



Sales Tax Newsletter

News and developments

A publication of the Sales and Special Taxes Division

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Tax Commissioner

Special Edition

Legislation was approved by the 2003 and 2005 North Dakota Legislative Assemblies that enables North Dakota's participation in the national Streamlined Sales Tax Project. The Streamlined Sales Tax Project, which involves representation from state and local tax administrators, state legislators, local government representatives, and private industry and business groups, was established to simplify and modernize sales and use tax collection and administration. From this effort, model legislation was developed by the Streamlined Project. Member states were encouraged to adopt legislation that would bring sales and use tax laws into conformity with this model legislation.

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This bulletin summarizes changes resulting from the Streamlined Sales Tax Project and approved by the North Dakota Legislative Assembly that may affect your business operations. Additional information will be provided through notifications, guidelines and newsletters you will receive regarding these sales and use tax changes.

Calculation of Tax

Currently, a bracket system is provided for computing the amount of sales tax due on a taxable transaction. A change in the law eliminates the bracket system, and instead requires retailers to compute the tax by multiplying the sales price by the applicable tax rate in effect. If the tax calculation results in a fraction of a cent, the tax calculation should be carried to the third decimal place and rounded to the nearest whole cent. If the third decimal place is four or less, round down, and if the third decimal place is greater than four, round up. This change should be made no later than October 1, 2005.

Local Option Tax – Caps and Thresholds

Under the Streamlined Sales Tax legislation that has been approved, the city and county cap or threshold will no longer apply when calculating the city or county sales or use tax. This change must apply to purchases occurring after September 30, 2005. In place of the cap or threshold, the legislature has approved a refund process in which the customer may apply for a refund of the local tax from the Office of State Tax Commissioner for the difference between the amount of the city and county sales and use tax paid, and the amount that would have been due by the previous application of the cap or threshold. Refund forms will be available for purchases made after September 30, 2005.



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If the sale is taxable, the freight, delivery and other transportation charges that are part of the sale and billed by the seller are taxable.

Freight, delivery and other transportation charges

Currently, freight, delivery and other transportation charges are generally subject to sales tax based upon the terms of the sale and how the delivery occurs. Effective October 1, 2005, “freight, delivery, and other transportation charges” are considered part of the selling price. If the sale is taxable, the freight, delivery, and other transportation charges that are part of the sale and billed by the seller are taxable. If the product being delivered is exempt from sales tax, then the freight, delivery, and other transportation charges are also exempt.

Delivery charges billed directly to the customer by delivery services that are not making the sale of tangible personal property remain exempt from sales and use tax.

Food and Food Products

Effective October 1, 2005, several changes will apply to the definition of “food and food ingredients” that are sold for domestic home consumption and are exempt from sales tax.

On or after October 1, 2005, “food and food ingredients” means 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. As a result of this change, which represents a broadening of the definition of food and food ingredients, items such as coffee, coffee substitutes, tea, cocoa or cocoa products, powdered drink mixes, and water, will be included in the new definition of food and food ingredients.

Water sold in containers of less than one gallon is currently taxable. Effective October 1, 2005, water is no longer subject to sales tax regardless of the volume being sold.

“Food and food ingredients” does not include alcoholic beverages, dietary supplements, soft drinks, tobacco, candy, or prepared food and these items remain subject to sales tax.

Alcoholic beverages

An alcoholic beverage for human consumption means beverages containing one-half of one percent or more of alcohol by volume.

Dietary supplements

“Dietary supplements” is defined as:

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 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.

The easiest method for determining if a product is a dietary supplement subject to tax is to look for a product label containing a “supplemental facts” box. If the label contains a “nutrition facts” box, the product is regard as a food and is exempt from tax.

Soft Drinks

Soft drinks subject to sales tax include nonalcoholic beverages that contain natural or artificial sweeteners, pop and fruit drinks or fruit punches that are less than fifty percent (50%) juice by volume. Products that are not soft drinks are those containing milk or milk products, soy, rice, or similar milk substitutes, or that contain greater then fifty percent (50%) vegetable or fruit juice by volume.

Tobacco

Tobacco means any cigarettes, cigars, chewing or pipe tobacco, or any other items that contains tobacco.

Candy

Candy means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour or any item requiring refrigeration.

Prepared Food

Prepared foods continue to be subject to sales tax. Prepared food includes food sold in a heated state or heated by the seller, or food that is prepared by mixing or combining two or more food ingredients for sale as a single item, or food sold with eating utensils, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws provided by the seller. Food sold in an unheated state by weight or volume as a single item is taxable only if sold with eating utensils. Generally businesses that sell prepared food include restaurants, convenience stores, delicatessens, concession stands, coffee shops, and caterers.

Lease or Rental

The lease or rental of tangible personal property is subject to sales tax based on the periodic payments as they are made. Sales tax is applied based on where the lease or rental equipment will be located in the state.

Currently, if the lease or rental property is picked up by the customer for use in another state, the first payment is not subject to North Dakota sales tax.

Effective October, 1, 2005, the first payment will be taxable in all instances where the customer takes possession of the lease or rental property within this state.

Examples of lease or rental transactions:

- a. A customer picks up lease or rental equipment for the day from a rental business. State and local sales tax will apply to the lease or rental charge based upon the location of the rental business.

Products that are not soft drinks are those containing milk or milk products, soy, rice, or similar milk substitutes, or that contain greater than fifty percent (50%) vegetable or fruit juice by volume.

- b. A customer has lease or rental equipment delivered to the customer's location for the day. State and local sales tax will apply to the lease or rental charge based upon the location of the customer.
- c. A customer enters into a six-month lease of equipment with lease payments due monthly. The customer picks up the equipment at the lessor's business location in the state. Because the customer first takes possession of the equipment at the lessor's business location, the first lease payment is subject to state and local sales tax based on the lessor's business location. Sales tax on subsequent lease payments will be due based on the location where the equipment is stored or used in this state. If stored or used outside this state, the subsequent lease payments will not be taxable in North Dakota.

North Dakota sales tax law continues to provide an exemption from sales tax on lease or rental receipts for tangible personal property purchased for lease or rental where sales or use tax has been paid to North Dakota on the purchase price. 

Because the customer first takes possession of the equipment at the lessor's business location, the first lease payment is subject to state and local sales tax based on the lessor's business location.

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:

- If you have general sales tax questions, please call our Sales Tax Compliance Section at (701) 328-3470.
- 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@state.nd.us**. 

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