

Instructions For Form N-168

Income Averaging for Farmers and Fishermen

(NOTE: References to “married” and “spouse” are also references to “in a civil union” and “civil union partner,” respectively.)

GENERAL INSTRUCTIONS

Use Form N-168 to elect to figure your 2020 tax by averaging, over the previous three years (base years), all or part of your 2020 taxable income from your trade or business of farming or fishing. This election may give you a lower tax if your 2020 income from farming or fishing is high and your taxable income for one or more of the three prior years was low.

In order to qualify for this election, you are not required to have been in the business of farming or fishing during any of the base years.

You may elect to average farming or fishing income even if your filing status was not the same in the election year and the base years.

You do not have to recompute, because of this election, the tax liability of any minor child who was required to use your tax rates in the prior years.

You may need copies of your original or amended Forms N-11 or N-15 that you filed for 2017, 2018, and 2019 to figure your tax on Form N-168. If you do not have copies of those returns, you can get them by filing Form L-72, Request for Copies of Hawaii Tax Return. Form L-72 may be obtained from any district tax office, by mail, or via the Internet at:

tax.hawaii.gov

Definitions

Farming Business. A farming business is the trade or business of cultivating land or raising or harvesting any agricultural or horticultural commodity. This includes:

1. Operating a nursery or sod farm;
2. Raising or harvesting of trees bearing fruits, nuts, or other crops;
3. Raising ornamental trees (but not evergreen trees that are more than six years old when severed from the roots);
4. Raising, shearing, feeding, caring for, training, and managing animals; and
5. Leasing land to a tenant engaged in a farming business, but **only** if the lease payments are (a) based on a share of the tenant's production (not a fixed amount), and (b) determined under a written agreement entered into before the tenant begins significant activities on the land.

A farming business **does not** include:

- Contract harvesting of an agricultural or horticultural commodity grown or raised by someone else, or
- Merely buying or reselling plants or animals grown or raised by someone else.

Fishing Business. A fishing business is the trade or business of fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade. This includes:

1. The catching, taking, or harvesting of fish;
2. The attempted catching, taking or harvesting of fish;
3. Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish;
4. Any operations at sea in support of, or in preparation for, any activity described in (1) through (3) above;
5. Leasing a fishing vessel, but only if the lease payments are (a) based on a share of the catch (or a share of the proceeds from the sale of the catch) from the lessee's use of the vessel in a fishing business (not a fixed payment), and (b) determined under a written lease entered into before the lessee begins any significant fishing activities resulting in the catch; and
6. Compensation as a crew member on a vessel engaged in a fishing business, but only if the compensation is based on a share of the catch (or a share of the proceeds from the sale of the catch).

The word fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

A fishing business does not include any scientific research activity conducted by a scientific research vessel.

Settlement from Exxon Valdez litigation. You will be treated as engaged in a fishing business with respect to any qualified settlement income you received if either of the following applies.

1. You were a plaintiff in the civil action *In re Exxon Valdez*, No. 89-095-CV (HRH) (Consolidated) (D. Alaska); or
2. All of the following apply:
 - a. You were a beneficiary of a plaintiff described in (1) above.
 - b. You acquired the right to receive qualified settlement income from that plaintiff.
 - c. You were the spouse or an immediate relative of the plaintiff.

Qualified settlement income is any taxable interest and punitive damage awards you received (whether as lump sums or periodic payments) in connection with the Exxon Valdez civil action described above. Qualified settlement income includes all such awards, whether received before or after the judgment and whether related to a settlement or a judgment.

SPECIFIC INSTRUCTIONS

Line 2 — To figure your **elected farm income**, first figure your taxable income from farming or fishing. This includes all income, gains, losses, and deductions attributable to your farming or fishing business. If you conduct both farming and fishing businesses, you must figure your elected farm income by combining income, gains, losses, and deductions attributable to your farming and fishing businesses.

Elected farm income also includes any gain or loss from the sale or other disposition of property regularly used in your farming or fishing business for a substantial period of time. However, if such gain or loss is realized after cessation of the farming or fishing business, the gain or loss is treated as attributable to a farming or fishing business only if the property is sold within a reasonable time after cessation of the farming or fishing business. A sale or other disposition within one year of the cessation is considered to be within a reasonable time.

Elected farm income does not include income, gain, or loss from the sale or other disposition of land or from the sale of development rights, grazing rights, and other similar rights.

Generally, income, gains, losses, and deductions from farming or fishing are reported on:

- Form N-11 or N-15, income from wages and other compensation you received (a) as a shareholder in an S corporation engaged in a farming or fishing business or (b) as a crew member on a vessel engaged in a fishing business (but see Fishing business on this page);
- Form N-11 or N-15, income from Exxon Valdez litigation;
- Form N-11 or N-15, deductible part of self-employment tax, but only to the extent that deduction is attributable to your farming or fishing business;
- Form N-11 or N-15, CCF reduction, except to the extent that any earnings (without regard to the carryback of any net operating or net capital loss) from the operation of agreement vessels in the fisheries of the United States or in the foreign or domestic commerce of the United States are not attributable to your fishing business;
- Federal Schedule C or C-EZ;
- Form N-11, capital gain or loss, or Capital Gain/Loss Worksheet in the Form N-15 instruction booklet;
- Federal Schedule E, Part II;
- Federal Schedule F;
- Schedule D-1;
- Federal Form 4835; and
- Federal Form 8949.

Your **elected farm income** is the amount of your taxable income from farming or fishing that you elect to include on line 2. You do not have to include all of your taxable income from farming or fishing on line 2. It may be to your advantage to include less than the entire amount, depending on how the amount you include on line 2 affects your tax bracket for the current and prior three tax years.

The excess farm loss rules don't apply in 2020. The excess business loss disallowance rule replaces the limitation on excess farm loss. Your elected farm income cannot include excess business losses. See the instructions for federal Schedule F (Form 1040) and federal Form 461.

Your elected farm income cannot exceed your taxable income. Also, the portion of your elected farm income treated as a net capital gain cannot exceed the **smaller** of your total net capital gain or the net capital gain attributable to your farming or fishing business. If your elected farm income includes net capital gain, you must allocate an equal portion of the net capital gain to each of the base years. If, for any base year, you had a capital loss that resulted in a capital loss carryover to the next tax year, **do not** reduce the elected farm income allocated to that base year by any part of the carryover.

Line 4 — Figure the tax on the amount on line 3 using the 2020 Tax Table, Tax Rate Schedules, or Capital Gains Tax Worksheet from your 2020 Form N-11 or Form N-15 instruction booklet. Enter the tax on line 4.

Line 5 — If you used Form N-168 to figure your tax for 2019 (that is, you entered the amount from the 2019 Form N-168, line 22, on your 2019 Form N-11, line 27 or Form N-15, line 44), enter on line 5 the amount from your

2019 Form N-168, line 11. If you used Form N-168 to figure your tax for 2018 but not 2019, enter on line 5 the amount from your 2018 Form N-168, line 15. If you used Form N-168 to figure your tax for 2017 but not 2018 or 2019, enter on line 5 the amount from your 2017 Form N-168, line 3.

If you figured your tax for 2017, 2018, and 2019 without using Form N-168, enter on line 5 the taxable income from your 2017 return (or as previously adjusted by the Department of Taxation (Department), an amended return, etc.). But if that amount is zero or less, complete the worksheet in the instructions to federal Schedule J to figure the amount to enter on line 5.

If you did not file a tax return for 2017, use the amount you would have reported as your taxable income had you been required to file a tax return.

Line 8 — If line 7 is zero, enter -0- on line 8. Otherwise, figure the tax on the amount on line 7 using either the 2017 Tax Rate Schedules on this page or the Tax on Capital Gains Worksheet on page 4 of the instructions.

Line 9 — If you used Form N-168 to figure your tax for 2019 (that is, you entered the amount from the 2019 Form N-168, line 22, on your 2019 Form N-11, line 27 or Form N-15, line 44), enter on line 9 the amount from your 2019 Form N-168, line 15. If you used Form N-168 to figure your tax for 2018 but not 2019, enter on line 9 the amount from your 2018 Form N-168, line 3.

If you figured your tax for both 2018 and 2019 without using Form N-168, enter on line 9 the taxable income from your 2018 return (or as previously adjusted by the Department, an amended return, etc.). But if that amount is zero or less, complete the worksheet in the instructions to federal Schedule J to figure the amount to enter on line 9.

If you did not file a tax return for 2018, use the amount you would have reported as your taxable income had you been required to file a tax return.

Line 12 — If line 11 is zero or less, enter -0- on line 12. Otherwise, figure the tax on the amount on line 11 using either the 2018 Tax Rate Schedules

on this page or the Tax on Capital Gains Worksheet on page 4 of the instructions.

Line 13 — If you used Form N-168 to figure your tax for 2019 (that is, you entered the amount from the 2019 Form N-168, line 22, on your 2019 Form N-11, line 27 or Form N-15, line 44), enter on line 13 the amount from your 2019 Form N-168, line 3.

If you did not use Form N-168 to figure your tax for 2019, enter on line 13 the taxable income from your 2019 return (or as previously adjusted by the Department, an amended return, etc.). But if that amount is zero or less, complete the worksheet in the instructions to federal Schedule J to figure the amount to enter on line 13.

If you did not file a tax return for 2019, use the amount you would have reported as your taxable income had you been required to file a tax return.

Line 16 — If line 15 is zero or less, enter -0- on line 16. Otherwise, figure the tax on the amount on line 15 using either the 2019 Tax Rate Schedules on page 3 or the Tax on Capital Gains Worksheet on page 4 of the instructions.

Lines 18, 19, and 20 — If you used Form N-168 to figure your tax for 2019, enter the amount from the appropriate lines of that Form N-168 on lines 18, 19, and 20. If you used Form N-168 to figure your tax for 2018 but not 2019, enter the amount from the appropriate lines of your 2018 Form N-168 on lines 18 and 19. If you used Form N-168 for 2017 but not 2018 or 2019, enter the amount from line 4 of your 2017 Form N-168 on line 18. Otherwise, enter your tax for the applicable year. If you amended your return or the Department made changes to it, enter the corrected amount. Do not include any amount from Forms N-2, N-103, N-152, N-312, N-338, N-344, N-348, N-405, N-586, or N-814.

Tax Rate Schedules for Year 2017

Schedule I – Use if your filing status is Single or Married Filing Separately

If your taxable income is:	Your tax is:
Not over \$2,400.....	1.40% of taxable income
Over \$2,400 but not over \$4,800	\$ 34 plus 3.20% over \$2,400
Over \$4,800 but not over \$9,600	\$ 110 plus 5.50% over \$4,800
Over \$9,600 but not over \$14,400	\$ 374 plus 6.40% over \$9,600
Over \$14,400 but not over \$19,200	\$ 682 plus 6.80% over \$14,400
Over \$19,200 but not over \$24,000	\$ 1,008 plus 7.20% over \$19,200
Over \$24,000 but not over \$36,000	\$ 1,354 plus 7.60% over \$24,000
Over \$36,000 but not over \$48,000	\$ 2,266 plus 7.90% over \$36,000
Over \$48,000	\$ 3,214 plus 8.25% over \$48,000

Schedule II – Use if your filing status is Married Filing Jointly or Qualifying Widow(er)

If your taxable income is:	Your tax is:
Not over \$4,800.....	1.40% of taxable income
Over \$4,800 but not over \$9,600	\$ 67 plus 3.20% over \$4,800
Over \$9,600 but not over \$19,200	\$ 221 plus 5.50% over \$9,600
Over \$19,200 but not over \$28,800	\$ 749 plus 6.40% over \$19,200
Over \$28,800 but not over \$38,400	\$ 1,363 plus 6.80% over \$28,800
Over \$38,400 but not over \$48,000	\$ 2,016 plus 7.20% over \$38,400
Over \$48,000 but not over \$72,000	\$ 2,707 plus 7.60% over \$48,000
Over \$72,000 but not over \$96,000	\$ 4,531 plus 7.90% over \$72,000
Over \$96,000	\$ 6,427 plus 8.25% over \$96,000

Schedule III – Use if your filing status is Head of Household

If your taxable income is:	Your tax is:
Not over \$3,600.....	1.40% of taxable income
Over \$3,600 but not over \$7,200	\$ 50 plus 3.20% over \$3,600
Over \$7,200 but not over \$14,400	\$ 166 plus 5.50% over \$7,200
Over \$14,400 but not over \$21,600	\$ 562 plus 6.40% over \$14,400
Over \$21,600 but not over \$28,800	\$ 1,022 plus 6.80% over \$21,600
Over \$28,800 but not over \$36,000	\$ 1,512 plus 7.20% over \$28,800
Over \$36,000 but not over \$54,000	\$ 2,030 plus 7.60% over \$36,000
Over \$54,000 but not over \$72,000	\$ 3,398 plus 7.90% over \$54,000
Over \$72,000	\$ 4,820 plus 8.25% over \$72,000

Tax Rate Schedules for Years 2018 and 2019**Schedule I – Use if your filing status is Single or Married Filing Separately**

If your taxable income is:

Your tax is:

Not over \$2,400.....	1.40% of taxable income
Over \$2,400 but not over \$4,800	\$ 34 plus 3.20% over \$2,400
Over \$4,800 but not over \$9,600	\$ 110 plus 5.50% over \$4,800
Over \$9,600 but not over \$14,400	\$ 374 plus 6.40% over \$9,600
Over \$14,400 but not over \$19,200	\$ 682 plus 6.80% over \$14,400
Over \$19,200 but not over \$24,000	\$ 1,008 plus 7.20% over \$19,200
Over \$24,000 but not over \$36,000	\$ 1,354 plus 7.60% over \$24,000
Over \$36,000 but not over \$48,000	\$ 2,266 plus 7.90% over \$36,000
Over \$48,000 but not over \$150,000	\$ 3,214 plus 8.25% over \$48,000
Over \$150,000 but not over \$175,000	\$ 11,629 plus 9.00% over \$150,000
Over \$175,000 but not over \$200,000	\$ 13,879 plus 10.00% over \$175,000
Over \$200,000	\$ 16,379 plus 11.00% over \$200,000

Schedule II – Use if your filing status is Married Filing Jointly or Qualifying Widow(er)

If your taxable income is:

Your tax is:

Not over \$4,800.....	1.40% of taxable income
Over \$4,800 but not over \$9,600	\$ 67 plus 3.20% over \$4,800
Over \$9,600 but not over \$19,200	\$ 221 plus 5.50% over \$9,600
Over \$19,200 but not over \$28,800	\$ 749 plus 6.40% over \$19,200
Over \$28,800 but not over \$38,400	\$ 1,363 plus 6.80% over \$28,800
Over \$38,400 but not over \$48,000	\$ 2,016 plus 7.20% over \$38,400
Over \$48,000 but not over \$72,000	\$ 2,707 plus 7.60% over \$48,000
Over \$72,000 but not over \$96,000	\$ 4,531 plus 7.90% over \$72,000
Over \$96,000 but not over \$300,000	\$ 6,427 plus 8.25% over \$96,000
Over \$300,000 but not over \$350,000	\$ 23,257 plus 9.00% over \$300,000
Over \$350,000 but not over \$400,000	\$ 27,757 plus 10.00% over \$350,000
Over \$400,000	\$ 32,757 plus 11.00% over \$400,000

Schedule III – Use if your filing status is Head of Household

If your taxable income is:

Your tax is:

Not over \$3,600.....	1.40% of taxable income
Over \$3,600 but not over \$7,200	\$ 50 plus 3.20% over \$3,600
Over \$7,200 but not over \$14,400	\$ 166 plus 5.50% over \$7,200
Over \$14,400 but not over \$21,600	\$ 562 plus 6.40% over \$14,400
Over \$21,600 but not over \$28,800	\$ 1,022 plus 6.80% over \$21,600
Over \$28,800 but not over \$36,000	\$ 1,512 plus 7.20% over \$28,800
Over \$36,000 but not over \$54,000	\$ 2,030 plus 7.60% over \$36,000
Over \$54,000 but not over \$72,000	\$ 3,398 plus 7.90% over \$54,000
Over \$72,000 but not over \$225,000	\$ 4,820 plus 8.25% over \$72,000
Over \$225,000 but not over \$262,500	\$ 17,443 plus 9.00% over \$225,000
Over \$262,500 but not over \$300,000	\$ 20,818 plus 10.00% over \$262,500
Over \$300,000	\$ 24,568 plus 11.00% over \$300,000

Form N-11 Filers - Tax on Capital Gains Worksheet for Years 2017, 2018, and 2019

1. Enter your taxable income
2. Enter your net long-term capital gain (Form 1040 or Schedule D) (as refigured)
3. Combine your Hawaii long-term adjustments, if any, and enter the total here (as refigured)
4. Combine lines 2 and 3. This is your Hawaii net long-term capital gain
5. Enter your net capital gain (Form 1040 or Schedule D) (as refigured)
6. Combine your Hawaii short-term adjustments, if any, and enter the total here (as refigured)
7. Combine lines 3, 5, and 6. This is your Hawaii net capital gain
8. Enter the **smaller** of line 4 or line 7
9. If you filed Form N-158, enter the amount from line 4e of Form N-158
10. Line 8 minus line 9. If this amount is zero or less, **stop here**; you **cannot** use this worksheet to figure your tax. Instead, use the Tax Rate Schedules shown on page 2 or page 3.....
11. Line 1 minus line 10
12. Enter the amount shown below for the filing status you claimed.....
Single or Married filing separately— \$24,000
Married filing jointly or Qualifying widow(er)— 48,000
Head of household— 36,000
13. Enter the **greater** of line 11 or line 12
14. Line 1 minus line 13. This is the amount of net capital gains eligible for alternative tax.....
15. Compute the tax on the amount on line 13 using the Tax Rate Schedules shown on page 2 or page 3....
16. Multiply line 14 by 7.25% (.0725) and enter the result
17. Line 15 plus line 16
18. Compute the tax on the amount on line 1. Use the Tax Rate Schedules shown on page 2 or page 3.....
19. **Tax.** Enter the **smaller** of line 17 or line 18 here and on the appropriate line of Form N-168

N-15 Filers - Tax on Capital Gains Worksheet for Years 2017, 2018, and 2019

1. Enter your taxable income
2. Enter the smaller of your Hawaii net long-term capital gain* or your Hawaii net capital gain* (Capital Gain/Loss Worksheet in the Form N-15 instruction booklet) (as refigured)
3. If you filed Form N-158, enter the amount from line 4e of Form N-158
4. Line 2 minus line 3. If this amount is zero or less, **stop here**; you **cannot** use this worksheet to figure your tax. Instead, use the Tax Rate Schedules shown on page 2 or page 3.....
5. Line 1 minus line 4
6. Enter the amount shown below for the filing status you claimed.....
Single or Married filing separately— \$24,000
Married filing jointly or Qualifying widow(er)— 48,000
Head of household— 36,000
7. Enter the **greater** of line 5 or line 6
8. Line 1 minus line 7. This is the amount of net capital gains eligible for alternative tax.....
9. Compute the tax on the amount on line 7 using the Tax Rate Schedules shown on page 2 or page 3
10. Multiply line 8 by 7.25% (.0725) and enter the result
11. Line 9 plus line 10
12. Compute the tax on the amount on line 1. Use the Tax Rate Schedules shown on page 2 or page 3.....
13. **Tax.** Enter the **smaller** of line 11 or line 12 here and on the appropriate line of Form N-168.....

***Note:** If you filed Form N-15, the computation to figure taxable income uses Hawaii income and deduction amounts from Column B. Therefore, the Tax on Capital Gains Worksheet should be completed using amounts from Column B of Form N-15.