can be electronically submitted through the account. If there is a tax due, it can be paid through an ACH Debit transaction, which authorizes the Office of State Tax Commissioner to withdraw the funds from the remitter’s checking or savings account.

**Don’t have a TAP account?** To set up a TAP account, go to **[www.tax.nd.gov/tap](http://www.tax.nd.gov/tap)** and click on “Sign Up For Access.”

**ACH Debit block:** If a remitter has placed an ACH Debit block on the remitter’s bank account, the remitter must contact the financial institution to authorize an ACH Debit payment prior to the transaction to prevent rejection of the payment. The financial institution will need the Office of State Tax Commissioner’s Originator ID number for this purpose. Use the applicable Originator ID below:

- To authorize the Office of State Tax Commissioner to debit a savings or checking account, use Originator ID number **1450309764**.
- To pay with a debit card, use Originator ID number **1621868563**.

- **ACH Credit** – If there is a tax due on Form RWT-941, both the return and the tax due can be electronically submitted through an ACH Credit transaction, which is an electronic transfer of funds from the remitter's bank to the Bank of North Dakota. The remitter initiates this through its own bank and is responsible for any fees to make the transfer. The ACH Credit transaction satisfies the Form RWT-941 filing requirement. For more information, go to [www.tax.nd.gov/tap](http://www.tax.nd.gov/tap) and click on "Make A Payment," then select "ACH Credit Information." **Note: The addenda record layout specified for "Royalty Withholding Tax" must be used.**

If a remitter provided an email address on the application form when registering for the royalty withholding account, a timely reminder to file will be sent to that email address. Failure to receive a reminder does not relieve the remitter's obligation to timely file Form RWT-941.

### Paper filing and payment options

Form RWT-941 may be filed on paper **only if** a remitter is not required to file it electronically or has obtained a waiver of the electronic filing requirement.

### Payment options for paper filers

If filing a paper Form RWT-941, payment of the tax due on the form can be electronically submitted through the remitter's TAP account or through the payment options at [www.tax.nd.gov/tap](http://www.tax.nd.gov/tap). If paying with a paper check, submit the check with Form RWT-941.

### When to file Form RWT-941

Except as provided under "Monthly filing" or "Annual filing" below, Form RWT-941 must be filed for each calendar quarter on or before the following due dates:

Calendar Quarter	Due Date
January, February, and March	April 30
April, May, and June	July 31
July, August, and September	October 31
October, November, and December	January 31

N.D.C.C. §§ 57-38-59.4(2) and 57-38-60(1)

### Monthly filing

In lieu of filing and paying on a quarterly basis, a remitter may elect to file Form RWT-941 and pay the tax due monthly. This option is available only if a remitter files and pays electronically. A remitter must contact the Office of State Tax Commissioner to arrange for monthly filing and payment. If this election is made and approved, a remitter must continue to file and pay monthly until it obtains permission to change.

### Annual filing

In lieu of filing and paying on a quarterly basis, a remitter may elect to file Form RWT-941 and pay the tax due on an annual basis if all the following conditions apply:

- The remitter had an obligation to file Form RWT-941 for all four quarters of the preceding calendar year.
- The remitter filed Form RWT-941 and paid the full amount of North Dakota income tax required to be withheld on or before the due date for all four quarters of the preceding calendar year.
- The total North Dakota income tax withheld by the remitter during the preceding calendar year was less than \$1,000.

A remitter must contact the Office of State Tax Commissioner to arrange for annual filing and payment.  
N.D.C.C. §§ 57-38-59.4(2) and 57-38-60(1)

### Failure To Timely File Or Pay

If Form RWT-941 is not filed, or if full payment is not remitted, on or before the due date, penalty and interest applies as follows:

- **Penalty**

- Late filed return—If an original return is not filed by the due date, the penalty is 5% of the tax due or \$5.00, whichever is greater, for the month in which the return is due, plus an additional 5% for each additional month (or fraction of a month) during which the tax remains unpaid, not to exceed 25% of the tax due.
- Late payment—If an original return is filed on or before the due date, but the full amount of tax due on it is not paid by the due date, the penalty is 5% of the tax due or \$5.00, whichever is greater.
- Amended return—If an amended return is filed after the due date of the original return, and there is a tax due on the amended return, a penalty of 5% of the tax due on the amended return or \$5.00, whichever is greater, applies.
- Paper return—If you meet the electronic filing requirements and do not file electronically by the due date, your return will be considered late and late filed return penalty will apply.

N.D.C.C. §§ 57-38-45(2), 57-38-59.4(2), and 57-38-61

- **Interest**

- Interest accrues at the rate of 1% of the tax due for each month (or fraction of a month) the tax remains unpaid, starting with the month following the month in which the original return was due. This also applies to tax due on an amended return filed after the due date of the original return.

N.D.C.C. §§ 57-38-45(1), 57-38-59.4(2), and 57-38-61

### Amended return

An amended Form RWT-941 can be filed electronically in TAP or on paper if the remitter is not required to file it electronically.

## PART 3 - INFORMATION RETURNS FOR OIL AND GAS ROYALTY PAYMENTS

Every remitter must file with the Office of State Tax Commissioner a copy of all federal Forms 1099-MISC and 1042-S reporting North Dakota oil or gas royalty payments. This applies whether or not North Dakota income tax was withheld from the payments. For North Dakota purposes, the requirement to file information returns is satisfied by filing with North Dakota a copy of the Form 1099-MISC or 1042-S filed with the Internal Revenue Service. N.D.C.C. §§ 57-38-59.4(2) and 57-38-60(3)(4)

### State-only Form 1099-MISC or 1042-S

If a remitter is not required to file a federal Form 1099-MISC or 1042-S for a royalty owner for federal income tax purposes—for example, the royalty owner is a corporation—the remitter must prepare and file a copy of a **state-only** Form 1099-MISC or 1042-S. The state-only Form 1099-MISC or 1042-S must show the same information that would have been reported on a federal Form 1099-MISC or 1042-S had one been required to be filed for federal income tax purposes. **Note: A reference to Form 1099-MISC or 1042-S in this section of the guideline includes a state-only Form 1099-MISC or 1042-S.**

N.D.C.C. §§ 57-38-56, 57-38-59.4(2), 57-38-60, and 57-38-61

## State information

Be sure to complete the state information boxes on the Form 1099-MISC or 1042-S to identify the state, provide the remitter's federal identification number, and show the North Dakota income tax withheld.

## Multiple types of payments on same Form 1099-MISC or 1042-S

If North Dakota oil or gas royalty payments and any other type of reportable payments (identified in Section 4 of this guideline) are reported on the same Form 1099-MISC or 1042-S, the submission of the Form 1099-MISC or 1042-S under the procedures in this Section 5 satisfies the North Dakota information return reporting requirements under Section 4 for the other reportable payments.

## Information returns for royalty owners

On or before January 31 following the end of the calendar year, a remitter must provide each royalty owner a copy of the federal or state-only Form 1099-MISC or 1042-S showing the amount of North Dakota oil or gas royalties paid and the amount of North Dakota income tax withheld from the payments.

## HOW AND WHEN TO FILE FORMS 1099-MISC AND 1042-S

### How to file

Forms 1099-MISC and 1042-S must be filed electronically. If a remitter can show good cause, the remitter may request a waiver of the electronic filing requirement. N.D.C.C. §§ 57-38-59.4(2) and 57-38-60(12), effective for calendar years 2022 and after.

Either of the following electronic filing methods may be used:

- **Method 1: Taxpayer Access Point (TAP)**

The information returns can be filed in TAP, the Office of State Tax Commissioner's online tax filing and account access system for businesses. In TAP, the data can be uploaded or manually keyed from the returns. To do so:

1. Go to **[www.tax.nd.gov/tap](http://www.tax.nd.gov/tap)**.
2. If new to TAP, select **Sign Up for Access** to create an account. If an existing user, select **Log On**.
3. After logging into account, under the "I want to" tab select **File W-2s or 1099s** and follow the online instructions.

**Tip:** If using TAP only to file information returns, select **Third party access**.

**Need help?** Step-by-step instructions on how to file the information returns in TAP can be found at **[www.tax.nd.gov/IncomeTaxWithholding](http://www.tax.nd.gov/IncomeTaxWithholding)** in the "Need Help With Filing?" section.

- **Method 2: Electronic upload web service through accounting software**

If a remitter uses accounting software that supports the transmission of information returns via an upload web service, the information returns can be submitted directly through the software. The software streamlines filing and provides confirmation that the information returns were successfully received and processed.

Anyone interested in incorporating the upload web service into their software or system can find technical information at **[www.tax.nd.gov/SoftwareDevelopers](http://www.tax.nd.gov/SoftwareDevelopers)** under the Technical Guidance section.



**Please note:**

1. Even if Forms 1099-MISC and 1042-S are electronically filed, North Dakota Form RWT-1096 must be filed separately on paper—see “Form RWT-1096, Royalty Withholding Annual Return and Transmittal” later in this section for more information. If Forms 1099-MISC and 1042-S are electronically filed, **do not** submit paper copies of the forms with Form RWT-1096; however, the date of the electronic transmission must be provided on Form RWT-1096.
2. Forms 1099-MISC reporting North Dakota oil and gas royalty payments subject to North Dakota income tax withholding must be filed using the procedures in this section of the guideline. Filing the forms through the Combined Federal/State Program does not satisfy the reporting requirements of this section. **If possible, do not include a Form 1099-MISC reporting North Dakota income tax withholding in a filing under the Combined Federal/State Program.**

**Formatting Form 1099-MISC and 1042-S Data Files**

**Form 1099-MISC** files must be formatted according to the specifications in IRS Publication 1220.

**Form 1042-S** files must be formatted using the formatting specifications contained in IRS Publication 1187.

For additional technical information on file specifications specific to North Dakota, go to **[www.tax.nd.gov/SoftwareDevelopers](http://www.tax.nd.gov/SoftwareDevelopers)**.

**Testing Form 1099-MISC Data Files**

The following two secure processes are available for testing the formatting of a Form 1099-MISC data file:

**Option 1—Submit file through TAP account**

If filer has access to a TAP account—whether as owner, employee, or third party—a test file can be securely submitted through the account’s messaging feature. Log into TAP account and click “Send message” under the “I Want To” section. Then choose Message Type “10. W2 1099 Test File.” Enter a subject and message, attach the file, and click “Submit.” The test file will be reviewed, and a response message will be sent to the TAP account. The response will either confirm the file passed validation with zero errors or identify any errors in the file and explain how to correct them.

**Option 2—Submit file using “Test W-2 & 1099 Files” feature in TAP**

A test file can also be submitted without having, or logging into, a TAP account. In TAP, under Resources, click on “Test W-2 & 1099 Files” and follow the instructions for uploading the file. Unlike Option 1 above, this feature is limited to providing an immediate response that either confirms zero errors or identifies any errors; it does not explain how to correct the errors.

**Don’t have a TAP account?** To set up a TAP account, go to **[www.tax.nd.gov/tap](http://www.tax.nd.gov/tap)** and click on “Sign Up For Access.”

### **Paper filing**

Unless a remitter has requested and been granted a waiver of the electronic filing requirement, Forms 1099-MISC and 1042-S must be electronically filed. If a waiver is obtained and paper forms are going to be filed, submit the paper copies with Form RWT-1096—see “Form RWT-1096—Royalty Withholding Annual Return And Transmittal” below.

### **When to file Forms 1099-MISC and 1042-S**

Forms 1099-MISC and 1042-S showing North Dakota income tax withholding must be filed on or before January 31 following the end of the calendar year.

### **Failure to file**

A penalty of \$10 per information return, up to a maximum amount of \$2,000, may be assessed for failure to file North Dakota information returns. This penalty may be assessed if information returns are not filed within thirty days after the Office of State Tax Commissioner provides written notice of the failure to file. N.D.C.C. §§ 57-38-59.4(2) and 57-38-60(5)

### **Corrections to Forms 1099-MISC and 1042-S**

If a corrected Form 1099-MISC or 1042-S reporting North Dakota oil or gas royalty payments is filed with the Internal Revenue Service, a copy of the corrected form must be filed with North Dakota. This includes any correction, including a change to the name or federal identification number of the employee or payee.

If a correction needs to be made only to the state information on the form, and a corrected form is not going to be filed for federal purposes, report the correction to North Dakota using a Form 1099-MISC or 1042-S (with the “CORRECTED” box checked). For state-only corrections, the forms can be marked “For State Purposes Only.” For North Dakota purposes, corrected forms cannot be electronically filed but must be filed on paper. North Dakota Form RWT-1096, Royalty Withholding Annual Return and Transmittal, must be completed and filed with the corrected Forms 1099-MISC or 1042-S.

## **FORM RWT-1096 - ROYALTY WITHHOLDING ANNUAL RETURN AND TRANSMITTAL**

All remitters must file Form RWT-1096, Royalty Withholding Annual Return and Transmittal, to report and reconcile the North Dakota income tax withheld and remitted for the calendar year.

### **Small producing remitter**

Even if a remitter qualifies for the small producing remitter exemption, the remitter still must file Form RWT-1096 to report the North Dakota oil or gas royalties paid. The remitter must report the amount of oil or gas production for the preceding calendar year on Form RWT-1096 to certify the remitter’s eligibility for the exemption.

### **How and When to file Form RWT-1096**

Form RWT-1096 must be filed electronically on or before February 28 following the end of the calendar year.

## **REPORTING BY A PUBLICLY TRADED PARTNERSHIP**

A royalty owner that is a publicly traded partnership must electronically transmit a copy of all of its federal Schedule K-1 forms to the Office of State Tax Commissioner if (1) the publicly traded partnership’s North Dakota oil or gas royalty payments are exempt from North Dakota income tax withholding and (2) the publicly traded partnership electronically files its federal Schedule K-1 forms with the IRS. Contact the Office of State Tax Commissioner for instructions on how to submit this information. N.D.C.C. § 57-38-59.4(5)(a)

## ASSISTANCE

Phone: 701-328-1248  
Speech/hearing impaired – call Relay North Dakota at 1-800-366-6888

Fax: 701-328-0146

Email: **withhold@nd.gov**

Website: **tax.nd.gov**

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

Visit: State Capitol Building, 8th floor  
Monday through Friday (except state holidays) 8:00 AM to 5:00 PM

## REGISTRATION ASSISTANCE

Phone: 701-328-1241

Fax: 701-328-0332

Email: **taxregistration@nd.gov**

## TAP ASSISTANCE

Phone: 701-328-1257

Email: **taphelp@nd.gov**

## TECHNICAL ASSISTANCE

Email: **magmedia@nd.gov**