



Guideline

Income Tax Composite filing method

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Tax Commissioner

This guideline applies to taxable years
beginning **BEFORE** January 1, 2006

Introduction

This guideline explains the conditions and procedures for the filing of a composite North Dakota individual income tax return under N.D.C.C. § 57-38-31.1. An eligible pass-through entity may file one North Dakota individual income tax return, called a “composite return,” and pay the tax due on behalf of two or more eligible members. The composite return satisfies the individual income tax filing requirement and tax liability of each eligible member who chooses to be included in it. The composite return does not satisfy the filing requirement of the pass-through entity; it must still file its own North Dakota income tax return.

Composite filing is optional. Composite filing is an option for eligible pass-through entities and their members to consider. No application or election has to be made by an eligible pass-through entity prior to filing a composite return. An eligible pass-through entity may choose to use or not to use the composite filing method for each taxable year.

Eligible pass-through entity. An eligible pass-through entity means a partnership, subchapter S corporation, trust, or a limited liability company treated like a partnership for federal income tax purposes. *Throughout the remainder of this guideline, “pass-through entity” will be used to refer to an eligible pass-through entity.*

Eligible member. An eligible member means a nonresident individual who is a partner, shareholder, beneficiary, or member of a pass-through entity, and whose only source of North Dakota income is a distributive share of income from one or more pass-through entities. An eligible member may choose to be included or not to be included in a composite return. **Note:** In the case of an S corporation, if a shareholder receives compensation (reported on Form W-2) for work performed in North Dakota, the shareholder is deemed to have income from a North Dakota source other than the S corporation and is ineligible to be included in a composite return. *Throughout the remainder of this guideline, “member” will be used to refer to an eligible member.*

Exception to income tax withholding. Starting with taxable years beginning on or after January 1, 2006, a pass-through entity must withhold North Dakota income tax from the year-end distributive share of income of its nonresident individual members. However, the new income tax withholding requirement does not apply with respect to a nonresident individual member who is included in a composite return. For more information on the income tax withholding requirement, see **Pass-Through Entity Withholding** under **What’s New!** at www.nd.gov/tax.

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Composite return

The composite return consists of two forms: Form ND-1 and Schedule CF. The pass-through entity must first complete Schedule CF to determine the proper amounts to enter on Form ND-1 for composite filing purposes. Specific instructions for completing both Schedule CF and Form ND-1 are provided in the instructions to Schedule CF.

Note: A copy of pages 1 and 2 of Form 58 (North Dakota Partnership Return Of Income), Form 60 (North Dakota Small Business Corporation Income Tax Return), or Form 38 (Fiduciary Income Tax Return), whichever applies, must be attached to the composite return.

Taxable year

The composite return must be based on and filed for the taxable year of the members included in it; therefore, the members must have the same taxable year. The taxable year of the members must be used for all individual income tax reporting, filing and payment purposes.

If the pass-through entity has a fiscal tax year but the members have a calendar tax year, the composite return must be filed for the members' calendar year. In addition, the North Dakota income or loss that is reportable on the composite return must be reported in the same calendar tax year in which the income or loss is reported on the members' federal income tax returns.

North Dakota income for composite filing purposes

The North Dakota income or loss that is reportable on the composite return is determined by adding the separate distributable shares of income or loss reportable to North Dakota by the members included in it. The separate share of distributable income or loss reportable to North Dakota by a partner or shareholder is the partner's or shareholder's share of the North Dakota income or loss determined on Form 58 (North Dakota Partnership Return Of Income) or Form 60 (North Dakota Small Business Corporation Income Tax Return). This amount is shown in Schedule A of the applicable form. (For this purpose, "partner" includes a member of a limited liability company treated like a partnership.) The separate share of income or loss reportable to North Dakota by a beneficiary is the beneficiary's distributable share of income or loss from the trust, as reported in Schedule 3 of Form 38 (North Dakota Fiduciary Income Tax Return).

Calculation of North Dakota tax liability

The North Dakota income tax liability under the composite filing method must be calculated by multiplying each member's share of North Dakota income reportable on the composite return by 5.54 percent (.0554). In the case of a loss amount, the tax is zero. Add the separately calculated amounts to determine the total tax due on the composite return. No deductions, exclusions, or income tax credits otherwise allowed under North Dakota income tax law are allowed under the composite filing method.

Credit for tax paid on composite return. If, after a composite return is filed, it is determined that a member included in it is ineligible for inclusion, or a member changes his or her mind about being included in it, the member must file an amended North Dakota individual income tax return on his or her own behalf. In this situation, the member's share of the North Dakota net income tax liability computed and reported on Schedule CF may be credited against the net tax liability computed on the member's amended North Dakota individual income tax return. On the amended return, the member claims

the credit by including it on the line for total payments (for withholding and estimated payments). A statement must be attached to the amended return showing the name and federal employer identification number of the pass-through entity, the amount of the credit for tax paid on the composite return, and an explanation that the member is changing from composite to individual filing.

To find out what his or her share of the net income tax liability is on the composite return, the member must contact the pass-through entity.

Filing and payment due dates

If the members included in the composite return have a calendar tax year, the composite return is due on April 15 following the end of the calendar year. If the composite return is filed on a fiscal year basis (because the members included in it have a fiscal tax year), the composite return is due on the 15th day of the fourth month following the end of the fiscal year.

Extension of time to file a composite return. To request an extension of time to file a composite return, the pass-through entity must complete and file North Dakota Form 101 on or before the due date of the composite return. North Dakota income tax law does not provide for an automatic extension. An extension will be granted only for good cause. ***Important: Disregard the instructions on Form 101 regarding recognition of federal extensions. A federal extension is not recognized for composite filing purposes.***

Tax due. Tax due on a composite return must be remitted with the return. An extension of time to file a composite return also extends the time to pay any tax due without penalty on the composite return; however, interest at the rate of 12% per year is charged on the tax due from the regular due date to the extended due date or the date the return is filed, whichever date is earlier.

Estimated tax

The pass-through entity must pay estimated North Dakota income tax on behalf of the members included in the composite return who are required to pay estimated North Dakota income tax. The determination of who is required to pay estimated North Dakota income tax and the computation of the amount to pay must be made on a per member basis following the procedure in Form 400-ES (North Dakota Estimated Income Tax For Individuals).

Payment of estimated tax. For each required installment payment, the pass-through entity must add the separate amounts of estimated income tax payable by the members included in the composite return, and must submit one check or money order for the total amount with the appropriate Form 400-ES payment voucher. The name, address and federal employer identification number of the pass-through entity must be entered in the taxpayer identification area, and the words “**Composite Return**” must be written in the top margin, of the Form 400-ES Payment Voucher.

Underpayment of estimated tax. Interest is charged on an underpayment of estimated North Dakota income tax. The determination of whether there is an underpayment of estimated tax and the computation of interest due on the underpayment must be made on a per member basis following the procedure in Form 400-UT (Underpayment Of Estimated North Dakota Income Tax By Individuals).

North Dakota tax matters person

The pass-through entity is responsible for the filing of the composite return and all matters related to it. Except as provided under **Form 500** below, a general partner or corporate officer must be designated as a North Dakota Tax Matters Person. In the case of a trust, the fiduciary fills this role. The North Dakota Tax Matters Person must be identified on Schedule CF. The North Dakota Tax Matters Person must do the following with respect to the composite return:

- Prepare, sign and file the return;
- Pay any tax, penalty and/or interest due with respect to the return, including estimated tax;
- Represent the members included in the return in an audit, including any administrative appeal actions;
- Handle all correspondence, including correction, assessment and refund notices; and
- Keep members informed of all matters related to the return.

Form 500. A pass-through entity may designate a third-party, such as a CPA or attorney, to act as its North Dakota Tax Matters Person by completing Form 500 (Authorization To Disclose Tax Information And Designation Of Representative) and attaching it to the composite return.

Need help?

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