



# NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER

## GUIDELINE - INCOME TAX: INCOME TAXATION OF NONRESIDENT ALIENS

### PURPOSE OF GUIDELINE

If you are a citizen of a country other than the United States and you meet the definition of a nonresident alien for United States income tax purposes, this guideline explains how to comply with North Dakota's income tax laws. If you work, carry on a trade or business, or own income-producing property in North Dakota, you may have to file a North Dakota income tax return and pay North Dakota income tax.

**Treaties between the U.S. and foreign countries.** Unless an income tax treaty between the United States and a foreign country specifically exempts income from taxation by the 50 U.S. states, North Dakota does not recognize the provisions of the treaty, and the treaty's provisions do not affect North Dakota's income tax laws. Therefore, even if income derived from North Dakota sources is exempted from U.S. income tax, it may be taxable by North Dakota.

### WHO MUST FILE

You must file a North Dakota individual income tax return if you derive any amount of gross income from North Dakota sources. You have gross income from North Dakota sources if you received any of the following:

- Wages, salary, tips, commissions, fees, and any other type of compensation for personal or professional services performed in North Dakota.
- Rents, royalties, or bonus payments from mineral interests, gains, and any other type of income from tangible property located in North Dakota.
- Income from a business carried on in North Dakota. This includes income from a business that you operate as a sole proprietorship, and income passed through to you by a partnership, S corporation, or other passthrough entity that carries on its business in North Dakota.
- Income from gambling activity carried on in North Dakota.
- Any other income having its source in North Dakota.

Gross income from North Dakota sources does not include interest, dividends, pensions, annuities, or income or gain from intangible property. However, if interest, dividends, or income or gain from intangible property is received from a business carried on in North Dakota, the income is included in gross income from a North Dakota source if it is properly allocated and apportioned to North Dakota by the business.

### WHO MUST PAY NORTH DAKOTA INCOME TAX

You will have to pay North Dakota income tax if you have to file a North Dakota income tax return and your total gross income from North Dakota sources is more than allowable deductions. For this purpose, allowable deductions do not include any deduction or exemption provided for under a treaty between the U.S. and a foreign country if the treaty provisions do not specifically make it applicable to the 50 U.S. states.

## WHICH FORMS TO USE

Form ND-1 and Schedule ND-1NR.

## INSTRUCTIONS FOR COMPLETING THE NORTH DAKOTA RETURN, FORM ND-1 AND SCHEDULE ND-1NR

The ND-1 instruction booklet does not explain how to complete the return in the case of a nonresident alien. Instead, you must complete the return using the step-by-step instructions that follow.

### STEP 1

#### Complete a U.S. Income Tax Return

In the case of a nonresident alien, some of the information needed to complete the North Dakota income tax return is taken from the U.S. income tax return. The proper U.S. income tax return to use is Form 1040NR. Whether or not you actually file a U.S. income tax return, you must obtain and complete a separate U.S. Form 1040NR for North Dakota income tax purposes. Complete the U.S. return according to the instructions provided with it; however, unless an income tax treaty between the U.S. and your country specifically applies a treaty provision to the 50 states of the U.S., you must disregard any instruction to the U.S. income tax return that refers to the treaty. Write "Pro Forma Return For ND Purposes" at the top of the completed U.S. income tax return and attach it to the North Dakota income tax return.

### STEP 2

#### Complete a North Dakota Income Tax Return

Complete the North Dakota Income Tax Return - Form ND-1 and Schedule ND-1NR. The references to Form 1040NR in these instructions refer to the form you completed in **Step 1** above.

- a. Complete the top portion of page 1 of Form ND-1 (through item C) according to the instructions on page 11 of the Form ND-1 instruction booklet. Note: If you have an ITIN (individual taxpayer identification number) instead of a social security number, enter the ITIN in the spaces for the social security number.
- b. On line 1a, enter the amount from Form 1040NR, line 11.
- c. On line 1b, enter the amount from Form 1040NR, line 15.
- d. Complete lines 2 through 5 and 7 through 17 according to the instructions in the Form ND-1 instruction booklet (usually, these lines will not apply).
- e. To calculate the amount of tax to enter on line 20, complete Schedule ND-1NR. Disregard the references to Form 1040 contained in Schedule ND-1NR. Instead, enter the amounts from Form 1040NR on the applicable lines of Schedule ND-1NR, Column A. (Enter scholarship and fellowship grant income on line 8, and a scholarship and fellowship exclusion on line 10C.) Then, complete Column B according to the instructions to Schedule ND-1NR. Complete the remaining lines on Schedule ND-1NR as instructed on the form.
- f. Complete the remaining lines on Form ND-1 as instructed on the form or in the Form ND-1 instruction booklet.

## WHEN AND WHERE TO FILE

The North Dakota individual income tax return must be filed on or before April 15. If the due date falls on a Saturday, Sunday, or holiday, you have until the next day that is not a Saturday, Sunday, or holiday to file your return. However, if you are required to file a U.S. Form 1040NR with the Internal Revenue Service and it isn't due until June 15, you have until June 15 to file the North Dakota individual income tax return (without penalty or interest).

Sign and date your North Dakota income tax return, Form ND-1 on page 2 and mail with a complete copy of your federal income tax return and a copy of any withholding documents reflecting your claimed North Dakota income tax withholding to the following address:

Office of State Tax Commissioner  
600 E. Boulevard Ave., Dept. 127  
Bismarck, ND 58506-5621

## NEED HELP?

Phone: Questions: 701-328-1260  
Forms requests: 701-328-1243  
Fax: 701-328-1942  
Speech/hearing impaired — call us through Relay North Dakota at 1-800-366-6888

Email: [individualtax@nd.gov](mailto:individualtax@nd.gov)

Website: [tax.nd.gov](http://tax.nd.gov)

Write: Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127,  
Bismarck, ND 58506-5621