



Sales Tax Newsletter

News and developments

A publication of the Tax Administration Division

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Tax Commissioner

NEW OR AMENDED LOCAL TAXES

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 April 1, 2010:

Inside this issue:

- New or Amended Local Taxes..... 1
- Notice on Local Tax Changes..... 1
- Sales Tax Seminars for Spring 2010..... 1
- Computer Software 2
- Software Maintenance Contracts 2
- Chemicals Used in Agricultural Production 3
- Taxation of Motor Vehicles 3
- File Your Sales Tax Return Electronically 4
- Subscription Newsletters 4
- Taxpayer Assistance 4

The city of **LaMoure** has increased its local sales, use and gross receipts tax from 1.5 to 2 percent. In addition, the city ordinance increased the maximum tax amount (refund cap) from \$25 to \$50 per transaction. All other provisions of the ordinance remain the same.

The city of **Lisbon** has increased its local sales, use and gross receipts tax from 1.5 to 2 percent. In addition, the city ordinance raised the maximum tax amount (refund cap) from \$37.50 to \$50 per transaction. All other provisions of the ordinance remain the same.

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 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.

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 web site or by mail upon request. 

NOTICE ON LOCAL TAX CHANGES

All new local sales and use taxes and changes to existing local taxes become effective on the first day of a calendar quarter (January 1, April 1, July 1, or October 1). We report these changes each quarter in our sales tax newsletter. If you need more advanced notice of these changes, you will find them on our website at least sixty days before the change becomes effective. On our website, select **Sales and Use > Streamlined Sales and Use**. Rate changes and city boundary changes are both identified under the “Sales and Use Tax” heading. 

SALES TAX SEMINARS FOR SPRING 2010

The Office of State Tax Commissioner will present two sales tax seminars this spring with Revenue Department officials from Minnesota and South Dakota. The seminars will focus on the similarities and differences in each state’s sales and use tax laws. If you transact business in North Dakota and in one or both of these adjoining states, these seminars will help you understand and comply with the laws in each state. There is no charge for the seminars, but please register if you plan to attend because space is limited.



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Custom computer software means any computer program that is written or prepared for a single customer based on the customer's needs or specifications.

Minnesota/North Dakota Border Workshop, April 27, 2010

- Registration begins at 8:30 a.m.
- Sales tax workshop 9:00 a.m. – 12:30 p.m.
- Located in the lower level meeting room of West Acres Shopping Mall, Fargo, ND
- To register, call the Minnesota Department of Revenue at 651.297.4213 or the North Dakota Tax Commissioner's Office at 701.328.3475

South Dakota/North Dakota Border Workshop, May 11, 2010

- Registration begins at 8:00 a.m.
- Sales tax workshop 8:30 – 12:00 p.m.
- Contractor's workshop 1:00 p.m. – 3:00 p.m.
- Located in room 514 of the Lake Area Technical Institute, Watertown, SD
- To register, go to www.state.sd.us/revenue, call the South Dakota Department of Revenue at 800.829.9188, or call the North Dakota Tax Commissioner's Office at 701.328.3475

COMPUTER SOFTWARE

The sale, lease, or license to use prewritten or "canned" computer software is subject to sales tax. Prewritten computer software is defined as tangible personal property in the sales tax law and the method of delivery has no impact on its taxability. Therefore, charges for the sale, lease, or license to use prewritten software that is downloaded from the Internet or otherwise transferred electronically, delivered by load and leave, or transferred on any type of tangible storage media are subject to North Dakota and applicable local sales taxes. Load and leave means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.

Prewritten computer software means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. Prewritten computer software includes software designed and developed by the author or creator to the specifications of a specific purchaser when the software is sold to someone other than the original purchaser. Prewritten software also includes prewritten portions or modules that are combined at the customer's request or to meet the customer's specifications.

Providing custom computer software is a service and charges to provide custom computer software are not taxable. Custom computer software means any computer program that is written or prepared for a single customer based on the customer's needs or specifications. Like prewritten software, the method of delivery has no impact on the taxability of charges for the software. Custom software providers must pay sales or use tax on all tangible personal property used to provide the software including documentation manuals and tangible storage media transferred to the customer with the custom software.

When a software provider modifies existing prewritten computer software to meet a specific customer's needs, the custom programming charges for modification are not subject to tax if the custom programming is separately stated on the invoice from the prewritten computer software charges.

SOFTWARE MAINTENANCE CONTRACTS

A computer software maintenance contract is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both. Maintenance agreements may be mandatory or optional. A mandatory contract is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.

Mandatory and optional software maintenance contracts for *custom* computer software are exempt from sales tax. Providing custom software and maintenance contracts for custom software are professional services and therefore, not subject to tax.

Mandatory computer software maintenance contracts for *prewritten* computer software are part of the purchase price of the software and are taxable.

Optional computer software maintenance contracts for prewritten computer software are taxed as follows:

- The portion of a contract for software updates or upgrades is taxable.
- Separately stated charges for support services are not taxable. Support services include phone support, help lines, training and similar activities that do not include updating the software or preparing to update the software. The service provider is required to pay sales or use tax on all tangible personal property used to provide the service.
- Charges for support services that are not separately stated or that are not optional when contracting for software updates or upgrades are taxable. 

CHEMICALS USED IN AGRICULTURAL PRODUCTION

Recently, we have been receiving questions regarding the taxability of two specific agricultural production related products: spray tank cleaner and foam marker. Although many chemicals used in the production and storage of agricultural crops are exempt from sales tax, these two products are taxable at the general sales tax rate of 5 percent.

Commercial fertilizer, herbicides, fungicides, insecticides, and fumigants are all exempt from sales tax when sold to a commercial applicator, farmer, or rancher and the product is used in commercial production of agricultural crops or vegetables or used to protect agricultural products in storage. In addition, adjuvants or additives required by the chemical label for application of a product warranty are exempt from tax sales. Purchases of fertilizer and other chemical products for home garden or lawn use are subject to tax.

For more information about exempt chemicals used in agricultural production, see our *Feed, Seed, & Farm Chemicals* guideline on the Tax Commissioner's website. Select **Sales and Use > Publications > Sales Tax Guidelines**. 

TAXATION OF MOTOR VEHICLES

Motor vehicles purchased for use on the streets and highways of North Dakota and required to be titled under North Dakota Century Code ch. 39-05 are not subject to sales tax. Instead, licensed motor vehicles are subject to a 5 percent motor vehicle excise tax.

The definition of a motor vehicle includes automobiles, trucks, trailers, semitrailers, motorcycles, all-terrain vehicles, snowmobiles and travel trailers for which a certificate of title is required.

If a vehicle purchaser is not required to title and register a vehicle because it was acquired for use solely on privately owned land and the vehicle will not be used on any streets, highways, or public property (usually all-terrain vehicles or snowmobiles), the vehicle is not subject to motor vehicle excise tax, but will be subject to sales tax.

Although the tax rate for both sales tax and motor vehicle excise tax is 5 percent, there are two important differences between the two tax types that both the seller and purchaser should know. First, the sale of any vehicle subject to state sales tax will also be subject to local sales or use tax if the purchaser takes possession of the vehicle or uses the vehicle within a county or city that imposes a local sales or use tax. Secondly, motor vehicle rebates that reduce the purchase price at the time of the sale are not subject to motor vehicle excise tax; however, the value of all rebates is subject to sales tax.

The collection of motor vehicle excise tax is carried out by the North Dakota Department of Transportation's Motor Vehicle Section, who acts as an agent for the State Tax Commissioner. Motor vehicle dealers must report all vehicle sales on Line 1 (Total Sales) of their North Dakota Sales and Use Tax Return. Sales that are subject to motor vehicle excise tax are reported as nontaxable sales on Line 2 of the sales tax return.

Motor vehicles purchased for use on the streets and highways of North Dakota and required to be titled under North Dakota Century Code ch. 39-05 are not subject to sales tax.

Motor vehicle dealers are not required by law to collect motor vehicle excise tax, but many dealers collect the tax and vehicle registration fees as a service to their customers. Retailers, however, are required to collect state and local sales tax on sales of snowmobiles and ATVs if the customer is not going to register the snowmobile or ATV with the North Dakota Department of Transportation or with another state. To assure all unregistered snowmobiles and ATVs are taxed correctly, retailers are required to report all untaxed snowmobiles and ATVs on the *Snowmobile/Off Highway Vehicle Sales Summary* form. The form is submitted to the Tax Commissioner's Office with each sales and use tax return. The summary form is located on our website at **Sales and Use > Forms** (under the "Other Forms" section). 

FILE YOUR SALES TAX RETURN ELECTRONICALLY

If you haven't registered to file your sales tax returns electronically, please check out our WebFile. WebFile is our free, secure, on-line service that allows you to file your returns over the Internet. There are many advantages to WebFile, but here are just a few:

- View all returns filed for the past three years on-line, including the returns you filed on paper. Returns may be viewed or printed at any time.
- Pay your returns electronically by ACH debit, ACH credit, or credit card. If you pay by ACH debit or ACH credit, you may submit your return early and delay the payment until the return due date.
- File returns twenty-four hours a day, seven days a week.
- Calculate your return with ease. All Calculations are completed automatically by WebFile.
- Save time, paper, and postage.
- Upload your return into WebFile from an XML file to avoid keying the data.
- Receive an e-mail reminder notice approximately one month before each return due date.
- Avoid delays and late fees. Returns are filed on time if submitted through WebFile by midnight of the due date.

For more information or to register for WebFile, go to our web site, select **Sales and Use > Electronic Filing**. If you have questions regarding the use of this safe and secure method of filing your sales tax returns, please call our office at 701.328.1246. 

SUBSCRIPTION NEWSLETTERS

Newsletters regarding sale tax and other tax types administered by the Office of State Tax Commissioner are available through a subscription service on the Commissioner's website. Available newsletters include income tax, motor fuels tax, motor vehicle tax, oil and gas tax, property tax, sales tax, alcohol wholesale tax, and research and statistics. To register, go to our web site, 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. 

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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