



# Sales Tax Newsletter

News and developments

A publication of the Tax Administration Division

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## NEW OR AMENDED LOCAL TAXES EFFECTIVE JANUARY 1, 2012

The Office of State Tax Commissioner administers all local sales, use and gross receipts taxes imposed in North Dakota. The following changes will become effective January 1, 2012.

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The city of **Bisbee** has imposed a city sales, use and gross receipts tax of 2 percent. The local tax will be reported as local code 229 on *Schedule ST Local*, the local option schedule of the sales and use tax return. The city ordinance does not include a maximum tax amount (refund cap), but does provide retailer compensation of 3 percent up to \$50 on a monthly return or \$150 on a quarterly return.

The city of **Fairmount** has increased its local sales, use and gross receipts tax from 1 to 2 percent. No other changes were made to the ordinance.

The city of **Hope** has increased its local sales, use and gross receipts tax from 1 to 2 percent. The maximum tax amount (refund cap) will also increase to \$50.00 per transaction.

The maximum tax amount (refund cap) 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 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.

For a complete listing of all local taxes imposed, see our *Local Option Taxes by Location* guideline available on our web site. 

## RETAILER COMPENSATION AVAILABLE TO ALL PERMIT HOLDERS

Don't forget to calculate and deduct compensation on your returns filed for reporting periods beginning January 1, 2012 and later. For most of you, that means compensation will be calculated beginning with the January monthly return due February 29, 2012 or the first quarter 2012 return due April 30.

The compensation amount approved by the 2011 Legislature is 1½ percent of the state tax due up to \$93.75 for each return. All return periods from monthly to annual qualify for the compensation, which is calculated on line 7 of the sales, use and gross receipts tax return, Form ST. Compensation reduces the amount due with the return and is allowed to all sales tax permit holders to help reduce the costs associated with collecting and remitting sales and use taxes; however, no compensation is allowed if the return is filed after the scheduled due date. Certified service providers and permit holders using certified automated systems and authorized to receive compensation under the Streamlined Sales Tax Agreement are not eligible for the 1½ percent compensation.



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*Taxable gross receipts include all additional charges a customer pays if the charges are mandatory or if the charges are for the delivery, pick up, or set-up of the taxable property.*

The new compensation effective January 1 has no impact on the law that requires monthly filing for permit holders that remit larger amounts of tax. All permit holders that reported \$333,000 of taxable sales and purchases in the previous calendar year are required under the sales and use tax law to file and remit tax monthly.

Local compensation that is provided by many of the cities that impose local tax has not changed and is available to all retailers that file returns by the due date. The compensation described in this article is in addition to any local compensation provided by cities. 

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## SALES TAX NEWSLETTER GOING ELECTRONIC

The Office of State Tax Commissioner has been publishing a sales tax newsletter for many years. The look and format has changed over the years, but our intent has always remained the same: to provide useful information about state and local sales, use and gross receipts taxes. We hope this information in our newsletters is helpful to sales and use tax permit holders across the country.

We believe it's time for yet another change in this quarterly publication. Beginning with the July 2012 edition of the *Sales Tax Newsletter*, all newsletters will be delivered exclusively in an electronic format. Those of you that file sales and use tax returns electronically with our WebFile system are already receiving electronic versions of the newsletter. It is easy to sign up for our on-line newsletter subscription service, which notifies you each time a new edition is available. In addition, more than ten years of past newsletters are posted on our web site and available for viewing.

Newsletters regarding sales tax as well as other taxes administered by the Tax Commissioner are available through a free subscription service on the Commissioner's web site. To register, go to [www.nd.gov/tax](http://www.nd.gov/tax) and select **Newsletter Subscription** near the top of the page on the blue bar. Then, just provide your e-mail address and select which newsletters you would like to receive. You will receive an e-mail to announce each time a new edition is available for review. We hope you will take advantage of this service and, more importantly, we hope you continue to read our sales tax newsletter to keep up to date on changes in the sales and use tax laws. 

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## LEASE AND RENTAL CHARGES ARE SUBJECT TO SALES TAX

North Dakota sales tax law includes the lease and rental of tangible personal property (other than motor vehicles) as a retail sale subject to sales tax. Gross receipts derived from the hourly, daily, weekly, monthly or annual lease or rental of tangible personal property within North Dakota are subject to sales tax.

Taxable gross receipts include all additional charges a customer pays if the charges are mandatory or if the charges are for the delivery, pick up, or set-up (also known as rig up or rig down) of the taxable property. **Optional charges** for cleaning/maintenance, repair parts and labor, insurance, or damage waiver are not subject to sales tax. Charges are mandatory if the renter is required to pay the charges in order to rent the tangible personal property or if the renter does not have the right to obtain these services associated with the rental from another vendor. The following are examples of mandatory charges:

- A customer damages a piece of rented equipment during the rental period and the renter is not authorized to repair the equipment or have it repaired by anyone other than the rental company. All charges to the renter for the repair including parts and labor are mandatory rental charges subject to sales tax.
- A rental company requires a customer to pay an "insurance fee" on rented property to cover possible damages to the equipment. The rental company may or may not pay the fee to an insurance company for coverage. The rental company does not allow the renter to obtain insurance coverage from another company and will not rent the equipment without payment of the insurance fee. All charges for the insurance fee are taxable as part of the rental fees.

- A customer rents equipment with a gasoline engine. The rental company charges for fueling the equipment after it is returned, but the customer does not have the option to refuel the equipment before it is returned. The refueling charge is mandatory and part of the rental charges subject to sales tax.

Sales tax is applied at the location where the tangible personal property will be located within the state during the rental period. If the customer picks up the tangible personal property at a location other than where the property will be located by the customer, the first rental period is taxed where the customer takes possession of the property. All other rental periods are taxed at the location of the property where used. If first possession of the lease or rental property takes place outside of North Dakota, North Dakota tax does not apply to the first rental period. The following are some examples of applying sales tax based on location:

- An individual rents a lawn mower for one day and picks up the mower at the North Dakota retail location of the rental business. State and local sales tax applies at the retail business location.
- A North Dakota contractor agrees to rent a skid steer loader by the month and picks up the loader from a rental company located in Minnesota. The contractor moves the loader to Fargo for use and returns it to the retailer after three months. The first month's rent is not subject to North Dakota sales tax because the contractor took possession out-of-state. Rental charges for months two and three are subject to North Dakota and Fargo city sales taxes where the equipment was located during the rental periods.
- A customer rents a tuxedo from a rental company in Bismarck and asks the rental company to ship the tuxedo to his home in Minot. The rental charges are subject to North Dakota and Minot local sales tax where the customer received the goods.

Rental of tangible personal property with an operator is **not** considered a rental of tangible personal property subject to sales tax. When an operator is provided with the property, the rental is a nontaxable service. To be considered an operator, the individual must do more than maintain, inspect, or set-up the tangible personal property. When a service provider uses tangible personal property to provide service to customers, the service provider is the final user of the property and liable for sales or use tax on the property's cost.

When a rental or lease company purchases tangible personal property to rent or lease, it may purchase the property for resale without payment of tax. In addition, repair and replacement parts purchased to maintain rental property may also be purchased for resale. To qualify for the resale exemption, the parts purchased must be a component of the property that is rented or leased to customers.

Rentals and leases of motor vehicles are treated differently than other rentals of tangible personal property as described above. Motor vehicle rentals are not subject to city or county sales taxes; however, Bismarck, Grand Forks and Minot currently impose a 1 percent city motor vehicle rental tax on rentals of less than thirty days if the renter takes possession of the vehicles at the city airport.

All rentals of licensed motor vehicles **for less than thirty days** in North Dakota are subject to the state 5 percent sales tax. In addition, these vehicles are subject to an additional 3 percent North Dakota rental surcharge if the vehicle has a gross vehicle weight of **ten thousand pounds or less**. The entire rental is subject to tax if the renter takes possession of the vehicle in North Dakota. Both taxes are collected at the time the vehicle is rented and each tax must be identified separately on the rental invoice. The 3 percent surcharge is reported annually on a special surcharge return.

The long-term lease of a motor vehicle is subject to motor vehicle excise tax rather than sales and use taxes. The owner of the vehicle is responsible to remit the motor vehicle excise tax to the North Dakota Department of Transportation's Motor Vehicle Division at the time the vehicle is titled and registered. The tax is calculated on the vehicle purchase price or the total of the lease consideration depending on the length of the lease period and vehicle weight. For more detailed information about motor vehicle excise tax on vehicles leases, see our *Lease or Rental of Motor Vehicles* guideline available on our web site. 

*Sales tax is applied at the location where the tangible personal property will be located within the state during the rental period.*

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## DISPOSAL AND ENVIRONMENTAL CHARGES

It is common for retailers to charge customers for disposing of old goods. These charges are commonly called disposal fees or environmental charges and are normally charged to customers to help defray the retailers' cost associated with landfill fees or complying with environmental regulations. When these charges are associated with a taxable retail sale and are also mandatory to the customer, the charges are part of the taxable sales price. However, if the charges are optional to the customer, they are a nontaxable service offered by the retailer.

The following are some examples of disposal and environmental charges:

- An automobile service company charges a \$2.00 environmental fee on each oil change for disposing of used motor oil. The customer has no other option to dispose of the oil and must pay the fee for each oil change. The environmental fee is a taxable portion of the itemized oil and parts sold to the customer as part of the oil change.
- A local home improvement store sells and delivers a new refrigerator to a customer and offers to remove and dispose of the customer's old refrigerator for \$50. If the customer prefers, he or she may dispose of the old unit in some other manner. If the customer elects to have the retailer dispose of the old unit, tax does not apply to the \$50 disposal fee because it is an optional service.
- A recycling company will accept old tires from customers, but charges a \$3 environmental fee for each tire accepted. The \$3 environmental fee is required for each tire; however, the fee is not subject to sales tax because there is no taxable sale of goods or service associated with the tire disposal. 

*Restocking charges are not taxable nor do they reduce the sales tax refunded to the customer.*

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## RETURNED MERCHANDISE

When taxable merchandise is sold and later returned to the seller by a customer who receives full credit or an entire refund of the purchase price, the seller shall refund or give credit to the customer for the amount of tax previously paid or charged. If only a portion of the purchase price is credited or refunded to the customer, the amount of the tax to be credited or refunded to the customer shall be computed based upon the amount of the purchase price to be credited or refunded exclusive of the tax.

### Restocking Charge

A restocking charge is a fee charged by the seller to a customer when the customer cancels a sale and returns the merchandise. The restocking fee is normally to cover the time and expense of repackaging or returning the merchandise to the seller's resale inventory. Restocking charges are not taxable nor do they reduce the sales tax refunded to the customer. This means the seller should not deduct the restocking charge from the sales price of the merchandise and calculate the sales tax credit or refund to the customer based on the net amount. Instead, the refund or credit should be calculated as the selling price plus the sales tax paid less the restocking fee. 

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## 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 the most current information regarding new and amended local taxes and city boundary changes see our web site [www.nd.gov/tax](http://www.nd.gov/tax), click on Sales and Use, then click on Streamlined Sales and Use. Changes to local taxes and city boundary changes are posted at least sixty days before the change becomes effective.
- If you have general sales tax questions, please call our Sales and Special Taxes Compliance Section at 701.328.1246. Please note the name of the person assisting with your question in the event you have follow-up questions later.
- 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. 



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