



Sales Tax Newsletter

News and developments

A publication of the Tax Administration Division

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SALES TAX RETURN REMINDERS

We wish to express our appreciation to all the retailers that work so hard to collect, report, and remit state and local sales taxes. We truly appreciate all your efforts to comply with the sales and use tax laws. The following are a few reminders that will help us accurately process and account for your returns:

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- **North Dakota Sales and Use Tax returns must be filed for all reporting periods even if no sales were made or no tax is due.** If you have no activity for the period, please record a zero on Line 1 - Total Sales, sign and date the return, and mail in the return envelope.
- For the most timely, efficient and error free returns, we recommend WebFile. However, if you choose to file on paper, we recommend using the preprinted return supplied by our office. If you use a software package to generate your return, make sure you enter the correct sales tax account number, period ending date, and company name and address information to ensure your return gets directed to the correct account.

- All returns must be signed and dated and a name and phone number must be provided for a contact person that can answer questions about the return.
- To be filed on time, paper sales tax returns and all payments by check for the period ending December 31, 2009 must be postmarked by the US Postal Service no later than February 1, 2010. Electronic returns filed by WebFile must be submitted by midnight February 1.
- If your business location or mailing address changes, please complete our *Sales and Use Tax Permit Change of Address* form and mail it to our office. The form is available on our website at www.nd.gov/tax. Click on "Sales and Use" on the left side of the page and then on "Forms." 

NEW OR AMENDED LOCAL TAXES

The Office of State Tax Commissioner administers all local sales, use and gross receipts taxes imposed in North Dakota. All of the following changes will become effective January 1, 2010.

The city of **Cavalier** has increased its local sales, use and gross receipts tax from 1½ to 2 percent. All other provisions of the ordinance remain unchanged.

The city of **Fargo** has increased its local sales, use and gross receipts tax from 1½ to 2 percent. In addition, the city ordinance raised the maximum tax amount (Refund Cap) from \$37.50 to \$50 per transaction.

The city of **Hankinson** has increased its local sales, use and gross receipts tax from 1 to 2 percent. In addition, the city ordinance raised the maximum tax (Refund Cap) to \$25 to \$50 per transaction and provided for compensation equal to 3 percent of the city tax due.



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If the credit amount is greater than the total state and local sales taxes due on the return, the Tax Commissioner will issue a check for unused credit.

The city of **Pembina** has increased its local sales, use and gross receipts tax from 1½ to 2½ percent. All other provisions of the ordinance remain unchanged.

The city of **Rolla** has increased its local sales, use and gross receipts tax from 1½ to 2 percent. In addition, the city ordinance added a contractor limited exemption when a *Contractor's Certificate* is issued. The ordinance also creates an exemption for sales of new farm irrigation equipment, new mobile homes, coin-operated amusement, and coin-operated vending sales of 99 cents or less. New farm machinery, which was exempt before January 1, continues to be exempt from tax.

The city of **Wahpeton** has increased its local sales, use and gross receipts tax from 1½ to 2 percent. In addition, the city ordinance raised the maximum tax (Refund Cap) from \$25 to \$50 per transaction.

The maximum tax amount (Refund Caps) allows purchasers to obtain a refund of the local tax paid to the retailer in excess of the cap amount. When retailers collect the entire local tax on the selling price and the local tax exceeds the refund cap, purchasers may apply to the Tax Commissioner for a refund or credit of the excess amount. Retailers may elect to collect the total tax amount or collect up to the cap amount, but must be consistent in the method they choose.

The limited exemption for contractors exempts contractors from paying local use tax on materials they purchased or possessed within the city limits but removed and installed into real property outside of the city. To qualify for the exemption, the contractor must have provided the seller a *Contractor's Certificate* at the time the goods were purchased.

For a complete listing of all local taxes imposed in North Dakota, see our *Local Option Taxes by Location* guideline. The guideline is available on our website or by mail upon request. 

LOCAL TAX REFUNDS

Most North Dakota cities and counties that impose a sales and use tax have established a maximum tax per transaction. This maximum amount, also known as a “refund cap” is the maximum amount of tax a purchaser pays on a purchase. To ease the burden of collecting local taxes, retailers may elect to collect tax on the full amount of the taxable transactions within each local taxing jurisdiction or to calculate the cap and collect tax up to the refund cap amount. For example, assume City A imposes a local 2 percent sales tax with a refund cap of \$50. If a consumer makes a purchase for \$3,500 in City A, the retailer may collect \$70 of local sales tax [$\$3,500 \times 2\%$] or \$50, which is the cap amount. Retailers must be consistent in collecting the full amount or the capped amount.

Any time a retailer elects to collect the full amount of tax rather than collect up to the cap amount, the customer may apply to the Tax Commissioner for a refund of local tax paid in excess of the cap. To request the refund, the purchaser must complete and submit a completed *Claim for Refund of City or County Sales and Use Tax Transmittal* form along with copies of the invoices to the Tax Commissioner. A copy of the claim form can be obtained from the Office of State Tax Commissioner, Sales & Special Taxes Compliance section by calling 701.328.1246, or by e-mailing to salestax@nd.gov. Forms are also available on our web site.

Businesses holding active sales and use tax permits that qualify for a local tax refund on purchases for their own use may take a credit on their sales and use tax return rather than submit a refund request. Credit is taken on the return by deducting the eligible amount from the appropriate city tax in Column C of the local option tax section of the return. If the credit amount is greater than the total state and local sales taxes due on the return, the Tax Commissioner will issue a check for unused credit.

The Claim for Refund form must be received by the Office of State Tax Commissioner or the credit must be applied to a sales tax return within three years of the actual purchase date identified on the purchase invoice. 

FILING REQUIREMENTS FOR STREAMLINED SALES TAX REGISTRANTS

Retailers that have voluntarily registered through the Streamlined Sales Tax (SST) central registration system to collect member states' sales and use taxes have a unique set of return filing requirements. SST registrants that have voluntarily registered to collect tax in North Dakota and that have not contracted with a Certified Service Provider, must file an annual sales tax return at the end of each calendar year and each time they have collected \$1,000 of state and local tax. The annual return for the period ending December 31 includes the time period since the last return was filed.

Voluntary SST registrants that have not contracted with a Certified Service Provider must file the December 31, 2009 sales tax return even if no sales were made in North Dakota or if no tax was collected during the reporting period. All retailers registered to file by WebFile will receive an e-mail reminder about the return due date. All other retailers will receive the North Dakota sales and use tax return in the mail. The due date of the return is February 1, 2010. 

TAXABILITY OF FOOD PRODUCTS

Candy, soft drinks, dietary supplements, and prepared food are subject to state and local sales taxes. All other sales of food and food ingredients for human consumption are exempt from sales tax.

Food and food ingredients are substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for taste or nutritional value. For purposes of taxation, candy, soft drinks, dietary supplements, prepared food, alcoholic beverages, and tobacco products are not food or food ingredients.

Candy is a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. A food product is not candy if it contains flour or if it requires refrigeration.

Any food product that contains the word "flour," including white, whole wheat, rice, or corn flour, in the ingredient list is not candy. Note that flour substitutes such as soy or whey are not flour. The ingredients list must actually state the word "flour" for a product (that would otherwise meet the definition of candy) to be excluded from candy.

For a product to be excluded from the definition of candy because of refrigeration, the product must require refrigeration. Candy that does not require refrigeration, but is sold in a cooled or frozen state is still candy.

Examples of taxable candy are almond bark, baking chips, breath mints, candy bars (without flour), caramel apples, cereal bars that do contain sweeteners but do not contain flour, chewing gum, chocolate covered chips, chocolate covered fruit or nuts, honey roasted nuts, marshmallows, and trail mix that contains candy pieces.

Cookies, unsweetened rice cakes, cereal bars that do not contain sweeteners and breakfast cereals are not candy.

Soft drinks are nonalcoholic beverages that contain natural or artificial sweeteners. A beverage that contains milk or milk products, soy, rice, or similar milk substitutes, or that contains more than fifty percent of vegetable or fruit juice by volume is not a soft drink.

Water, coffee, tea, sports drinks, and cocktail mixes that contain sweeteners, and (1) do not contain more than fifty percent (fruit or vegetable) juice and (2) do not contain milk or milk substitutes are taxable soft drinks. Bottled water that does not contain natural or artificial sweeteners is not a soft drink and is exempt from tax. Ice is also exempt from tax.

Dietary supplements are any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral

Any food product that contains the word "flour," including white, whole wheat, rice or corn flour, in the ingredient list is not candy.

concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this sentence and which is intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR section 101.36.

Although the definition of dietary supplements is long and complex, dietary supplements are easily identified by the “Supplement Facts” label on the product.

Prepared food means food that meets any of the following conditions:

1. Food that is sold in a heated state or heated by the seller;
2. Two or more food ingredients mixed or combined by the seller for sale as a single item;
3. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

Prepared food does not include the following:

- Food that is only cut, repackaged, or pasteurized by the seller.
- Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration to prevent food borne illness.
- Food sold without eating utensils in an unheated state by weight or volume. For example, a pound of potato salad or a quart of soup.
- Bakery items sold without eating utensils including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

Prepared food summary:

As a general rule, raw food that requires cooking to make it safe to eat or food that is only cut, repackaged or pasteurized by the seller is not prepared food and is exempt from tax. All food sold in a heated state and all food sold with eating utensils is prepared food subject to sales tax. When a seller mixes or combines two or more food ingredients together for sale as a single item it will be prepared food subject to tax unless it:

- Is sold by weight or volume (i.e., pound, ounce, quart, gallon, etc.), or
- Is a bakery item.

Other important food facts:

- Gross receipts from vending machines are always subject to sales tax. Therefore, sales of all food and food ingredients sold through a vending machine are subject to sales tax. For example, a piece of fruit or a bottle of unsweetened water is subject to sales tax when sold through a vending machine.
- Food paid for by government Food Stamps or WIC food vouchers are exempt from sales taxes even when the food product meets the definition of candy, soft drinks, dietary supplements, or prepared food. 

TAXPAYER ASSISTANCE

If you have questions regarding sales tax or about correspondence received from our office, the following information will be helpful in ensuring that your call or visit to our office is completed in a speedy and efficient manner:

- For Streamlined Sales and Use Tax information and updates on our web site www.nd.gov/tax, click on *Sales and Use*, then click on *Streamlined Sales & Use* on the drop down list. The information includes up-to-date rate and boundary tables.
- If you have general sales tax questions, please call our Sales and Special Taxes Compliance Section at 701.328.1246.
- If calling our office about correspondence you have received, please call the number that is listed on the correspondence, and have a copy of the correspondence available when you call.
- When calling our office, please note the name of the person assisting with your question in the event you will have any follow-up questions later.
- Instead of calling or visiting our office, you may also e-mail us at salestax@nd.gov.

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