



# Sales Tax Newsletter

News and developments

A publication of the Tax Administration Division

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## NEW METHOD FOR FILING A CANADIAN REFUND OF SALES TAX

Beginning July 1, 2009, the North Dakota Office of State Tax Commissioner will replace the paper process Canadian residents use to request a refund of sales tax. An electronic process will be used in place of the paper form. Canadian residents will need to submit their sales tax refund claims online using a special secure electronic form available from the Tax Commissioner's web site, [www.nd.gov/tax](http://www.nd.gov/tax).


The Office of State Tax Commissioner will eliminate the paper form when switching to an online tool. The electronic filing will reduce the processing time and enable the Commissioner to issue refunds faster.

Canadian purchasers simply enter their qualifying invoices into the secure portion of the Commissioner's web site, [www.nd.gov/tax](http://www.nd.gov/tax). Upon entering all the invoices for request, a confirmation page with a unique confirmation number is generated. Claimants need to print out the confirmation page, sign it, attach their original invoices that they used in their refund request, and mail the confirmation page and receipts to the Office of State Tax Commissioner.


The electronic system allows the Canadian purchaser to track the status of his or her claim and learn if an invoice is accepted or rejected. Requests filed online are more accurate because the system automatically reviews the entries for common math errors. And, by using the online system, the Tax Commissioner's Office is able to quickly determine eligibility of the receipts.

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Retailers that have been providing refund forms to Canadian customers should dispose of any remaining forms and inform customers of the new process. For more information, visit the Tax Commissioner's web site at [www.nd.gov/tax](http://www.nd.gov/tax), under the *What's New* section or, call 701.328.1241. 

## SALES TAX EXEMPTION FOR NATURAL GAS

Effective July 1, 2009, all sales of natural gas will be exempt from state and local sales taxes. This is the final step of a two phase approach to exempting natural gas from all sales and use taxes. The 2007 Legislative assembly approved House Bill 1049, which reduced the sales tax rate on natural gas from 2 percent to 1 percent effective January 1, 2008 and created a complete exemption from tax effective July 1, 2009. 

## 2009 LEGISLATIVE SESSION UPDATE

The 2009 North Dakota Legislative Assembly approved a number of bills that impact sales and use taxes, motor vehicle excise tax, and the wholesale alcoholic beverage tax. The following is a summary of the highlights. For the complete text of the bills and other pertinent information on the legislative session, go to [www.legis.nd.gov/assembly/61-2009/](http://www.legis.nd.gov/assembly/61-2009/).



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*Beneficiated coal is coal that has been processed to remove water and contaminants to improve the coal's quality.*

***Sales tax legislation:***

**HB1083 Repeal of June 22nd Due Date**

Prior to 2009, all sales and use tax permit holders that reported more than \$333,000 of taxable sales or purchases in the previous year were required to file the May monthly sales and use tax return at the end of each biennium by June 22. The early due date will no longer apply. All future sales and use tax returns are due on the last day of the month following the reporting period. If the last day of the month falls on a holiday or weekend, the due date is moved forward to the next business day. To be filed timely, WebFile returns must be submitted on-line before midnight of the due date and paper returns must be postmarked by the US Postal Service on or before the due date.

**HB1289 Exemption on Farm Irrigation Repair Parts**

Effective July 1, 2009, repair parts used in agricultural irrigation systems will be exempt from sales tax and farm machinery gross receipts tax. Prior to July 1, all repair parts used in farm irrigation systems were subject to 5 percent sales tax. Irrigation equipment repair parts are defined as repair or replacement parts for irrigation equipment which have a specific or generic part number assigned by the manufacturer of the irrigation equipment. Parts do not include tires, fluid, gas, grease, lubricant, wax or paint. To qualify for the exemption, the parts must be used exclusively for agricultural purposes.

**SB2032 Exemption for Construction of a Wind-powered Electrical Generating Facility**

Current sales tax law provides a sales tax exemption on production equipment or tangible personal property other than production equipment used to construct a wind-powered electrical generating facility on which construction is completed before January 1, 2011. SB2032 extends the exemption to plants constructed or expanded before January 1, 2015. A wind-powered electrical generating facility is a power plant that provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

**SB2035 Exemption for Beneficiated Coal**

Effective July 1, 2009, the initial sale of beneficiated coal will be exempt from sales tax. Beneficiated coal is coal that has been processed to remove water and contaminants to improve the coal's quality. In addition, SB2035 expands the sales tax exemption available for the construction of new power plants and the repowering of existing power plants that convert coal into electricity. Effective July 1, the existing sales tax exemption available for construction or repowering of power plants that use coal in its natural state will also be available to plants that convert beneficiated coal into electricity.

**SB2037 Exemption to Construct or Expand a System to Compress, Process, Gather, or Refine Gas**

The 2007 Legislative Assembly approved a sales tax exemption for tangible personal property used to compress, process, gather, or refine gas "recovered from a gas well in this state." SB2037 clarifies that the exemption applies to gas produced from both oil and gas wells in North Dakota. To qualify for the exemption, the following must apply:

- The tangible personal property must be used to construct a new system or expand an existing system used to compress, process, gather, or refine gas.
- The tangible personal property must be incorporated into the new or expanded system.
- To receive the exemption at the time of purchase, the system operator must apply to the Tax Commissioner for the exemption before purchasing the property. If the exemption is not approved before the purchase, the system operator must pay the tax and apply for a refund.
- If the property is purchased and installed by a contractor, the contractor must pay tax on the purchase price, but the system operator may apply for a refund of the tax paid by the contractor.

**SB2040 Exemption for Telecommunications Infrastructure**

Effective July 1, 2009, purchases of tangible personal property purchased to construct or expand a telecommunications service infrastructure in North Dakota is exempt from sales tax. To qualify for the exemption, the property must be incorporated into a telecommunications infrastructure owned by a telecommunications company. A telecommunications company means a person engaged in the furnishing of telecommunications service within North Dakota.

To qualify for the exemption at the time of purchase, the telecommunications company must apply to the Tax Commissioner before purchasing the property. If the exemption is not approved before the purchase or if the materials are purchased and installed by a contractor, the purchaser must pay the tax and the telecommunications company may apply for a refund of the tax paid.

### **SB2053 Exemption for Sales to Native American Tribal Governments**

Effective July 1, 2009, Native American tribal governments will be exempt from sales tax. A tribal government is defined as an agency, instrumentality, or political subdivision that performs essential government functions. Qualifying tribal governments do not include businesses entities or agencies whose primary purpose is to operate a business enterprise.

Under the new exemption, Native American government entities will be exempt on purchases made anywhere in North Dakota. The Tax Commissioner's Office will be issuing an exemption certificate to each tribe so they will be able to provide copies to retailers making exempt sales. Retailers should maintain a copy of the exemption certificate on file to document exempt sales.

SB2053 does not change the taxability of sales to individual Native American tribal members. Purchases made by enrolled tribal members and by businesses owned by the tribe are subject to sales tax when the purchaser takes possession of the goods off the reservation. However, individual enrolled members and tribally owned businesses are exempt from state and local sales taxes when the seller delivers the goods onto the reservation. Sales documentation must show the goods were delivered onto the reservation and should contain the tribal member's enrollment number.

### **SB2090 Exemption for Montana Residents Expanded to Businesses**

Prior to April 23, 2009, the sales tax law contained an exemption for residents of Montana. The exemption applied to purchases: (1) made by individuals that were in North Dakota for the express purpose of making a purchase, (2) were \$50 or more, and (3) were removed from North Dakota for use. SB2090 expanded this exemption to Montana business entities.

The bill was effective immediately upon signature by Governor Hoeven. Business entities that qualify for the sales tax exemption are domestic Montana corporations or other entities when the owners, partners, or members are individual Montana residents or domestic Montana corporations.

### **SB2325 Streamlined Sales Tax Agreement**

The legislature approved all changes required for North Dakota to remain in compliance with the Streamlined Sales and Use Tax Agreement. The agreement is a cooperative effort of state and local governments in conjunction with the business community to make sales tax laws more simple and uniform and to utilize technology to help reduce the burden of collecting sales and use taxes. SB2325, which is effective July 1, 2009, does the following:

- Defines "mandatory" and "optional" prewritten computer software maintenance contracts. The taxability of these contracts remains unchanged.
  - o Mandatory contracts are part of the selling price of prewritten computer software and are subject to sales tax in the same manner as the software.
  - o Optional contracts that provide only software updates are subject to sales tax.
  - o Optional contracts that bundle software updates with support service for one non-itemized price are subject to sales tax. If an optional contract separately itemizes support services and prewritten software updates, only the charges for the software updates are subject to sales tax.
  - o Optional contracts that provide only support service (no prewritten software updates) are exempt from state and local sales taxes.
- Amends the definition of "durable medical equipment" repair parts. Durable medical equipment and repair parts for the equipment are exempt from sales tax. The revised definition clarifies that repair and replacement parts do not include consumable items that are for single patient use only. Therefore, the single patient use items are subject to sales tax.

*Purchases made by enrolled tribal members and by businesses owned by the tribe are subject to sales tax when the purchaser takes possession of the goods off the reservation.*

- Provides relief of liability to retailers that collect sales tax at the incorrect rate if the effective date of the rate change is less than thirty days after the date of enactment. The relief applies only for thirty days after the effective date of the rate change and only if the retailer collected tax at the rate existing prior to the rate change.
- Defines “specified digital products.” The definition will help states more clearly identify if digital products (books, videos, and music) downloaded from the Internet are taxable or exempt. North Dakota does not tax digital products downloaded from the Internet except for prewritten computer software. See explanation of SB2347 below.

### **SB2347 Specified Digital Products**

North Dakota adopted the streamlined sales tax definition of specified digital products. These products include digital audio-visual works, digital audio works, and digital books. Essentially, these products are movies and other videos, music, and books that are downloaded from the Internet. These digital products continue to be exempt from state and local sales taxes in North Dakota. Prewritten computer software is the only product downloaded from the Internet that is taxable in this state.

### ***Motor vehicle excise tax legislation:***

#### **HB1131 Motor Vehicle Lease Valuation**

When a motor vehicle with an actual weight of ten thousand pounds or less is leased for one year or more, the motor vehicle excise tax due at the time of registration is 5 percent of the total lease consideration. If all or part of the lease is a gift or other agreement for a nominal value, HB1131 authorizes the Department of Transportation to determine the fair market value of the lease for purposes of calculating the motor vehicle excise tax due.

#### **SB2184 Exemption for Manufacturers’ Incentives**

Effective May 1, 2009, discounts and other incentives offered by vehicle manufacturers’ are exempt from tax. To qualify for the exemption, the discount or other incentive must reduce the amount paid by the purchaser to the seller at the time of purchase. If the purchaser pays the incentive amount to the seller and is later reimbursed by the manufacturer, the full purchase price paid, including the rebate amount, is subject to the 5 percent motor vehicle excise tax.


### ***Alcohol tax legislation:***

#### **HB1249 Domestic Distilleries**

Effective July 1, 2009, a license will be available to operate a domestic distillery in North Dakota. To qualify as a domestic distillery, a majority of the products used to produce distilled spirits must be North Dakota farm products. The applicant must establish that it has applied for and obtained the necessary federal registrations and permits required under the Internal Revenue Code prior to applying for a North Dakota domestic distillery license.

A domestic distillery may sell the spirits it produces to consumers or to wholesalers, but may not engage in wholesaling activities. These distilleries are obligated to collect sales tax on all retail sales and to remit all applicable retail sales tax and wholesale alcohol taxes to the Tax Commissioner with the prescribed forms.

#### **SB2416 Alcoholic Beverage Tax on Wine**

Effective July 1, 2009, the wholesale alcoholic beverage tax on sparkling wine will be reduced from one dollar a wine gallon to fifty cents a wine gallon. The new rate will be equal to other wine containing less than 17 percent alcohol by volume. The wholesale alcoholic beverage tax is reported and paid to the Tax Commissioner by the wine wholesaler. The alcoholic beverage gross receipts tax, which is collected by the retailer and reported on the North Dakota sales and use tax return, remains at 7 percent of the retail selling price. 

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