North Dakota Office of State Tax Commissioner

# Income Tax Newsletter

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This edition of the Income Tax Newsletter provides a review of the income tax changes made by the 2019 North Dakota Legislature and the changes made to the 2019 income tax forms to implement them. It also provides some filing reminders and other items of interest.

**Inside this issue:**



## New Military Retirement Pay Exclusion

Starting with the 2019 tax year, a new deduction is available to individuals who receive retirement pay benefits as a retired member of the U.S. armed forces or its reserve components, the Army National Guard, or the Air National Guard. "U.S. armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard. The deduction is also allowed to a surviving spouse of a deceased retired service member. Retirement pay benefits received for federal civil service employment as a military technician (dual status) are not eligible for the deduction. The deduction is equal to the taxable portion of the benefits reported on Form 1040 or 1040 SR, line 4d. The deduction is entered on Form ND-1, line 14. A copy of the Form 1099-R received from the Defense Finance and Accounting Service (DFAS) must be attached to the return.

Retired service members (or their surviving spouses) are still subject to the North Dakota filing requirements even if their military retirement pay benefits are the only income for the year.

North Dakota tax law does not require income tax to be withheld from retirement benefit payments, including military retirement benefits. North Dakota income tax is withheld from military retirement benefit payments only if a service member requested DFAS to do so. To stop the withholding of North Dakota income tax from the payments, a service member must submit a written request to DFAS. For more information, go to Defense Finance and Accounting Service.

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 to claim it. Whether or not all of the amount withheld from the military retirement pay will be refunded will depend on the retired servicemember'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.

## New Social Security Benefit Exclusion

Starting with the 2019 tax year, a new deduction is available to eligible individuals who receive social security benefits and part of the benefits are taxable on their federal income tax returns. To be eligible for the deduction, the individual's federal adjusted gross income must be $50,000 or less (or $100,000 or less if married and filing a joint return). If eligible for the deduction, the deduction is equal to the taxable portion of their social security benefits reported on Form 1040 or 1040 SR, line 5b. The deduction is entered on Form ND-1, line 15.

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In the case of married individuals who file a joint return, the portion of social security benefits deducted on Form ND-1, line 15, must not be included in qualified income for purposes of calculating the marriage penalty credit on Form ND-1, line 22.

**Coordination with U.S. Railroad Retirement Board payments.**
If an individual receives Tier 1 social security equivalent benefits from the U.S. Railroad Retirement Board, which are reported on a Form RRB-1099, they are treated the same as social security benefits and are reported on the same lines of the federal income tax return. The portion, if any, of Tier 1 benefits that are taxable on the federal income tax return and included on Form 1040 or 1040-SR, line 5b, are exempt from state income tax under the federal law governing the U.S. Railroad Retirement Board. Therefore, the portion of Tier 1 benefits taxed on the federal income tax return are deductible from North Dakota taxable income regardless of the amount of the recipient's federal adjusted gross income. Enter any taxable Tier 1 benefits on Form ND-1, line 9.

If an individual receives social security benefits (Form SSA-1099) and Tier 1 benefits (Form RRB-1099), and a taxable amount is reported on Form 1040 or 1040-SR, line 5b, determine the portion of the taxable amount to deduct on Form ND-1, lines 9 and 15, by multiplying the taxable amount by a ratio equal to the gross amount of each type of benefit divided by the gross amount of both benefits combined.

## Change To E-Filing Requirement For W-2s and 1099s

Starting with the 2019 Forms W-2 and 1099 that are due on January 31, 2020, any person, including a payroll service provider, required to file 10 or more Forms W-2 or 10 or more Forms 1099 must file them electronically in the manner prescribed by the state tax commissioner.

While the requirement to electronically file Forms W-2 and 1099 applies to businesses that file 10 or more forms for 2019, businesses filing less than 10 forms are encouraged to electronically file them as well. Electronically filing these forms can easily be done in one of the following ways:

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

For questions and assistance, contact the Office of State Tax Commissioner by sending an email to withhold@nd.gov or by calling 701.328.1248.

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

## New Optional Contribution To Veterans Fund

A new optional contribution was added to Forms ND-EZ and ND-1 for the support of the Veterans' Postwar Trust Fund. Individuals having a refund or tax due of at least $5 on their income tax return may contribute $1 or more to the fund, which will reduce their refund or increase their tax due. Monies contributed to the fund are used by the North Dakota Department of Veterans Affairs to fund programs and services benefiting veterans and their dependents. For more information on its purposes and services, go to ND Department of Veterans Affairs. The contribution is made on Form ND-EZ, line 5 (refund return) or line 8 (tax due return), or on Form ND-1, line 31 (refund return) or line 35 (tax due return).

## Expansion Of Credit For Hiring Disabled Or Mentally Ill Person

The 2019 North Dakota Legislature changed the income tax law governing the income tax credit for hiring a developmentally disabled or chronically mentally ill person, effective only for the 2019 and 2020 tax years. The changes will expire, and the law will revert back to how it was before the changes, starting with the 2021 tax year unless the Legislature amends the law to extend the changes beyond 2020.

**Pre-2019 law.** Under the law in effect before the 2019 tax year, an income tax credit was allowed only to a C 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.

**2019 and 2020 law.** Effective for the 2019 and 2020 tax years, an income tax credit is available to all taxpayers (not just C corporations) for employing a developmentally disabled or mentally ill individual. To qualify, an employer must apply for and obtain from the North Dakota Department of Human Services, Vocational Rehabilitation Division, a letter certifying that the individual (1) has a severe developmental or mental disability, (2) is eligible for the agency's services, and (3) requires customized employment to become employed. The credit is equal to 25% of the wages paid to the individual during the year, up to a maximum credit of $1,500 per year. The credit is allowed for each eligible individual hired. The total credit a taxpayer may claim in a year may not exceed 50% of the taxpayer's tax liability before credits. The forms and lines on which the credit is claimed are listed below.

| **If filing:** | **Enter credit on:** |
|---|---|
| Form ND-1 (individual) | Schedule ND-1TC, line 23 |
| Form 38 (fiduciary) | Schedule 38-TC, line 19 |
| Form 40 (C corporation) | Schedule TC or CR, Part III, line 6 |
| Form 58 (partnership) | Schedule K, line 23 |
| Form 60 (S corporation) | Schedule K, line 19 |

## New College Expense Reimbursement Exclusion

Starting with the 2019 tax year, a new income tax deduction is available to individuals who receive a taxable reimbursement from an employer for expenses paid by the employee for higher education or career and technical education. The deduction is equal to the amount of the payment included in taxable wages reported in box 1 of the employee's Form W-2. Any portion of the reimbursement that the employee deducts or excludes from federal taxable income is not eligible for the state deduction. The deduction is entered on Schedule ND-1SA, line 7.

## Reinstatement of stillborn child deduction

In 2017 the North Dakota Legislature created a stillborn child income tax deduction, which was equal to the federal dependency exemption amount. However, in 2018, this deduction was rendered unusable when the federal Tax Cuts and Jobs Act of 2017 changed the federal dependency exemption amount to zero. The 2019 North Dakota Legislature addressed this unforeseen outcome by amending the law

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to replace the federal dependency exemption amount with a state-prescribed amount and making the change retroactive to 2018. The deduction amount for 2018 was set at $4,150. For tax years 2019 and after, this amount will be adjusted annually for inflation. For 2019 the inflation-adjusted deduction amount is $4,204.

The deduction is claimed on Schedule ND-1SA, line 5. The parent claiming the deduction will need a certified copy of the North Dakota Fetal Death Record (Certification of Fetal Death or Certification of Birth Resulting in Stillbirth) from the North Dakota Department of Health, Division of Vital Records. The 11-digit certificate number and date of death from the form must be provided on Schedule ND-1SA.

If the parents file separate income tax returns, the deduction is allowed to the parent who would have been eligible to claim the child as a dependent on his or her federal income tax return if the child had been born alive. For information on who is entitled to a federal dependency exemption, see IRS Publication 501.

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 going to the ND Health Department Vital Records Division. It can also be obtained in person at its offices located in the Judicial Wing, State Capitol, First Floor, Room 118.

**Procedure for claiming deduction on 2018 return**

If a qualifying parent filed a 2018 North Dakota income tax return on which there was a tax liability, but the parent did not claim the deduction, the parent may claim the deduction in one of the following ways:

- 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. Mail to the Office of State Tax Commissioner, State Capitol, Dept. 127, Bismarck, ND 58505-0599. Or fax to 701.328.1942.
- File an amended 2018 Form ND-1 with a Schedule ND-1SA (Statutory Adjustments). There is no separate line on the 2018 Schedule ND-1SA for the stillborn child deduction. Enter the amount of $4,150 on line 4 and write "Stillborn child deduction" on the dotted line to the left of the number. Attach a copy of the certificate from the North Dakota Division of Vital Records. Mail the amended return to Office of State Tax Commissioner, State Capitol, Dept. 127, Bismarck, ND 58505-0599.

## New Automation Credit

For tax years 2019 through 2022 only, a new income tax credit is available to a primary sector business for purchasing new or used machinery or equipment to automate a manufacturing process in North Dakota. A primary sector business 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.

**Qualifying purchase**

The purchase must upgrade or advance a manufacturing process by improving job quality or increasing productivity. A taxpayer must apply to the North Dakota Commerce Department for review and approval of the eligibility of the machinery and equipment, which 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 (1) a 5 percent increase in average wages or (2) a 5 percent improvement in workplace safety as documented through participation in a North Dakota Workforce Safety and Insurance safety incentive program. "Increased productivity" means a 5 percent or more increase in either (1) output or (2) number of units produced per automated line per time period.

**Amount of credit**

The credit is equal to 20 percent of the purchase cost and is allowed in the tax year in which the taxpayer takes title to the machinery or equipment. For a capital lease, the cost is the fair market value of the machinery or 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 5 tax years.

In the case of a corporate 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.

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.

The forms and lines on which the credit is claimed are listed below.

| If filing: | Enter credit on: |
|---|---|
| Form ND-1 (individual) | Schedule ND-1TC, line 22 |
| Form 38 (fiduciary) | Schedule 38-TC, line 18 |
| Form 40 (C corporation) | Schedule TC or CR, Part III, line 23 |
| Form 58 (partnership) | Schedule K, line 22 |
| Form 60 (S corporation) | Schedule K, line 18 |

**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 with the Office of State Tax Commissioner a report documenting the improved job quality or increased productivity and any other information that the tax commissioner determines is necessary for administration of the credit. Additional information on what will be required to satisfy this reporting requirement will be provided on the Office of State Tax Commissioner's website when available.

**Commerce Department application forms**

For information on obtaining primary sector business certification and obtaining approval of purchases for the automation credit, go to ND Commerce Department Economic Development and Finance Division.

## New Alternative Simplified Method For Calculating Research Credit

For tax years 2019 and after, a taxpayer may elect to use an alternative simplified method to calculate the North Dakota research income tax credit. Under this method, the 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 claimed. If the qualified research expense amount is zero in any of the three preceding tax years, the credit under the alternative simplified method is 7.5% of the first $100,000 of qualified research expenses plus 2.4% of the qualified research expenses in excess of $100,000 for the tax year.

A taxpayer may choose between the regular method and the alternative simplified method on a year-to-year basis. The method initially used to calculate the North Dakota research credit claimed on the return filed for a tax year is binding for that tax year. The alternative simplified method may not be used to calculate the North Dakota research credit for any tax year beginning before January 1, 2019.

## Expansion Of Nonprofit Private School Credits

The 2019 North Dakota Legislature changed the income tax law governing the income tax credits for making contributions to nonprofit private elementary schools, high schools, and colleges in North Dakota, effective only for the 2019 and 2020 tax years. The changes will expire, and the law will revert back to how it was before the changes, starting with the 2021 tax year unless the Legislature amends the law to extend the changes beyond 2020.

**Pre-2019 law.** The law in effect prior to 2019 allowed the credits to taxpayers other than individuals for making direct contributions to qualifying schools. A separate credit is allowed for contributions made to schools within each of the three school categories. While an individual was not allowed any credit for making a direct contribution, an individual could 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.

A partnership, S corporation, estate, or trust passed a credit equal to 50% of direct contributions within a school category through to its owners or beneficiaries. A C corporation was allowed a credit equal to the lesser of (1) 50% of direct contributions within a school category plus any credit in the same category received from a passthrough entity, (2) 20% of the corporation's tax liability before credits, or (3) $2,500. An individual was allowed a credit equal to the lesser of (1) credits within the same school category received from a passthrough entity, (2) 20% of the individual's tax liability before credits, or (3) $2,500.

**2019 and 2020 law.** Effective for the 2019 and 2020 tax years, the law was expanded to allow the credits to individuals for making direct contributions to qualifying schools. In addition, the limitation on the credit allowed in a tax year based on a taxpayer's tax liability before credits was expanded by increasing the percentage from 20% to 25%.

## Changes To New Jobs Training Program

The 2019 North Dakota Legislature made changes to the New Jobs Training Program administered by Job Service North Dakota. This 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. Under the funding mechanism, the North Dakota income tax withheld from the wages paid to the employees filling the new jobs identified in the agreement are used to pay for part or all of the training costs. Effective for agreements entered into during the period July 1, 2019, through June 30, 2021, no more than $2,500,000 of credits may be awarded to eligible businesses.

Effective March 27, 2019, employers that are not primary sector businesses may qualify to participate in 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, go to North Dakota New Jobs Training Program.

## Changes To 2019 Income Tax Forms

*(Note: Items with an asterisk "*" indicate there is a separate article on the subject in this newsletter.)*

**Individual forms**

The following changes were made to Form ND-1 and its supplementary schedules for 2019:

- Form ND-1
  - o The line for the housing incentive fund addition adjustment was removed.
  - o The line for the National Guard / Reserve member federal active duty pay exclusion was moved from Form ND-1 to Schedule ND-1SA.
  - o A line was added for the new military retirement pay exclusion (see line 14).*
  - o A line was added for the new social security benefit exclusion (see line 15).*
  - o Two lines were added for the new optional contribution to the Veterans Postwar Trust Fund (see lines 31 and 35). Note: This also applies to Form ND-EZ—see lines 5 and 8. *
- Schedule ND-1SA, Statutory Adjustments
  - o A line was added for the reinstated stillborn child deduction (see line 5).*
  - o A line was added for the National Guard / Reserve member federal active duty pay exclusion, which was removed from Form ND-1 (see line 6).
  - o A line was added for the new exclusion for a taxable employer reimbursement of college expenses (see line 7).*
- Schedule ND-1TC, Tax Credits
  - o The line for the geothermal energy device credit was revised to limit entries to unused credit carryovers (see line 12). The credit for new installations expired on December 31, 2014, and the 2018 tax year was the last year of the five-year credit period available for installations completed in the 2014 tax year.
  - o The line for the automation credit (in effect for the 2014 through 2017 tax years) was revised to limit entries to unused credit carryovers from those tax years (see line 17).

- o The lines for the credits for making contributions to nonprofit private primary schools, high schools, and colleges in North Dakota and their instructions were revised to reflect legislative changes and the creation of a new supplemental schedule on which to calculate the credits—see Schedule ND-1PSC below.*
- o A line was added for the new automation credit in effect for the 2019 through 2022 tax years (see line 22).*
- o A line was added for the new credit for hiring a developmentally disabled or mentally ill person (see line 23).*

- Schedule ND-1PSC, Nonprofit Private School Credits for Individuals
  - o This is a new supplemental schedule to Form ND-1. Individuals must complete this schedule to claim the expanded and revised credits for making charitable contributions to nonprofit private primary schools, high schools, or colleges located in North Dakota.*

**Fiduciary forms**

The following changes were made to Form 38 and its supplemental schedules for 2019:

- Schedule CR, Credit for Income Tax Paid to Another State or Local Jurisdiction
  - o A new line was added on which to enter the name of the state to which income tax was paid.
- Tax Computation Schedule
  - o The instructions to line 2 (Additions) relating to an electing small business trust (ESBT) were revised to provide that if the net amount of an ESBT's income, gains, and losses is negative, enter the amount as a negative number on line 2.
- Schedule 38-TC, Tax Credits
  - o The line for the geothermal energy device credit was revised to limit entries to unused credit carryovers (see line 10). The credit for new installations expired on December 31, 2014, and the 2018 tax year was the last year of the five-year credit period available for installations completed in the 2014 tax year.
  - o The lines for the credits for making contributions to nonprofit private primary schools, high schools, and colleges in North Dakota and their instructions were revised to reflect legislative changes (see lines 15 through 17).*
  - o The line for the automation credit (in effect for the 2014 through 2017 tax years) was revised to limit entries to unused credit carryovers from those tax years (see line 14).
  - o A line was added for the new automation credit in effect for the 2019 through 2022 tax years (see line 18).*
  - o A line was added for the new credit for hiring a developmentally disabled or mentally ill person (see line 19).*
- Schedule K-1 (Form 38)—Changes were made to the lines on Schedule K-1 corresponding to the changes made to Schedule 38-TC.

**Partnership forms**

The following changes were made to Form 58 and its supplemental schedules for 2019:

- Schedule K (Form 58)
  - o The line for the biomass, geothermal, solar, and wind energy device income tax credits and its instructions were changed to reflect the general expiration of the credits on December 31, 2014. The credit for new installations expired on December 31, 2014, and the 2018 tax year was the last year of the five-year credit period available for installations completed in the 2014 tax year. An exception applies for a wind device if its installation commenced before January 1, 2015, and it was completed before January 1, 2017. See line 12.
  - o A line was added for the new automation credit in effect for the 2019 through 2022 tax years (see line 22).*
  - o A line was added for the new credit for hiring a developmentally disabled or mentally ill person (see line 23).*

- Schedule K-1 (Form 58)—Changes were made to the lines on Schedule K-1 corresponding to the changes made to Schedule K.

**S corporation forms**
The following changes were made to Form 60 and its supplemental schedules for 2019:

- Schedule K (Form 60)
  - o The line for the geothermal energy device credit was removed. The credit for new installations expired on December 31, 2014, and the 2018 tax year was the last year of the five-year credit period available for installations completed in the 2014 tax year.
  - o A line was added for the new automation credit in effect for the 2019 through 2022 tax years (see line 18).*
  - o A line was added for the new credit for hiring a developmentally disabled or mentally ill person (see line 19).*
- Schedule K-1 (Form 60)—Changes were made to the lines on Schedule K-1 corresponding to the changes made to Schedule K.

**C corporation forms**
On Form 40, Schedule TC (Tax Credits) and Schedule CR, Part III (Tax Credits For Corporations Filing a North Dakota Consolidated Return Using the Combined Report Method), a line was added for the new automation credit in effect for the 2019 through 2022 tax years (see line 23).*

## Reminders

**Where's My Refund?**
The Where's My Refund? tool may be used to check the status of a North Dakota individual income tax refund. It shows if a return has been received, is being processed, and the date the refund is issued. The tool also allows the user to request an email or text notification when the refund is issued. To see how the tool works, see the short video. To use the tool, the user will need the taxpayer's social security number, filing status, and the exact amount of the refund shown on the return.

Refund information is updated once per day. Allow 24 hours before checking again. There is no need to call the Office of State Tax Commissioner unless the "check refund status" says to do so. The processing of a refund takes a bit longer than in previous years because of the additional security checks built into the system to help prevent tax fraud and ID theft.

**Payment voucher required with payment by check or money order**
North Dakota offers several payment options for submitting an estimated tax payment, extension payment, or payment of a balance due on a return. For convenience and security, and knowing the payment was timely received by our office, electronic payment is encouraged and recommended. However, if choosing to pay with a paper check, a payment voucher is required for all income tax payment types that are mailed to the Office of State Tax Commissioner. The appropriate payment voucher can be obtained by going to Make A Payment.

**Most common errors by paper filers**
For the fifteen percent of individual income tax filers who still file a paper return, the most common errors made on them have not changed much. Any of the following errors may delay the processing of a return or, in some cases, result in the return being sent back to the taxpayer:

- **Missing a signature.** An unsigned return is not complete and will be sent back to the taxpayer for signing. For married persons filing a joint return, both spouses must sign the return.

- **Missing copy of federal return.** A copy of Form 1040 and its required supplemental schedules must be attached to the state return. Without a copy of the federal return, the state return is incomplete and will be sent back to the taxpayer.
- **Missing a social security number.** This number is used to properly identify a taxpayer's return. For married persons filing jointly, both spouses' social security numbers must be provided.
- **Math error.** This is the most common of all errors on paper returns.
- **Missing a Form W-2.** A copy of all Form W-2s must be attached. Also attach a copy of any Form 1099 or North Dakota Schedule K-1 showing North Dakota income tax withholding.
- **Insufficient postage.** Depending on the number of documents making up the return, additional postage may be required to mail the return.

If it is necessary to send an incomplete return back to a taxpayer due a missing signature or federal return, the return is not considered filed and may result in late filing and payment charges if resubmitted after the return's due date.

## Other Items Of Interest

**Income tax withholding from wages paid in 2020**
The methods for withholding North Dakota income tax from employees' wages generally have been similar to the methods used for federal income tax withholding purposes. This includes reliance upon the federal Form W-4. The Internal Revenue Service made significant changes to the federal withholding methods, including a complete revision of Form W-4, for 2020. Changes have been made to North Dakota's income tax withholding methods and tables for 2020 that conform in certain respects to the federal changes. This includes accommodating the use of either the older versions of Form W-4 or the new Form W-4 for 2020 and after.

The 2020 North Dakota Income Tax Withholding Rates and Instructions booklet explains how to calculate the amount of North Dakota income tax to withhold from employee wages for the 2020 calendar year. Similar to the federal methods for 2020, the North Dakota methods for calculating the withholding amount for an employee will depend on whether or not the employer is working from an older Form W-4 or the new Form W-4 for 2020. The booklet contains the following three sections:

- **Section 1 - Withholding Methods For Forms W-4 Before 2020**
  If withholding is based on a Form W-4 (Employee's Withholding Allowance Certificate) from before 2020, use the methods and tables in Section 1 of the booklet. The methods in Section 1 are the same as the methods used in 2019, except that the withholding allowance amount and the withholding tables have been updated to reflect the inflation-adjusted amounts for 2020.
- **Section 2—Withholding Methods For Forms W-4 For 2020 And After**
  If withholding is based on the new 2020 Form W-4 (Employee's Withholding Certificate), or if a newly hired employee has not submitted a Form W-4, use the methods and tables in Section 2 of the booklet. The methods in Section 2 are set up to accommodate the use of the new Form W-4. The methods in Section 2 are different from the methods used in 2019.
- **Section 3 – Supplemental Wages**
  The information in Section 3 explains how to withhold from supplemental wages, which may be used in conjunction with the methods in either Section 1 or Section 2, whichever applies.

**Farm residence property tax exemption**
Many CPAs and other tax professionals statewide with farm clients will be affected by changes made to the farm residence property tax exemption under N.D.C.C. § 57-02-08(15)(b) by the 2019 North Dakota Legislature. Senate Bills 2278 and 2360 changed the farm income requirements starting with exemption

applications filed with county assessor offices for the 2020 property tax year. Among the changes is a requirement to file a new form called a Statement of Farm Gross Income to show compliance with the new farm gross income test. Because the exemption must be renewed each year, this new requirement affects existing as well as new claimants.

The new farm gross income test requires that a claimant have annual gross income from farming which is 66% or more of the claimant's annual gross income during either of the two preceding calendar years. For applications filed for the 2020 property tax year, this means the claimant must meet the farm gross income test in either the 2018 or 2019 calendar year. If the claimant is married, the spouse's gross income must be included in the calculation.

Under the new farm gross income test, farm gross income has the same meaning as that used to determine if an individual is considered a farmer under the special estimated tax rules for farmers under federal income tax law, which are found in Internal Revenue Code § 6654(i)(2). This means that the same income data from the federal income tax return used to determine if an individual is a farmer under the federal estimated tax rules must be used to determine if the individual satisfies the farm residence exemption's farm gross income test. For this reason, many farmers may be contacting their tax professionals for help in filling out the new Statement of Farm Gross Income.

On the Statement of Farm Gross Income, there are two sections. In the first section on page 1 of the form, the total gross income is calculated by aggregating all farm and non-farm items of gross income. In the second section on page 2 of the form, farm gross income is calculated by aggregating only the items of farm gross income. In both sections, the federal income tax forms and lines where the gross income data are to be found are identified to make completion of the form as easy as possible.

The Statement of Farm Gross Income should be submitted along with the application for the farm residence exemption, which is due on February 1 of the year for which the exemption is being claimed. For the 2020 property tax year, this is February 1, 2020. If the statement cannot be filed with the application, it may be submitted separately no later than March 31 of the same year. Both the application and the statement must be filed with the assessor's office for the county in which the residence is located.

Because the Statement of Farm Gross Income contains income information from a claimant's federal income tax return, the 2019 legislation provides that the statement is a confidential record in the county's records.

The 2018 and 2019 versions of the Statement of Farm Gross Income are available on the Office of State Tax Commissioner's website at www.nd.gov/tax. They are provided in a format that allows them to be completed online and either printed or saved on the user's computer.

For questions and assistance on the farm residence property tax exemption and the new farm gross income requirements, contact the assessor or tax equalization director for the county in which the residence is located.

**Civilian spouse of a U.S. armed forces service member**

In late December 2018 Congress passed the Veterans Benefits and Transition Act (P.L. 115-407), which the president signed on December 31. This federal legislation amended the Servicemembers Civil Relief Act ("SCRA") (50 U.S.C. 4001) to expand the state income tax protections for civilian spouses of U.S. armed forces service members.

Prior to 2009, the SCRA provided a number of protections to U.S. armed forces service members. The protections included an exemption from state income tax on military pay earned in states where they are stationed but are not legal residents. This was to ease their state income tax obligations that would otherwise result from their movement in and out of states due only to military orders. In 2009 Congress passed the Military Spouses Residency Act (P.L. 111-97) to amend the SCRA to provide state income tax protections to the civilian spouses of service members. The amendment added the following provisions that apply to 2009 and after:

- The legal residence of a civilian spouse does not change when he or she moves from one state to another if the sole purpose for moving is to live wherever the service member is stationed. (Note: This provision has been interpreted differently by the states. Some states interpret this as requiring both the civilian spouse and the service member to have the same state of legal residence. Other states, including North Dakota, do not require this.)
- A civilian spouse's income for services performed in a state is exempt from that state's income tax if (1) the service member is permanently stationed in the state, (2) the service member and civilian spouse are not legal residents of the state, and (3) the civilian spouse is in the state only to be with the service member. (Note: This provision has been interpreted differently by the states. North Dakota interprets it to mean wages, tips, commissions, and other compensation received for employment, as reported on federal Form W-2.)

Effective for tax years 2018 and after, the Veterans Benefits and Transition Act further amended the SCRA to provide that a civilian spouse may elect to use the same state of legal residence as the service member for state income tax purposes for any tax year in which they are married for any part of the year.

For more information, see the income tax guideline Civilian Spouses of Military Service Members.

## Assistance

For assistance, the following phone numbers and e-mail 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
E-mail .......... taxinfo@nd.gov

Taxpayer services *(correction notices, calculation worksheets, information requests)* 701.328.1242

Individual income tax .......... 701.328.1247
E-mail .......... individualtax@nd.gov

Partnership, S corporation, trust, and estate income tax .......... 701.328.1258
E-mail .......... individualtax@nd.gov

Corporation income tax .......... 701.328.1249
E-mail .......... corptax@nd.gov

Income tax withholding from wages (for employers) .......... 701.328.1248
E-mail .......... withhold@nd.gov
Income tax withholding from oil and gas royalties .......... 701.328.1247
E-mail .......... individualtax@nd.gov

Collections (tax due statements, lien notices, payment plans) .......... 701.328.1244

Business registration .......... 701.328.1241
E-mail .......... 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.