



Sales Tax Newsletter

News and developments

A publication of the Tax Administration Division

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2013 LEGISLATIVE SESSION UPDATE

The following are highlights of sales and use, alcohol, tobacco, and special fuels taxes legislation approved by the 2013 North Dakota Legislative Assembly and signed into law by Governor Jack Dalrymple. There were a large number of bills this session, some with quite significant changes that will impact retailers. For some of the more complex bills, additional detailed information has been posted to the home page of the Tax Commissioner’s web site.

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House Bill 1077 Licensed Winery Direct Sales to Retailers

HB 1077 authorizes a licensed winery (in-state or out-of-state) that produces no more than 50,000 gallons of wine a year to sell wine directly to a retailer licensed to sell alcoholic beverages. Wineries may deliver wine directly to retailers themselves or may contract with a common carrier.

A winery may:

- Deliver up to 4,500 cases of wine a year with its own equipment, trucks and employees.
 - A case of wine may not exceed 2.38 gallons (9 liters).
- Contract with a common carrier to deliver up to 4,500 cases of wine directly to retailers from the winery or the winery’s bonded warehouse. Individual shipments to retailers by a common carrier may not exceed three cases a day for each retailer.
 - A case of wine may not exceed 2.38 gallons (9 liters).
- Contract with a licensed distributor to deliver to retailers.

House Bill 1097 Electronic Sales Tax Filing Requirement

Retailers that report more than \$333,000 of taxable sales and purchases in the previous calendar year are required by law to file Form ST - Sales, Use, and Gross Receipts Tax returns monthly. Beginning with the January 2014 reporting period, these same businesses will be required to file the monthly sales tax return electronically. The current electronic filing methods available are the North Dakota Sales Tax WebFile program and the Streamlined Sales Tax Simplified Electronic Tax Return (also known as SER). More information regarding the new electronic filing requirement and the electronic methods available will be mailed to retailers who have been filing paper returns but will be required to file electronically in January.

House Bill 1134 Sales Tax Exemption for Gas Collection Systems

Effective July 1, 2013, the existing sales tax exemption that applies to tangible personal property used to compress, process, gather or refine gas produced at a North Dakota oil or gas well is expanded to include certain gas collection systems that capture at least seventy-five percent of the gas and natural gas liquids from a well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over fifty percent of the propane and heavier hydrocarbons. The intent of the exemption is to encourage capture and use of casinghead gas and to reduce the amount of gas flared during the production of crude oil.



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Beginning in 2013, retailers licensed to sell fireworks may sell fireworks during the period of December 26 through January 1 in addition to the traditional season of June 27 through July 5 .

House Bill 1236 Farm Machinery Leasing

HB1236 contains two very significant changes to how farm machinery gross receipts tax apply to the lease of new farm machinery. The bill applies to all leases entered into on or after July 1, 2013.

1. For all leases of new farm machinery, leasing companies must (1) pay tax on the purchase price of new farm machinery purchased to lease, or (2) collect tax from the farmer on three years of lease payments or on the equivalent value of three years of lease payments if the actual term of the lease is less than three years.
2. A new trade-in credit will be available to farmers that own or lease farm machinery if the farmer replaces the owned or leased machinery with new farm machinery that will be leased.

There is not adequate space in this newsletter to completely explain the farm machinery leasing related changes. For more detailed information, see our memorandum dated June 6, 2013, and addressed to farm machinery implement dealers and leasing companies. The memo is on the Spotlight section of the Tax Commissioner's web site.

House Bill 1259 Fireworks Sales

Beginning in 2013, retailers licensed to sell fireworks may sell fireworks during the period of December 26 through January 1 in addition to the traditional season of June 27 through July 5.

House Bill 1382 Wind-Powered Electrical Generating Facility Sales Tax Exemption

Current law contains a sales and use tax exemption for tangible personal property used to construct a wind-powered electrical generating facility with a nameplate capacity of one hundred kilowatts or more. The exemption applies to plants on which construction was completed before January 1, 2015. The exemption has been extended to plants constructed before January 1, 2017.

House Bill 1410 Liquefied Natural Gas Plant: Sales Tax and Special Fuels Exemptions

HB 1410 creates a new sales and use tax exemption effective July 1, 2013, for all tangible personal property used to construct a plant in North Dakota that produces liquefied natural gas (LNG). The requirements of the exemption are as follows:

- The tangible personal property must be incorporated into the plant structure or used during construction to the point of having no economic value.
- The plant owner must apply for the exemption prior to plant construction or must pay tax on the tangible personal property and apply for a refund of the tax paid.
- If the plant owner applies for the exemption prior to construction of the plant, the plant owner may transfer the exemption approval issued by the Tax Commissioner to contractors who may also purchase and use qualifying materials tax free.
- After a LNG plant qualifying for a sales tax exemption has been constructed, HB1410 exempts liquefied natural gas used for an agricultural, industrial, or railroad purpose from sales, use, and special fuels taxes. The tax exemption for LNG fuel will not apply until after the plant owner has certified to the Tax Commissioner that the plant is complete and the Tax Commissioner has notified special fuels dealers and consumers about the exemption.

House Bill 1413 Gasification Plant Byproduct Production Facility Sales Tax Exemption

Effective July 1, 2013, tangible personal property used to construct or expand a facility used to produce byproducts associated with coal gasification is exempt from sales and use tax. The requirements of the exemption are as follows:

- The tangible personal property must be incorporated into the plant structure or used during construction to the point of having no economic value.
- The plant owner must apply for the exemption prior to plant construction or must pay tax on the tangible personal property and apply for a refund of the tax paid.
- If the plant owner applies for the exemption prior to construction of the plant, the plant owner may transfer the exemption approval issued by the Tax Commissioner to contractors who may also purchase and use qualifying materials tax free.

House Bill 1459 Sales Tax Refund on Purchases to Replace Flooded Residence

HB 1459 authorizes refunds of North Dakota sales tax paid on certain purchases of property to replace residential property damaged or destroyed by river flooding during 2011.

For more detailed information or to obtain a claim for refund form, check the *What's New* section of the home page on the Tax Commissioner's web site. Forms and Instructions will be available after July 10.

House Bill 1464 Sales Tax Permit Compensation Increase

Effective for tax reporting periods beginning on or after July 1, 2013, the maximum amount of retailer compensation will increase from \$93.75 to \$110. Retailers that file sales tax returns and pay the tax due by the return due date qualify for compensation of 1½ percent of the state tax reported due up to the maximum amount, which will be \$110 effective July 1. All retailers qualify for compensation and the maximum amount applies to each monthly, quarterly, semi-annual, annual or seasonal return filed.

Senate Bill 2090 Manufactured Home Sales

SB 2090 makes significant changes to the taxation of manufactured homes. First, the term "mobile" home in the sales and use tax statutes is replaced with "manufactured" home, which is a more customary term in the housing industry today. Secondly, effective July 1, 2013, a mobile home sold with installation will be a construction contract rather than a retail sale. As a result, the dealer will be required to pay sales or use tax on its cost of the manufactured home and will incorporate that cost into the total contract price of the home with the consumer rather than to collect sales tax on the retail selling price of the manufactured home. Installation is defined as any method established under North Dakota Century Code 54-21.3-08, which is the manufactured home installation program administered by the Community Services Division of the Commerce Department. The program has adopted federal installation standards developed by the Department of Housing and Urban Development (HUD).

For more detailed information, see our memorandum dated June 6, 2013, and addressed to Manufactured Home Dealers. The memo is on the *Spotlight* section of the Tax Commissioner's web site.

Senate Bill 2106 Cigarette-Making Machines

SB 2106 defines a "cigarette-making machine", identifies how the machines may be used, and establishes requirements related to owning and operating the machine.

- A cigarette making machine is a machine used for commercial purposes to process tobacco into a roll or tube, formed or made from any material other than tobacco, at a production rate of more than five rolls or tubes per minute.
- The person operating or maintaining the cigarette-making machine must obtain a federal permit under 26 U.S.C. 5713 or must use the machine exclusively for personal purposes. Used exclusively for personal purposes means the product resulting from the operation of the machine is consumed by the individual who owns the machine or by other persons whose consumption of the product is incidental to the owner's personal use of the machine.
- All cigarette-making machines must be registered with the North Dakota Attorney General, and the registration must be renewed every three years. The registration must include a copy of the federal permit or must include an affidavit stating the machine will be used exclusively for personal purposes.
- All cigarette-making machines must include a working, tamper-proof counting device that records the number of all rolls or tubes processed on the machine.
- The person operating or maintaining a cigarette-making machine must:
 - Pay all taxes required under North Dakota Century Code Chapter 57-36, Tobacco Products Tax Law.
 - Comply with the provisions of North Dakota Century Code Chapter 51-25 related to the Master Settlement Agreement.
 - Comply with the ignition propensity requirements under North Dakota Century Code Chapter 18-13 for all cigarettes produced by the machine.
 - Use only federal tax-paid roll-your-own tobacco or tobacco exempt from federal tax under 26 U.S.C. 5704(b).

HB 1459 authorizes refunds of North Dakota sales tax paid on certain purchases of property to replace residential property damaged or destroyed by river flooding during 2011.

Senate Bill 2126 Automated Sales Suppression Devices and Software

Automated sales suppression devices, zappers, and phantom-ware are hardware and software products used in conjunction with electronic cash registers and other point of sale systems and are used to systematically falsify retailers' sales records. These products are used to hide sales transactions for the purpose of underreporting sales, revenues, and taxes. SB 2126 makes it unlawful to willfully sell, purchase, possess, install, transfer, manufacture, own, or use these products in North Dakota.

SB 2126 also makes it unlawful to use a re-encoder or scanning device to access, read, scan, obtain, memorize, or store information from a magnetic strip or stripe of an electronic payment card without permission from the authorized user of the electronic payment card with the intent to defraud the authorized user.

A person convicted of a violation of this law is guilty of a class B felony. A person convicted of a violation more than once is guilty of a class A felony and is also subject to a fine of up to \$100,000.

Senate Bill 2142 Telecommunications Infrastructure Sales Tax Exemption

A previous sales tax exemption for tangible personal property used to construct or expand a telecommunications service infrastructure in North Dakota, which expired December 31, 2012, was reinstated effective January 1, 2013, and will continue through June 30, 2017. In addition to the reinstatement, the exemption was expanded to allow a telecommunications company to transfer preapproved exemptions to contractors. If the telecommunications company requests the exemption before construction begins, the telecommunications company may transfer the exemption approval authorized by the Tax Commissioner to contractors so they may also purchase and use qualifying property without payment of sales or use tax.

Senate Bill 2147 Alcohol Fulfillment Houses

SB 2147 identifies persons that may sell, fill orders, and transport alcoholic beverages to consumers in North Dakota for personal use without using a wholesaler. The bill, which is effective August 1, 2013, defines direct shipper, licensed alcohol carrier, and licensed logistics shipper and prescribes the licensing requirements for each. Any alcoholic beverage sold or delivered directly to a consumer in North Dakota must be labeled and delivered according to the standards established in SB 2147. The most significant changes to the alcohol tax law under SB 2147 are as follows:

- A licensed logistics shipper may provide fulfillment services and deliver alcoholic beverages directly to a North Dakota consumer on behalf of a licensed direct shipper if they use a licensed alcohol carrier to deliver the product.
- All carriers delivering alcoholic beverages to consumers without first having the alcoholic beverage delivered through a licensed wholesaler must obtain an alcohol carrier license and must report delivery information to the Tax Commissioner's Office.

The bill also establishes penalties for failure to obtain a license or follow the required processes. For more detailed information, see the alcohol tax section of the Tax Commissioner's web site.

Senate Bill 2217 Streamlined Sales Tax Agreement

SB 2217 contains changes necessary for North Dakota to be 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 between states. The changes adopted update North Dakota law with language in the Agreement and have no direct impact on retailers doing business in North Dakota.

Senate Bill 2261 911 Emergency Services Fee on Prepaid Wireless Telecommunication Service

Effective January 1, 2014, a new fee will be imposed on sales of prepaid wireless telecommunication service. The fee will be 2 percent of the selling price of the service and will be collected by the retailer selling the service. The fee will be remitted to the Tax Commissioner by the retailer on a separate return, which will be filed on the same schedule as the sales, use, and gross receipts tax return.

Any alcoholic beverage sold or delivered directly to a consumer in North Dakota must be labeled and delivered according to the standards established in SB 2147.

Prepaid wireless service is any telecommunications service that provides the right to use a mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which are paid for in advance and sold in predetermined units or dollars which decline with use in a known amount.

Prepaid wireless telecommunication services are commonly sold by department stores, electronics stores, grocery stores, convenience stores and many other businesses. The Tax Commissioner's Office will be contacting retailers of prepaid wireless telecommunication service and providing additional information regarding collection, reporting and remitting responsibilities. If you sell prepaid wireless service and have not been contacted by our office by December 1, 2013, please contact the sales and special taxes compliance section at 701.328.1246 or www.salestax.nd.gov.

Senate Bill 2284 Brewer Taproom License

SB 2284 creates a new brewer taproom alcoholic beverage license effective July 1, 2013. A brewer may hold only one taproom license, and the main provisions of the new license are as follows:

- The brewer may manufacture, store, transport, sell, and export no more than 25,000 barrels of malt alcoholic beverages annually.
- The malt beverage manufactured on the licensed premises may be sold to consumers at the brewery premises or at a restaurant owned by the licensee and located on property contiguous to the brewery. No alcoholic beverage other than the malt beverage manufactured on premises may be sold at the brewery.
- The brewer may sell the malt beverage manufactured on the licensed premises for off premises consumption in brewery-sealed containers of not less than twelve ounces (.36 liters) and not more than 5.16 gallons (19.53 liters).
- The brewer may also sell the malt beverage manufactured on the licensed premises to licensed beer wholesalers.
- The brewer may dispense free samples of the malt beverage offered for sale. The samples may be up to sixteen ounces per patron (.47 liter).
- The brewer may sell and deliver to licensed retailers within North Dakota malt beverage manufactured on the licensed premises. Sales may be made under the following conditions:
 - The volume of malt beverage that may be sold or delivered directly to all retailers may not exceed 10,000 barrels a year.
 - Individual deliveries other than draft beer are limited to the case equivalent of eight barrels per day to each licensed retailer.
 - The brewer must deliver with his own equipment, trucks, and employees. A common carrier may not be used to deliver to the public or licensed retailers.
- The brewer may apply to the Tax Commissioner for special event permits for up to twenty days per calendar year.
 - A special events permit authorizes the brewer, subject to local ordinance, to provide free samples of beer and to sell beer by the glass or in closed containers at a trade show, convention, festival, or similar event approved by the Tax Commissioner as a special event.
- The brewer must file monthly beer supplier's reports with the Tax Commissioner for each month it made sales to wholesalers.
- The brewer shall also file an annual report to the Tax Commissioner and remit the beer wholesale tax on all beer sold at retail to consumers and on all beer sales to other retailers.
- A brewer may not have ownership in or be an officer, director, agent, employee, or affiliate of any other manufacturer, brewer, importer, wholesaler, or retailer.

The brewer must file monthly beer supplier's reports with the Tax Commissioner for each month it made sales to wholesalers.

Senate Bill 2294 Dyed Diesel Fuel Notices

Diesel fuel that is used for agricultural, railroad, or industrial purposes is subject to a four cents per gallon special fuel tax and is dyed red to distinguish it from all other diesel fuel, which is subject to a tax of twenty-three cents per gallon. Effective August 1, 2013, the penalty for using dyed fuel used in the fuel tank of a licensed motor vehicle will increase to \$500 for the first offense, \$2,000 for a second offense within three years, \$4,000 for a third offense within three years, and \$10,000 for the fourth and each subsequent offense within a three year period.

SB 2294 also requires retailers to affix a sticker to all retail fuel pumps dispensing dyed special fuel to advise consumers of the penalty for using dyed diesel fuel in the supply tank of a licensed motor vehicle. 

FALL 2013 SALES TAX SEMINARS

The Tax Commissioner's Office has scheduled two separate sales tax seminars for this fall with the Revenue Departments in Minnesota and South Dakota. The seminars focus on the similarities and differences in each state's sales and use tax laws. The seminar is free, but preregistration is strongly recommended because space is limited and both sessions normally fill up. Both seminars are at the West Acres shopping mall in Fargo in the lower level Community Room in the J C Penney wing.

The South Dakota/North Dakota workshop will be held Tuesday, September 24. Registration begins at 8:30 a.m. The sales tax workshop runs from 9:00 a.m. to 12:00 p.m. and the contractor workshop begins at 1:00 p.m. and ends at 3:30 p.m. To register, call the South Dakota Department of Revenue at 800.829.9188 or the North Dakota Tax Commissioner's Office at 701.328.3475.

The Minnesota/North Dakota workshop will be held Wednesday, October 23. Registration begins at 8:30 a.m. The sales tax workshop runs from 9:00 a.m. to 12:30 p.m. To register, call the Minnesota Department of Revenue at 651.297.4213 or the North Dakota Tax Commissioner's Office at 701.328.3475. 

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.

TAXPAYER COPIES

Each reporting period, the Tax Commissioner's Office mails a preprinted sales tax return to each sales tax permit holder that files a paper return. In the past, a blank "taxpayer copy" has been mailed with each preprinted form. Starting in July, we will no longer be mailing the blank taxpayer copy with the preprinted forms. We believe that very few of the taxpayer copies are actually used by taxpayers, so to prevent waste and streamline our printing and mailing operations, we have decided to eliminate this document from our mailing. If you would still like a taxpayer copy, it is available on our web site in the sales tax section.

We appreciate that many sales tax filers use WebFile to file their sales tax returns, and encourage all permit holders that file on paper to consider trying the WebFile system. WebFile allows you to electronically file your sales tax returns over the Internet and make secure payments via electronic credit or debit transfers. WebFile offers 24/7 access to file current returns or view previously filed returns. Please visit our web site for additional information or to sign up for WebFile. 

NEW OR AMENDED LOCAL TAXES EFFECTIVE JULY 1, 2013

The Office of State Tax Commissioner administers all local sales, use and gross receipts taxes imposed in North Dakota. Effective July 1, 2013, the City of **Edgley**, which imposes a 2 percent sales, use, and gross receipts tax, will create a maximum tax amount (refund cap) of \$50 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. 

SUMMARY OF LOCAL TAX CHANGES IN THE PAST YEAR

Many new local taxes have been imposed and many tax rates have changed in the past year. All local tax changes are posted to the Tax Commissioner's web site sixty days before the change is effective. To locate the local tax change notices on the web site click on [Sales and Use](#), then [Streamlined Sales and Use](#), and then under the **Sales and Use Tax Information** heading, click on [Local Taxing Jurisdiction Rate Changes](#).

For a complete listing of all local option taxes, see our *Local Option Taxes by Location* guideline. Local taxes include (1) city sales, use, and gross receipts tax, (2) county sales, use and gross receipts tax, (3) city lodging taxes, and (4) city lodging and restaurant taxes. The following local tax changes occurred in the past year:

- April 1, 2013
 - City of **Crosby** increased its sales, use, and gross receipts tax from 1 to 2 percent and increased the maximum tax amount from \$25 to \$50.
 - City of **Crosby** imposed a 1 percent lodging tax.
 - City of **South Heart** imposed a 2 percent sales, use, and gross receipts tax. There is no maximum tax amount.
 - City of **Stanley** increased its sales, use, and gross receipts tax from 1 to 1½ percent.
 - City of **Tioga** increased its sales, use, and gross receipts tax from 2 to 2½ percent.
 - **Ward County** imposed a ½ percent sales and use tax (no alcohol or farm machinery gross receipts tax). The maximum tax amount is \$12.50.
- January 1, 2013
 - City of **Belfield** suspended its 2 percent lodging tax.
 - City of **Buffalo** increased its sales, use, and gross receipts tax from 1 to 2 percent
 - City of **Fargo** increased its sales, use, and gross receipts tax from 1½ to 2 percent and increased the maximum tax amount from \$37.50 to \$50.
 - City of **Finley** increased its sales, use, and gross receipts tax from 1 to 2 percent and increased the maximum tax amount from \$25 to \$50.
 - City of **Glen Ullin** imposed a 2 percent lodging tax and a 1 percent lodging and restaurant tax.
 - City of **Killdeer** imposed a 2 percent lodging tax.
 - City of **Minnewaukan** imposed a 2 percent lodging tax and a 1 percent lodging and restaurant tax.
 - City of **Mott** increased its sales, use, and gross receipts tax from 1½ to 2 percent.
 - City of **Ray** imposed a 1 percent lodging tax.
 - City of **Ray** imposed a 1½ percent sales, use, and gross receipts tax. There is no maximum tax amount.
 - City of **Steele** eliminated its \$25 maximum tax amount.
 - City of **Tioga** increased its lodging tax from 1 to 2 percent.
 - City of **Tioga** increased its sales, use, and gross receipts tax from 1 to 2 percent.
 - City of **Wahpeton** amended the 1 percent lodging and restaurant tax to also impose tax on prepared food.
 - City of **Wilton** increased its sales, use, and gross receipts tax from 1 to 2 percent and increased the maximum tax amount from \$25 to \$50.
 - City of **Wishek** increased its sales, use, and gross receipts tax from 1 to 1½ percent.

Many new local taxes have been imposed and many tax rates have changed in the past year.

- October 1, 2012
 - City of **Glenburn** increased its sales, use, and gross receipts tax from 1½ to 2 percent.
 - City of **Park River** eliminated its \$25 maximum tax amount.
 - City of **Williston** increased the maximum tax amount from \$25 to \$50.
 - **Williams County** suspended its ½ county sales and use tax.
 - City of **Ellendale** imposed a 2 percent lodging tax.
 - City of **Wyndmere** imposed a 2 percent lodging tax and a 1 percent lodging and restaurant tax.
- July 1, 2012
 - City of **Fargo** reduced its sales, use, and gross receipts tax from 2 to 1½ percent and decreased the maximum tax amount from \$50 to \$37.50.
 - City of **Surrey** imposed a 2 percent sales, use, and gross receipts tax. There is no maximum tax amount. 

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, 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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