Guideline

Income tax withholding

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Tax Commissioner

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Introduction

This guideline is for employers. It explains the income tax withholding requirements under North Dakota income tax law. Current North Dakota income tax law requires income tax withholding from wages paid by an employer to an employee. Certain pass-through entities are also required to withhold individual income tax from the year-end distributive share of income of its individual owners or beneficiaries who are nonresidents of North Dakota. This withholding is reported separately from employer's withholding. For more information about the withholding requirement for pass-through entities, contact the Individual Income Tax Section by e-mail at individualtax@nd.gov or by phone at 701-328-1032.

Definitions. The terms *wages, employer, employee, payroll period,* and *calendar quarter* have the same meaning as defined in the Internal Revenue Code of 1986, as amended, for purposes of federal income tax withholding on wages. North Dakota Century Code §§ 57-38-59(1) and 57-38-01(10)

Payroll service provider. If an employer contracts with a payroll service provider to file and pay the federal and state withholding taxes on behalf of the employer, and the payroll service provider files and pays the employer's federal withholding taxes electronically, the payroll service provider is required to electronically file and pay the employer's North Dakota withholding taxes. For complete details on the procedures that a payroll service provider must follow, go to the Office of State Tax Commissioner's web site at www.nd.gov/tax and click on **Income Tax Withholding > Publications** on the left-hand side of the page. Then click on **Notice To Payroll Service Providers**.

Income tax withholding requirement

An employer is required to withhold North Dakota income tax from wages paid to an employee if the employee performs services within North Dakota and the wages are subject to federal income tax withholding. Wages that are not subject to federal income tax withholding, such as wages paid for domestic labor, are not subject to North Dakota income tax withholding. If an employer and employee mutually agree to withhold federal income tax from wages that are not subject to federal income tax withholding, the wages are *not* subject to North Dakota income tax withholding. N.D.C.C. § 57-38-59(1)

North Dakota resident working in another state. If an employer's main place of business is located in North Dakota, the employer must withhold North Dakota income tax from wages paid to a resident employee who performs services in another state. However, this does not apply if the employer is required by the other state to withhold that state's income tax from the wages. N.D.C.C. § 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. 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 *not* exempt from North Dakota income tax withholding. Except where an income tax treaty between the United States and a foreign country specifically exempts income from state taxation, income tax treaties between the United States and foreign countries are not recognized for North Dakota income tax purposes. N.D.C.C. § 57-38-59(1)(2)

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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.
- Enter "1" for the number of withholding allowances.
- 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.)

Exemptions

All wages that are subject to federal income tax withholding are subject to North Dakota income tax withholding, except:

- 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, as provided for under federal interstate commerce law.
- Wages paid to an eligible resident of Minnesota or Montana for services performed in North Dakota (see ***"Reciprocity"*** below for more information). N.D.C.C. § 57-38-59.1
- Wages paid to a Native American Indian for services performed on an Indian reservation, provided the person (1) is an enrolled member of a federally-recognized Indian tribe, (2) lives on the reservation where enrolled, and (3) performs the services for which the wages are paid on the reservation where enrolled.
- Wages paid by a farmer or rancher to an employee solely for agricultural labor. N.D.C.C. § 57-38-60(10)

Reciprocity. Income tax reciprocity agreements between North Dakota and the states of Minnesota and Montana provide that wages paid to residents of Minnesota and Montana for services performed in North Dakota are exempt from North Dakota income tax withholding, 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

Voluntary agreement to withhold. An employer and an employee may mutually agree to have North Dakota income tax withheld from wages otherwise exempt from North Dakota's income tax withholding requirement, in which case the employer must comply with the registration, reporting, and payment requirements explained in this guideline. N.D.C.C. § 57-38-61

Amount to withhold

An employer may use one of three methods to determine the amount of North Dakota income tax to withhold. Method One (Percentage of Wages Method), which is functionally similar to the federal percentage method (in *Circular E*), is recommended for all wage levels and is best suited for computerized payroll systems. Method Two (Percent of Federal Withholding) is a simplified method in which the federal income tax withheld is multiplied by

a flat tax rate; however, this method is recommended for use only when annual wages do not exceed $18,000 for single persons or $30,000 for married persons. Method Three (Withholding Tables), which is functionally similar to the federal wage bracket method (in *Circular E*), may be used for annual wages up to $65,000 and is recommended for manual payroll systems. Instructions on the use of each method are provided in a separate publication entitled *North Dakota Income Tax Withholding: Rates and Instructions.* N.D.C.C. § 57-38-59

Minimum amount to withhold. If the amount of North Dakota income tax to withhold from an employee's wages for a pay period is calculated to be less than $1.00, the employer is not required to withhold that amount. However, if the employer withholds an amount of less than $1.00, the employer must remit the amount to the Office of State Tax Commissioner. N.D.C.C. § 57-38-61

Federal Form W-4. North Dakota does not have a form comparable to *Federal Form W-4*. The information on the *Federal Form W-4* is also used for North Dakota income tax withholding purposes. If an employee claims exempt status on *Federal Form W-4*, the exempt status is recognized for North Dakota income tax withholding purposes. If an employer is required to submit a copy of *Federal Form W-4* to the Internal Revenue Service, the employer must also submit a copy of the *Federal Form W-4* to the Office of State Tax Commissioner. N.D.C.C. § 57-38-61

Funds held in trust. North Dakota income tax withheld from an employee's wages is deemed to be held in trust by the employer for the State of North Dakota. N.D.C.C. § 57-38-60(8)

Registration

Every employer required to withhold North Dakota income tax must register with the Office of State Tax Commissioner by completing and filing *Application to Register for Income Tax Withholding and Sales and Use Tax Permit*. If an employer is a new business in North Dakota, this form is included in the booklet *New Business Registration Forms*, which contains information and forms for common state business requirements and other purposes. The application is also located on the Tax Commissioner's web site. North Dakota Administrative Code § 81-03-03.1-02

Change in federal employer identification number (FEIN). If an employer's FEIN is changed for any reason, the employer must complete and file a new *Application to Register for Income Tax Withholding and Sales and Use Tax Permit* to register the change.

Cash deposit or bond or undertaking executed by surety company. If required by the tax commissioner, an employer must either 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)

Closing an account. If an employer goes out of business or permanently ceases to pay wages, the employer must immediately notify the Office of State Tax Commissioner. Upon notification, the Office of State Tax Commissioner will provide the proper forms and other information that the employer will need to satisfy any remaining income tax withholding requirements and close the employer's account. N.D.C.C. § 57-38-61

Personal Liability of corporate officer, or LLC governor, manager, or member. North Dakota tax law makes the corporate officer, manager or governor of a limited liability company, or member of a member-controlled limited liability company who controls, supervises, or is charged with the responsibility of filing the withholding or sales and use tax returns and payments personally liable for the failure of the business to file the returns or remit the tax. Dissolution of the business does not discharge this personal liability.

Cash deposit or bond or undertaking executed by surety company in lieu of personal liability. The corporate officers, governors or managers of a limited liability company, or members of a member-controlled limited liability company may elect to not be personally liable for a failure to file or pay, if the corporation or LLC 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 or LLC. Contact the Office of State Tax Commissioner if the corporation or LLC wishes to exercise this option. N.D.C.C. §§ 57-38-60.1 and 57-38-60.2

Reporting and payment requirements

Every employer required to withhold North Dakota income tax must file an income tax withholding return on a calendar quarter basis (or, if eligible, on a calendar year basis) and pay the tax withheld with the return. The income tax withholding return may be filed either on paper or electronically. (See ***Electronic Filing*** on this page for more information on electronic filing and payment.) In addition to the income tax withholding return, every employer must file a copy of *Federal Form W-2* for each employee with a transmittal return at the end of the calendar year. A *Form W-2* does not have to be filed with North Dakota if the wages reported on it for federal purposes are exempt from North Dakota withholding (see ***Exemptions*** on page 2).

Paper filing. If filing on paper, preaddressed forms are mailed at the appropriate time(s) during the year to every registered employer. If a registered employer does not receive a preaddressed form for any reason, the employer should contact the Office of State Tax Commissioner before the due date of the return to obtain a preaddressed form. Failure to receive the proper form does not relieve the obligation to file or pay on time.

Electronic filing of income tax withholding return. If approved to file the income tax withholding return electronically, timely reminders will be provided in lieu of preaddressed paper forms. The reminder will be sent by e-mail, if an e-mail address is provided by the employer, or by regular mail if an e-mail address has not been provided. Failure to receive a reminder does not relieve the obligation to file or pay on time.

Income tax withholding return. Except as provided below under ***Annual filing***, *Form 306, North Dakota Income Tax Withholding Return*, 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)(2)

Annual filing. An annual filing option is available to eligible employers under which one *Form 306* may be filed for the entire calendar year on or before January 31 following the end of the calendar year. An employer is eligible for annual filing if *all* of the following conditions apply: (1) The employer had an obligation to file *Form 306* for all four quarters of the preceding calendar year; (2) The employer filed a *Form 306* 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; *and,* (3) The total North Dakota income tax withheld by the employer during the preceding calendar year was less than $500.00. Contact the Office of State Tax Commissioner for information on the procedures that apply for annual filing. N.D.C.C. § 57-38-60(1)

Payment of income tax withheld. The total amount of North Dakota income tax withheld during the period covered by *Form 306* must be remitted with *Form 306*. N.D.C.C. § 57-38-60(1)(2)

Electronic Filing. Employers may use either of two electronic filing and payment options to satisfy their *Form 306* filing and payment obligations: Withholding WebFile or Withholding E-File. The Withholding WebFile option allows employers to submit their returns on the Internet and make payment by an ACH Debit electronic funds transfer (Tax Commissioner withdraws funds from employer's bank account). There is no cost to the employer to

use WebFile. The Withholding E-File option allows employers to electronically submit the return information and payment through an ACH Credit electronic funds transfer (employer contacts its bank with instructions to initiate the electronic transfer of your tax payment from your bank account to the State's account). The employer is responsible to pay any bank fees under the E-File option. The ACH credit transfer acts as the return and no additional information needs to be submitted. Employers must register to use either electronic filing method. WebFile registration must be completed on-line from the Tax Commissioner's web site at www.nd.gov/tax. Click on **Income Tax Withholding > Electronic Filing** on the left-hand side of the page. Then click on ***Getting Started***.
E-File registration may be completed on-line in the same manner as WebFile or by mailing a completed *Form 301EF*, which is also available on our web site under Income **Tax Withholding > Forms**.

Transmittal return. *Form 307, North Dakota Transmittal of Wage and Tax Statements (Forms W-2) Return*, must be filed on or before February 28 following the close of the calendar year. See ***Information returns for wages*** below for more information about *Form W-2* requirements. N.D.C.C. § 57-38-60(3)

Information returns for wages

Except for the wages listed under ***Exemptions*** on page 2 of this guideline, every employer is required to file a copy of *Federal Form W-2* with the Office of State Tax Commissioner to report the payment of wages to an employee during the calendar year. This requirement applies even if an employer is not required to register for North Dakota income tax withholding purposes. In addition to the information required to be shown on *Form W-2* for federal tax purposes, the copy of *Form W-2* filed with North Dakota must show the total amount of North Dakota wages and North Dakota income tax withheld for the calendar year. Except where an employer is required to file *Form W-2* information electronically, an employer may file the information in paper document form or electronically. N.D.C.C. § 57-38-60(3)(4)(6)

Magnetic media requirement. If an employer or payroll service provider is required to file *Form W-2* information on magnetic media for federal purposes and the quantity of *Form W-2* forms required to be filed with North Dakota is 250 or more, the information must be filed on magnetic media for North Dakota purposes. For more information, obtain the *Income tax guideline: Information returns*.

Transmittal of W-2s. Employers must submit the *Form W-2* information. In addition, if submitted on paper, a *Form 307, North Dakota Transmittal of Wage and Tax Statements (Forms W-2) Return* must accompany the W-2s. However, if the *Form W-2* information is submitted electronically, a *Form 307* is not to be sent. The *Form W-2* information and *Form 307 (if required)* is to be submitted on or before February 28 following the end of the calendar year in which the wages were paid. N.D.C.C. § 57-38-60(3)(4)

Reporting to employees. On or before January 31, an employer must provide each employee with a copy of the *Federal Form W-2* that is required to be filed with the Office of State Tax Commissioner. N.D.C.C. § 57-38-60(6)

Information returns for nonwages

In addition to reporting wage information, a business that owns property, or carries on its trade or business activities, in North Dakota may be required to file information from *Federal Forms 1099, 1042-S* and *W-2G* with the Office of State Tax Commissioner. For more information, obtain the *Income tax guideline: Information returns*.

Need help?

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