



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER INCOME TAX NEWSLETTER

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2019 LEGISLATIVE RUNDOWN

This newsletter provides a summary of the bills passed by the 2019 North Dakota Legislative Assembly that affect North Dakota’s income and estate tax laws. If a bill contains changes affecting areas of the law not related to income or estate tax, this summary only covers the income and estate tax portions of the bill. You may view the text of the bills and other legislative information on the [North Dakota Legislative Branch website](#).

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HB 1016 - NEW JOBS TRAINING PROGRAM: CREDIT CAP

This budget bill for Job Service North Dakota includes a provision that places a limit on the amount of the new jobs credit from withholding that may be awarded to employers participating in the New Jobs Training Program. The Program provides an incentive for primary sector businesses to create new jobs through expansion of operations in, or relocation to, North Dakota. An eligible business may enter an agreement under which Job Service will develop and coordinate training of the employees filling the new job positions. The program provides a funding mechanism, called the “new jobs credit from withholding,” to offset part or all of the employer’s training costs. The new jobs credit from withholding refers to the amount of North Dakota income tax withheld from the wages paid to the employees filling the new jobs identified in the agreement. This bill provides that no more than \$2,500,000 of credits may be awarded on agreements entered into during the period beginning July 1, 2019, and ending June 30, 2021.

Information about the new jobs training program is available on the [North Dakota Job Service website](#). If you have questions about the program, contact Job Service North Dakota at 701.328.2812; email: jsnjt@nd.gov.

Statutory change: See note to N.D.C.C. § 52-02.1

Effective date: Credits awarded during period beginning July 1, 2019, and ending June 30, 2021.

HB 1040 - 21ST CENTURY MANUFACTURING WORKFORCE CREDIT

This bill creates a new income tax credit called the 21st century manufacturing workforce tax credit. While there are many similarities between this new credit and the automation income tax credit that expired at the end of the 2017 calendar year, there also are some new requirements that must be met to qualify. The credit is available only to a primary sector business, which is a business certified by the North Dakota Department of Commerce, Division of Economic Development and Finance (Commerce Department), as one using knowledge or labor to add value to a product, process or service that results in the creation of new wealth in North Dakota.



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Qualifying Purchase

The credit is allowed for purchasing new or used machinery and equipment for the purpose of automating a manufacturing process in North Dakota. The machinery and equipment must consist of automation and robotic equipment that upgrades or advances a manufacturing process. It does not include equipment acquired only to replace existing equipment. A purchase includes an acquisition under a capital lease that meets generally accepted accounting principles.

The upgrade or advancement of the manufacturing process must result in either improved job quality or increased productivity. “Improved job quality” means either a 5% increase in average wages or a 5% improvement in workplace safety as documented through participation in a North Dakota Workforce Safety and Insurance safety incentive program. “Increased productivity” means a 5% or more increase in either output or number of units produced per automated line per time period.

Amount of Credit

The credit is equal to 20% of the purchase cost and is allowed in the tax year in which the taxpayer takes title to the equipment. For a qualifying capital lease, the cost is equal to the fair market value of the equipment at the inception of the lease. If the credit exceeds the tax liability in the first tax year, the excess may be carried over and used on subsequent years’ returns for up to five tax years. The amount of the approved purchases may not be used as the basis for any other deduction or credit allowed under North Dakota income tax law.

In the case of a corporation income tax return filed on a consolidated basis using the combined reporting method, a credit earned by any corporation included in the return may be offset against the combined tax liabilities of all corporations included in the return.

Passthrough Entity: If the taxpayer is a partnership or other passthrough entity, the credit is computed at the passthrough entity level and passed through to the entity’s owners based on their respective ownership interests in the entity.

Annual Credit Limit

The maximum amount of credits allowed for all qualifying purchases by all taxpayers is limited to \$1 million per calendar year. If the total credits allowed to taxpayers for qualifying purchases made in a calendar year are less than the annual \$1 million limit for that year, the amount of the unclaimed credits remaining under the annual limit are rolled over to the following calendar year, which increases the maximum amount of credits available for the following calendar year. If the total credits attributable to qualifying purchases during a calendar year exceed the maximum amount of credits available for the calendar year, the maximum amount of credits available for the calendar year must be prorated among the qualifying taxpayers.

Reporting Requirement

Within one year after claiming the credit, a business is required to file a report with the Office of State Tax Commissioner documenting the improved job quality or increased productivity, and any other information that the tax commissioner determines is necessary for administration of the credit.

Application and Approval

Information on obtaining primary sector business certification and obtaining approval of purchases for purposes of the 21st century manufacturing workforce income tax credit may be found on the [North Dakota Department of Commerce website](#), or by calling 701.328.5300.

Statutory change: Created a new section to N.D.C.C. ch. 57-38.

Effective date: First four taxable years beginning on or after January 1, 2019.

HB 1053 - MILITARY RETIREMENT PAY DEDUCTION

This bill creates a new income tax deduction for retired U.S. armed forces, Reserve, and National Guard members, and their surviving spouses. The deduction is equal to the taxable portion of the military retirement benefit payments they report on their federal income tax return for the tax year.

2019 North Dakota Income Tax Return

Starting with the 2019 North Dakota individual income tax return, a new line dedicated to the new deduction will be added to the return. A retired service member (or surviving spouse of a retired service member) is still subject to North Dakota filing requirements, regardless of whether the individual's military retirement pay is the only income for the year. If there is no filing requirement, but North Dakota income tax is withheld from an individual's military retirement pay, see "Refund of North Dakota income tax withholding" below.

North Dakota Income Tax Withholding

North Dakota income tax law does not require income tax withholding from military retirement payments. North Dakota income tax would be withheld from a retired service member's military retirement payments only if the service member requested the Defense Finance and Accounting Service (DFAS) to do so. To stop the withholding of North Dakota income tax from his or her military retirement payments, the service member must submit a written request to DFAS. Complete information is provided under State Income Tax Withholding on the [DFAS website](#).

Refund of North Dakota Income Tax Withheld

If North Dakota income tax is withheld from a retired service member's military retirement pay during 2019, the service member must file a 2019 North Dakota income tax return after the close of the 2019 tax year to obtain a refund of it. Whether or not all of the amount withheld from the military retirement pay will be refunded will depend on the retired service member's tax situation. If the retiree's only income for the year is the military retirement pay, the military retirement pay deduction will result in a zero tax liability, in which case the entire amount withheld will be refunded. However, if the retiree also has other types of income on which there is a tax liability, part or all of the amount withheld from the military retirement pay may be needed to offset that tax liability.

***Statutory change:** Created a new subdivision to subsection 2 of N.D.C.C. § 57-38-30.3.*

***Effective date:** Taxable years beginning on or after January 1, 2019.*

HB 1083 - INCOME TAX REFUND OFFSET PROGRAM

This bill added North Dakota's institutions of higher education and the North Dakota Student Loan Service Center to the list of claimant agencies that may offset debts using an individual debtor's North Dakota income tax refund.

***Statutory change:** Amended subsection 1 of N.D.C.C. § 57-38.3-02.*

***Effective date:** Taxable years beginning on or after January 1, 2019.*

HB 1111 - RESEARCH INCOME TAX CREDIT

This bill changed the income tax law governing the North Dakota research expense income tax credit to allow taxpayers to use the alternative simplified method for purposes of calculating the state credit on qualifying North Dakota-based research expenses.

Old Law

Since 1988, North Dakota income tax law has provided an income tax credit for qualified research spending in North Dakota utilizing the federal definitions of what constitutes qualified research, qualified research expenses, and the base amount. The credit is calculated on the amount by which



qualified research expenses in North Dakota exceed the North Dakota base amount. The base amount calculation is based on historical research expense and gross receipts data and the average gross receipts for the four years preceding the tax year for which the credit is being calculated.

Federal income tax law was changed in 2006 to provide for an alternative simplified method of calculating the federal credit. Under the alternative simplified method, the credit is equal to a percentage of the amount by which qualified research expenses for the tax year exceed 50% of the average qualified research expenses for the three tax years preceding the tax year for which the credit is being calculated.

North Dakota income tax law does not recognize the federal alternative simplified credit method, which means taxpayers must calculate the North Dakota credit using the regular method even though they calculated their federal credit using the alternative simplified method.

New Law

For tax years 2019 and after, taxpayers may elect to use the alternative simplified method to calculate their North Dakota research income tax credit. They may do so regardless of whether they elected to use it to calculate their federal research credit. If an election is made to use the alternative simplified method to calculate the state credit, the state credit is equal to the sum of the following:

- 17.5% of the first \$100,000 of North Dakota alternative excess research and development expenses for the tax year.
- 5.6% of the North Dakota alternative excess research and development expenses in excess of \$100,000 for the tax year.

North Dakota alternative excess research and development expenses means the amount by which qualified research expenses incurred in North Dakota exceed 50% of the average qualified research expenses incurred in North Dakota for the three tax years preceding the tax year for which the credit is being determined.

The alternative simplified method may not be used to calculate the North Dakota research credit for any tax year beginning before January 1, 2019. For tax years beginning on or after January 1, 2019, the method used to calculate the North Dakota research credit claimed on the income tax return filed for the tax year is binding for that tax year. A taxpayer may choose between the regular method and the alternative simplified method each tax year.

Statutory change: Amended N.D.C.C. § 57-38-30.5.

Effective date: Taxable years beginning on or after January 1, 2019.

HB 1112 – E-FILING OF FORMS 1099 AND W-2

Starting with the 2019 Forms 1099 and W-2 that are due in 2020, any person, including a payroll service provider, required to file 10 or more of these information returns must file them electronically in the manner prescribed by the state tax commissioner. The state tax commissioner may waive this electronic filing requirement upon a showing of good cause.

Statutory change: Created a new subsection to, and amended subsection 11 of, N.D.C.C. § 57-38-60.

Effective date: Taxable years beginning on or after January 1, 2019.

HB 1174 – SOCIAL SECURITY BENEFITS DEDUCTION

This bill created a new income tax deduction for eligible individuals who receive social security benefit payments. An individual is eligible for the deduction if (1) any of the individual's benefits are required to be included in the individual's federal adjusted gross income and (2) the individual's federal adjusted gross income does not exceed \$50,000, or \$100,000 if married filing jointly.

The bill also made two other changes. First, the marriage penalty income tax credit law was changed to provide that any social security benefits deducted from North Dakota taxable income must not be included in calculating qualifying income for purposes of the credit. Second, the homestead property tax credit law was changed to provide that, even if part of social security benefits are exempted from North Dakota income tax, the full amount of the benefits received must be included in income for purposes of the income test.

Statutory change: Created new subdivision to subsection 2 of N.D.C.C. § 57-38-30.3, amended subsection 5 of N.D.C.C. § 57-02-08.1, and amended N.D.C.C. § 57-38-01.28.

Effective date: Taxable years beginning on or after January 1, 2019.

HB 1248 – OPTIONAL CONTRIBUTION TO VETERANS SERVICES FUND

This bill created a new optional contribution on the individual income tax return to support the Veterans' Postwar Trust Fund, a permanent trust fund administered by the state treasurer. All income generated by the fund is appropriated to the North Dakota Administrative Committee on Veterans Affairs to be used for programs that benefit and provide services to veterans or their dependents. Individuals who have a refund or tax due of at least \$5 on their North Dakota income tax return may make a contribution of \$1 or more to the fund, which will either reduce the refund or increase the amount due on their returns.

Statutory change: Created new section to N.D.C.C. ch. 57-38.

Effective date: Taxable years beginning on or after January 1, 2019.

HB 1276 – STILLBORN CHILD DEDUCTION

In 2017, the North Dakota Legislature created a new deduction for parents who lose a child to stillbirth. The deduction was equal to the federal income tax dependency exemption amount allowed for the tax year in which the stillbirth occurred. The federal Tax Cuts and Jobs Act passed at the end of 2017 changed the dependency exemption amount to zero for the 2018 through 2025 tax years, effectively making the state stillborn child deduction equal to zero for the same tax years. For this reason, the state deduction was available only for the 2017 tax year, and the line for the deduction was removed from the 2018 North Dakota Schedule ND-1SA (Statutory Adjustments).

This bill reinstates the stillborn child deduction by amending the law to replace the language referencing the federal dependency exemption amount under I.R.C. § 152 with a state-prescribed amount and making the change effective retroactively back to the 2018 tax year. For the 2018 tax year, the deduction amount was set at \$4,150. For tax years 2019 and after, this amount will be adjusted annually for inflation using the consumer price index for all urban consumers (CPI-U) in the Midwest region, as determined by the U.S. Department of Labor, Bureau of Labor Statistics, for the most recent year ending on December 31.

An individual is eligible for this deduction if both of the following apply:

- A fetal death record has been filed with the North Dakota Department of Health, Division of Vital Records, as required under N.D.C.C. § 23-02.1-20. This record must be filed in the case of a fetal death that occurs in North Dakota after a gestation period of twenty or more completed weeks.
- The individual could have claimed the child as a dependent for federal income tax purposes if the child had been born alive.

An individual claiming this deduction must be able to provide a certified copy of a North Dakota Fetal Death Record to the North Dakota Office of State Tax Commissioner. The parent(s) identified on the fetal death record or other authorized person may obtain a certified copy of a North Dakota Fetal Death Record by requesting one from the [North Dakota Division of Vital Records](#). It can also be obtained in person at its office located in the Judicial Wing, State Capitol, First Floor, Room 118.

Procedure for Claiming Deduction on 2018 Form ND-1

To claim the reinstated deduction on the 2018 Form ND-1, the following procedures apply:

- Obtain a Certification of Fetal Death (or Certification of Birth Resulting in Stillbirth) from the North Dakota Division of Vital Records.
- If the 2018 Form ND-1 has already been filed, mail or fax the following to the Office of State Tax Commissioner: (1) Copy of the certificate from the Division of Vital Records. (2) Letter or note containing the name and social security number of the parent claiming the deduction and a statement that the parent is providing the information to claim the stillborn child deduction for the 2018 tax year. Note: If the parents file separate returns, only one of the parents may claim the deduction.

Mail to: Office of State Tax Commissioner, Dept. 127, Bismarck, ND 58505-0599. Or fax to: 701.328.1942. Upon receipt of the documents, the Office of State Tax Commissioner will make the necessary adjustments to the taxpayer's account.

- If the 2018 Form ND-1 has not been filed, complete a 2018 Schedule ND-1SA (Statutory Adjustments). There is no separate line for the stillborn child deduction on this schedule. Enter the amount of \$4,150 on line 4 and write "Stillborn child deduction" on the dotted line to the left of the number. Include the Schedule ND-1SA and a copy of the certificate from the Division of Vital Records with the Form ND-1 when it is filed.

Statutory change: Amended subdivision q of subsection 2 of N.D.C.C. § 57-38-30.3.

Effective date: Retroactively applies to taxable years beginning on or after January 1, 2018.

HB 1384 – NONPROFIT PRIVATE SCHOOL CONTRIBUTION CREDIT

This bill changed the law governing the income tax credits allowed for making charitable contributions to nonprofit private schools in North Dakota.

Old Law

Pre-2019 law provided for a separate credit for each of three school categories—primary, secondary, and higher education. The credits are allowed to a C corporation, partnership, S corporation, estate and trust. The credit is not allowed to an individual for contributing directly to a qualifying school; however, an individual is allowed to claim his or her share of a credit received as an owner of a partnership or S corporation, or as a beneficiary of an estate or trust. Except for contributions made by passthrough entities - partnerships, S corporations, estates and trusts - the credit allowed within each school category is equal to the lesser of (1) 50% of qualifying contributions within the school category, (2) 20% of the taxpayer's tax liability before credits, or (3) \$2,500. If the credit exceeds the taxpayer's tax liability, the excess is lost; the excess may not be carried over to any other tax year.

Passthrough Entity: In the case of a passthrough entity, qualifying contributions within a school category are multiplied by 50%, and the resulting amount is passed through to the entity's owners or beneficiaries based on their respective interests in the entity. Unless an owner or beneficiary is another passthrough entity, the tax liability and maximum credit limitations are applied on the owner's or beneficiary's tax return.

New Law

This bill made two changes to the law: First, the limitation on individuals' eligibility for the credit for direct contributions was removed; the credit is now allowed to individuals for contributing directly to a qualifying school. Second, the limitation based on a percentage of the tax liability was increased from 20% to 25%. These changes apply only to the 2019 and 2020 tax years, after which they become ineffective. Unless changed by the legislature, for tax years 2021 and after, the law governing these credits will revert back to how it applied prior to 2019.

Statutory change: Amended N.D.C.C. § 57-38-01.7.

Effective date: First two taxable years beginning on or after January 1, 2019, after which the changes become ineffective and the law reverts back to how it read before the 2019 changes.

HB 1406 – CREDIT FOR HIRING DEVELOPMENTALLY DISABLED OR SEVERELY MENTALLY ILL PERSON

This bill changed the income tax law governing the corporate income tax credit for hiring an individual who is developmentally disabled or chronically mentally ill.

Old Law

Pre-2019 law allowed an income tax credit to a corporation that hired an individual who is developmentally disabled or chronically mentally ill. The credit was equal to 5% of the first \$6,000 of wages paid to the employee during the first 12 months of employment. The credit could not exceed 50% of the corporation's tax liability. If the credit exceeded the corporation's tax liability, the excess could not be carried to any other tax year.

New Law

This bill made the following changes to the law:

- The credit is now allowed to other types of taxpayers—individuals, estates, trusts and passthrough entities, such as partnerships and S corporations.
- The language “chronically mentally ill” was replaced with “severe mental illness.”
- To qualify for the credit, an employer must apply to the Department of Human Services, Vocational Rehabilitation Division, for a determination that the employee has a most significant disability, is eligible for services, and requires customized employment to obtain competitive integrated employment. If an employee is determined to meet these conditions, a letter of certification must be issued to the employer. The department may not certify more than 100 employees for purposes of the credit, which is to be determined in the order the applications are received.
- The credit rate was increased from 5% to 25%.
- The credit is now allowed in each tax year wages are paid to a qualifying employee, up to a maximum wage amount of \$6,000 per employee per year.

Statutory change: Amended N.D.C.C. § 57-38-01.16.

Effective date: First two taxable years beginning on or after January 1, 2019, after which the changes become ineffective and the law reverts back to how it read before the 2019 changes.

HB 1475 – COLLEGE EXPENSE REIMBURSEMENT DEDUCTION

This bill created a new income tax deduction for individuals who receive taxable reimbursements of eligible education expenses from their employers. Eligible education expenses mean expenses incurred by an employee that are directly related to the attainment of higher education or career and technical education. The deduction is equal to the amount of the employer's reimbursement payment that is included in the employee's taxable wages reported on the employee's federal income tax return.

Statutory change: Created a new subdivision to subsection 2 of N.D.C.C. § 57-38-30.3.

Effective date: Taxable years beginning on or after January 1, 2019.

SB 2325 – NEW JOBS TRAINING PROGRAM: NON-PRIMARY SECTOR BUSINESS ELIGIBILITY

This bill changed the law governing the new jobs training program administered by Job Service North Dakota to expand eligibility for the program to employers that are not primary sector businesses. An employer that does not qualify as a primary sector business may qualify for services under the new jobs training program if all of the following conditions are met:

- The employer contracts to provide employees to a primary sector business.
- The employer and the primary sector business are parties to the same new jobs training program services agreement.
- The employer is designated as the recipient of the program services in the new jobs training program services agreement.

For more information on the new jobs training program, go to the [North Dakota Job Service website](#).

Statutory change: Amended N.D.C.C. § 52-02.1-02.

Effective date: Due to the emergency clause, the bill took effect on March 27, 2019.

ASSISTANCE

To assist you in your tax preparation work, the following phone numbers and email addresses are provided for your convenience.

General Information.....	701.328.7088
Toll free.....	877.328.7088
TDD (ask for 701.328.7088).....	800.366.6888
Fax	701.328.3700
Email.....	taxinfo@nd.gov
Taxpayer Services (<i>correction notices, calculation worksheets, information requests</i>).....	701.328.1242
Individual Income Tax	701.328.1247
Email.....	individualtax@nd.gov
Partnership, S corporation, Trust and Estate income tax	701.328.1258
Email.....	individualtax@nd.gov
Corporation Income Tax	701.328.1249
Email.....	corptax@nd.gov
Income Tax Withholding from Wages (for employers)	701.328.1248
Email.....	withhold@nd.gov
Income Tax Withholding from Oil and Gas Royalties.....	701.328.1247
Email.....	individualtax@nd.gov
Collections (<i>tax due statements, lien notices, payment plans</i>).....	701.328.1244
Business Registration.....	701.328.1241
Email.....	taxregistration@nd.gov

Additional contact information can be found on the Office of State Tax Commissioner’s website at www.nd.gov/tax under [Contact Us](#).

