



# Guideline

## Sales Tax Sales, Use and Gross Receipts Tax Requirements

Cory Fong  
Tax Commissioner

July 2009

In order to promote a better understanding of the North Dakota sales, use and gross receipts tax laws, the Office of State Tax Commissioner provides the following general information. Special guidelines for certain types of businesses also are available and may be obtained by contacting the Sales Tax Compliance Section of the Office of State Tax Commissioner or by viewing the guidelines on our web site at [www.nd.gov/tax](http://www.nd.gov/tax).

### Imposition and Rates - Sales & Use Tax

Sales tax is paid by the purchaser and collected by the retailer.

Sales tax is levied at the following rates:

- 3 percent on the total receipts from retail sales of *new* mobile homes. (*Used* mobile homes are exempt.)
- 5 percent on the total receipts from the leasing or renting of hotel, motel or tourist court accommodations for periods of less than 30 consecutive days.
- 5 percent on the total receipts from all other taxable retail sales of tangible personal property and services.

### Imposition and Rates - Gross Receipts Tax

Gross receipts tax is levied at the following rates:

- 3 percent on the gross receipts from retail sales of new farm machinery and new irrigation equipment used exclusively for agricultural purposes.
  - 7 percent on the gross receipts from retail sales of alcoholic beverages sold for consumption either on or off the premises.
- \* The 1 percent on the gross receipts from the leasing or renting of hotel, motel, or tourist court accommodations for periods of fewer than thirty consecutive days, excluding bed and breakfast accommodations was in effect from July 1, 2003 through June 30, 2007.

### Permits and Reporting

Any business or institution making taxable retail sales of tangible personal property or services is required to hold a North Dakota sales, use and gross receipts tax permit. An application to obtain a permit must be submitted to the Registration Section of the Office of State Tax Commissioner. When a business or institution has a permit, a sales, use and gross receipts tax return is sent to the taxpayer each calendar quarter (or each assigned reporting period) to report and remit the sales, use and gross receipts tax. The reporting and paying of North Dakota state and local sales, use and gross receipts taxes can also be completed using the state's electronic sales, use and gross receipts tax filing system, which may be used as an alternative to filing the paper tax return. For more information on the state's sales, use and gross receipts tax filing system, please refer to the electronic filing information located at [www.nd.gov/tax/salesanduse/elecfile](http://www.nd.gov/tax/salesanduse/elecfile). ***These returns must be filed each period whether tax is due or not.*** If no tax is due, the return must be filed indicating that no taxable sales or reportable purchases were made for that period. If the return is not filed, the Sales Tax Compliance Section will notify the permit holder that the return is delinquent and that a penalty is due.

Sales tax applies to sales of tangible personal property and certain services to a final user and consumer. Use tax is complimentary to sales tax and is imposed on the use, storage or consumption of tangible personal property in this state unless the goods already have been subjected to sales tax.

If a business or institution purchases materials, supplies or equipment for resale, the business or institution should not pay the tax to the supplier. Instead, the business or institution should collect tax from the customer when the item is sold and remit the tax to the Office of State Tax Commissioner.

If a business or institution purchases materials, supplies or equipment for use in its business, the business or institution is required to pay sales tax to the supplier of these items. If the supplier does not hold a North Dakota sales, use and gross receipts tax permit, the tax should not be remitted to the supplier, but should be remitted as a use tax directly to the Office of State Tax Commissioner.

## Penalties

For returns filed late, a minimum penalty of 5 percent of the tax due or \$5.00, whichever is greater, will be added to the tax due for the first month the return is late. For each additional month or fraction thereof that a return is late an additional penalty equal to 5 percent of the tax due will be assessed up to a maximum of 25 percent of the tax due. Interest is not assessed for the first month the return is delinquent. Interest of 1 percent of the tax due will be assessed for each month or fraction of a month after the first month that a return is late. Penalty and interest is calculated separately for sales/use tax and gross receipts tax.

## Retail Sales-Sales For Resale

A *retail sale* is the sale of tangible personal property to a person who is the final user and consumer of the goods. The seller or supplier in this instance is required to collect sales tax on the sale to the final user.

A *sale for resale* is made when a dealer or supplier sells to another bona fide retailer for resale. The seller or supplier is not required to collect sales tax from the individual or company making the purchase for resale provided the seller obtains a North Dakota certificate of resale, a Multistate Tax Commission Uniform Sales and Use Certificate, or a certificate of exemption authorized by the Streamlined Sales Tax Agreement from the purchaser.

If a person submits a false North Dakota certificate of resale to a seller, the person submitting the false certificate is liable for any tax and penalties which may become due. Certificates of resale should be obtained from retailers at least every two years.

The North Dakota certificate of resale is available on our website.

### North Dakota Certificate of Resale

I hereby certify that I hold \_\_\_\_\_ Sales and Use Tax Permit Number \_\_\_\_\_. I am engaged in the business of selling, leasing or renting \_\_\_\_\_, and that the tangible personal property purchased from \_\_\_\_\_ is purchased by me for resale.

**I further certify that I will report and remit any sales or use tax and any penalties which become due as a result of purchases made from the above seller which are used or consumed by me.**

\_\_\_\_\_  
Business Name

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

*These certificates are not to be sent to the Office of State Tax Commissioner*, but must be retained in the supplier's files to substantiate sales claimed as sales for resale.

## Purchases Subject to Use Tax

Individuals and businesses that purchase supplies and equipment for use in running a business or for personal use must pay a sales or use tax on these purchases, based on the cost of the items being purchased. If these items are purchased from a firm that does not collect North Dakota sales tax, the purchaser must report the purchase on the *Items Subject to Use Tax* line of the sales, use and gross receipts tax return and pay a use tax on the purchase price. Examples of taxable purchases include office supplies, office equipment, samples, fixtures, display cases, maintenance items, cleaning supplies, delivery equipment, special installation tools and equipment, etc.

## Rentals of Tangible Personal Property

The term *sale* also includes the leasing or renting of tangible personal property leased or rented for final use or consumption within this state. Certain vehicles subject to the motor vehicle excise tax imposed by the North Dakota Century Code ch. 57-40.3 also will be subject to sales tax if the vehicle is rented in this state for less than 30 days. Please see the Licensed Motor Vehicle Dealers Guideline for details.

## **Delivery To Out-Of-State Residents**

Delivery to a customer out-of-state constitutes a sale in interstate commerce and is not a taxable sale in North Dakota. For example, if a retailer in North Dakota sells merchandise to an out-of-state resident and, as a condition of the sale, agrees to deliver the merchandise or to have the merchandise delivered to the customer at a point in another state, North Dakota sales tax does not apply. However, the North Dakota retailer may be obligated to collect and remit the tax for the state into which the retailer delivers if the retailer's activities in that state are sufficient to obligate the retailer to that state's tax law.

On sales to out-of-state residents, retailers must be certain that their records contain proof of delivery, such as truck records, bills of lading, statement by the customer, etc. These conditions apply to deliveries into any state or Canadian province.

## **Delivery Charges Taxable**

Freight, delivery, and other transportation charges, including shipping and handling charges and setup charges, are always considered to be part of the selling price. If the sale is taxable, the freight, delivery, and other transportation charges are taxable. If the product being delivered is exempt from sales tax, then the freight, delivery and other transportation charges are also exempt. Delivery charges billed directly to the customer by delivery services that are not making the sale of tangible personal property remain exempt from sales and use tax.

## **Sales to Nonprofit Organizations Are Taxable**

The total receipts from sales of tangible personal property to nonprofit organizations for their own use are subject to sales tax. Such organizations include Boy Scouts, Girl Scouts, F.F.A., Chambers of Commerce, Lions Clubs and other civic organizations, as well as churches and religious groups.

## **Sales to Residents of Montana**

North Dakota sales tax law contains an exemption for persons from Montana, defined by N.D.C.C. § 57-39.2-04(12) from paying sales tax when purchasing tangible personal property within North Dakota. A person of Montana can take delivery of tangible personal property in North Dakota and can purchase this property without paying the North Dakota sales tax provided the following conditions are met:

1. The sale is in excess of \$50.00.
2. The personal property will be taken out of the state of North Dakota and used exclusively outside this state.
3. The resident of Montana is in North Dakota to make a specific purchase.
4. The resident of Montana must sign a certificate of purchase form certifying Montana residency and that the goods will be used outside of North Dakota.

The prescribed certificate of purchase for use in making sales to persons from Montana may be obtained from the Office of State Tax Commissioner or from our website at [www.nd.gov/tax/salesanduse/forms/montana-refund-enabled.pdf](http://www.nd.gov/tax/salesanduse/forms/montana-refund-enabled.pdf).

Goods purchased by persons from Montana must be taken from North Dakota and used entirely outside this state in order to qualify for the exemption. Accordingly, tax must be paid on lodging accommodations, meals, entertainment and similar goods and services which are consumed in this state.

## **Sales to Canadian Residents**

Sales to residents of Canada are not exempt from North Dakota sales tax, however, in some cases the Canadian buyer may obtain a refund of North Dakota sales tax paid.

The refund is available under the following conditions:

1. The Canadian resident must be in North Dakota to make a purchase and not as a tourist or temporary resident.
2. The goods must be removed from North Dakota within 30 days of purchase and permanently used outside of North Dakota.
3. The Canadian resident must apply online to the Tax Commissioner using our website [www.nd.gov/tax](http://www.nd.gov/tax).
4. The qualifying purchases (each invoice) must equal or exceed \$25.00 before sales tax.
5. The total refund must be \$15.00 per year, per request.

Goods purchased by Canadian residents must be taken out of North Dakota and used entirely outside this state in order for the refund to be allowed. Accordingly, tax paid on lodging accommodations, meals, entertainment, etc. is not subject to refund since these purchases are used in North Dakota.

## Sales to Contractors

North Dakota sales and use tax law regards any contractor who incorporates tangible personal property into real property as the final user and consumer of the property. As a final user and consumer, the contractor is liable for sales or use tax on the purchase price of that property.

If a contractor furnishes the seller of construction materials with a completed contractor certificate containing the contractor's license number assigned under the provisions of N.D.C.C. ch. 43-07 and the contractor's sales and use tax number assigned by the State Tax Commissioner, the seller is not required to collect tax on the sale. Any contractor furnishing such a certificate must report those purchases on the sales and use tax return for the reporting period in which the purchases are made and pay the tax to the Office of State Tax Commissioner with that return. Reporting the purchases and paying the tax on a completed job basis is not permitted.

The following constitutes the Contractor's Certificate as prescribed by the State Tax Commissioner and is available on our website.

### Contractor's Certificate

I, the undersigned, am a construction contractor holding North Dakota Contractor's License No. \_\_\_\_\_ issued by the Secretary of State of the State of North Dakota and North Dakota Sales and Use Tax Permit Number \_\_\_\_\_ assigned to me by the State Tax Commissioner of the State of North Dakota.

I certify that as a construction contractor, I will report and remit any sales or use tax due directly to the Office of the North Dakota State Tax Commissioner as a result of purchases made by me from \_\_\_\_\_ (Seller)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
(Address)

If a contractor or subcontractor also is engaged in retail trade and part or all of the machinery, equipment, material or supplies used in carrying out a construction contract are taken from stock that was purchased for resale, the contractor must pay a use tax on his cost of the materials. The purchase price or value of the machinery, equipment, materials or supplies used or consumed in carrying out the construction contract must be reported on the *Items Subject to Use Tax* line of the sales, use and gross receipts tax return.

## Local Sales and Use Tax

In addition to state sales, use and gross receipts taxes, various cities and counties also impose local option sales, use and gross receipts taxes. Most locations that impose a local option sales tax also impose a local option use tax, with the exception of the cities of Cando, Regent and Scranton. These locations impose a sales tax but not a use tax. See the *Local Option Taxes by Location* guideline for details about local option sales, use and gross receipts taxes.

Because Cando, Regent and Scranton do not impose a local option use tax, a business must be located within these cities to be affected by the local taxes. However, for locations that impose a use tax, businesses not located within the city or county may be required to collect the local option tax if they maintain an office or warehouse in that location, have any employees or representatives working or stationed in that location, deliver goods into the city or county in company owned delivery vehicles or have some other type of presence within the location.

Although local option taxes are imposed locally, the Office of State Tax Commissioner administers the taxes. Please contact the Office of State Tax Commissioner for additional information regarding the local taxes which may affect you. For a complete listing of the city and county taxes, our office publishes the guideline *Local Option Taxes by Location*.

## Streamlined Sales & Use Tax Agreement

North Dakota is a member state that is in compliance with the Streamlined Sales and Use Tax Agreement. It is the purpose of this agreement to simplify and modernize sales and use tax administration to reduce the burden of tax compliance. For more information regarding the Streamlined Sales and Use Tax Agreement, please visit our web site at [www.nd.gov/tax](http://www.nd.gov/tax) or contact [salestax@nd.gov](mailto:salestax@nd.gov).