



Guideline

Alcohol Tax Domestic Winery

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Tax Commissioner

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North Dakota licensed domestic wineries are subject to the provisions of Title 5 of the North Dakota Century Code ("N.D.C.C."). Specifically, N.D.C.C. § 5-01-17 provides the licensing, operations, and ingredient utilization requirements for domestic wineries licensed to operate in the state.

N.D.C.C. § 5-01-20 states that wineries producing no more than 50,000 gallons of wine per year may sell and deliver wine produced by the winery direct to licensed retailers. Deliveries to retail locations using the winery's own vehicles are limited to 4,500 cases no larger than 2.38 gallons each which totals 10,710 gallons. Deliveries to retail locations using an alcohol carrier (common carrier) is also limited to 4,500 cases no larger than 2.38 gallons each which totals 10,710 gallons.

The North Dakota Office of State Tax Commissioner ("Tax Commissioner") is responsible for the administration of this and other state laws regulating domestic wineries.

The following Guidelines provide direction for the business activities of domestic wineries, including those which operate another business activity on the domestic winery premises such as a restaurant, home wine-making center, or home beer-brewing center.

Domestic Winery License, Renewal of License, and Sales and Use Tax Permit

- A domestic winery must apply for an annual manufacturing license from the Tax Commissioner in order to produce domestic wine and sell wine produced by the winery. New and renewed licenses are effective from January 1st to December 31st of each calendar year.
 - The "Manufacturing License Application" is available on the Tax Commissioner's web site at www.nd.gov/tax/ under Alcohol/Forms.
 - The application must be accompanied by the annual license fee of \$100.00.
 - The completed renewal application and license fee are due before January 1st each year.
 - Proof of registration with the U.S. Food & Drug Administration must be submitted with the application.
 - A copy of the Federal Registration and Basic Permit must be submitted with the application.
 - The licensed premises must be delineated by a diagram or blueprint that must be included with the license application or license renewal application.
 - If the premises also contain a home wine-making center, that area must be delineated on the diagram.
- A domestic winery must apply for and possess a valid North Dakota Sales and Use Tax Permit in order to sell wine produced by the winery for sale at retail, glassware, wine literature and accessories, and related tangible personal property, cheese, cheese spreads, and other snack food items.

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- The Sales and Use Tax Permit application is available on the Tax Commissioner's website at www.nd.gov/tax/ under TAP (Taxpayer Access Point).
- The permit remains in effect until revoked by the Tax Commissioner or withdrawn by the domestic winery.
- Retail licenses to sell or otherwise dispense alcoholic beverage are available from the North Dakota Attorney General, county, and city governmental agencies.

Definitions Applicable to Domestic Winery Operations

- N.D.C.C. § 5-01-01(10) defines "licensed premises" as "the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed."
 - Each location of a domestic winery under common ownership or with a common name is considered a separate "licensed premises." The owner of more than one domestic winery location must:
 - Apply for a separate annual license for each location;
 - Separately account for all activity at each location; and
 - Not commingle or move product between locations.
- N.D.C.C. § 5-01-01(20) defines "wine" as "the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume."
- For these Guidelines, "domestic wine" means wine produced and made available for sampling or sale by a domestic winery licensed to operate in North Dakota and subject to the majority ingredient utilization requirement.
- For these Guidelines, "kit wine" means wine produced at a home wine-making center located on a domestic winery's premises and not subject to the majority ingredient utilization requirement.

Domestic Winery Activities

- A domestic winery license allows the domestic winery to produce and sell domestic wine.
 - Only domestic wine produced by the winery may be sampled and sold at retail by that winery on winery premises and at special events.
 - Kit wine produced in a home wine-making center is intended for sale to customers who make the wine and may not be sold as domestic wine.
- N.D.C.C. § 5-01-17(2) provides that all sales of domestic wine to any other retail licensed premises in North Dakota must be made through a licensed North Dakota liquor wholesaler; except as provided under N.D.C.C. § 5-01-20, a winery producing no more than 50,000 gallons per year may sell and deliver on-site or off-site the wine produced by the winery directly to licensed retailers with the following restrictions:
 - Deliver wine to retailers off-site using the winery's equipment, trucks, and employees with quantities limited to 4,500 cases (2.38 gallons each for a total of 10,701 gallons) per calendar year.
 - Contracts with a licensed distributor (wholesaler) to ship and deliver to the retailer.
 - Contracts with a common carrier licensed as an alcohol carrier to ship and deliver the wine to the retailer directly from the winery with quantities limited to 3 cases a day (7.14 gallons) and not to exceed 4,500 cases (10,701 gallons) per calendar year.
 - Another exception exists for sales at a restaurant owned by the licensee located on property contiguous to the domestic winery premises. A domestic winery may obtain a domestic winery license and a retailer license allowing the on-premises sale of alcoholic beverages at such a restaurant. Alcoholic beverages that may be offered for sale at the restaurant include:

- Domestic wine;
- Other alcoholic beverages manufactured by another licensed manufacturer contiguous to the winery and under the same ownership as the winery and restaurant; and
- Alcoholic beverages purchased from a North Dakota wholesaler.

A domestic winery may also:

- Sell its domestic wine at on sale or off sale, in retail lots, and not for resale.
- Sell or direct ship its domestic wine to persons inside or outside North Dakota in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of 25,000 gallons in a calendar year. All direct shipments must follow N.D.C.C. § 5-01-16.
- Sell or direct ship bulk domestic wine to any person or entity inside or outside of North Dakota.
 - Domestic wineries that sell or direct ship bulk domestic wine to another source must still comply with the North Dakota Domestic Winery laws, particularly those requiring that North Dakota grown products be used in the domestic wine produced by that domestic winery.
- Purchase wine in bulk from any person or entity inside or outside of North Dakota.
 - Domestic wineries that purchase wine in bulk from another source must still comply with the state's Domestic Winery laws, particularly those requiring that North Dakota grown products be used in the domestic wine produced by that domestic winery.
- Sell glassware, wine literature and accessories and related tangible personal property, cheese, cheese spreads and other snack food items.
- Dispense samples of domestic wines offered for sale by the domestic winery.
 - The annual wine gallonage used for free samples may be deducted from the domestic wine on which tax is imposed under N.D.C.C. § 5-03-07 if complete records are maintained verifying the gallonage being claimed.
 - Samples of domestic wine sold by that winery are subject to the tax imposed under N.D.C.C. § 5-03-07.
 - A domestic winery which operates a home wine making center on the domestic winery premises may produce wine representative of the wine that may be produced from a kit available for sale to customers and offer samples of that wine to prospective customers. This wine is subject to the tax imposed under N.D.C.C. §§ 5-03-07 and 57-39.2-02.1.
 - Domestic wine used for sampling (free and sold) must be accounted for separately.
 - Domestic wine samples (free and sold) may not be removed by consumers from the domestic winery premises or special event location.

Majority Ingredient Utilization Requirement

- N.D.C.C. § 5-01-17(1) provides that the percentage of ingredients by volume, excluding water, of wine produced by a domestic winery which must be grown and produced in North Dakota must be at least:
 - 10% in the second year of licensure;
 - 20% in the third year of licensure;
 - 30% in the fourth year of licensure;
 - 40% in the fifth year of licensure; and
 - 51% in the sixth and subsequent years of licensure.

- The majority ingredient utilization requirement applies to the total volume of domestic wine produced by the domestic winery.
 - Total volume means all domestic wine for sale or sampling purposes as a product of the winery.
 - Total volume does not include kit wine produced by customers of a home wine-making center.
- A domestic winery must keep detailed records of North Dakota ingredients used to produce domestic wine to prove compliance with the majority ingredient utilization requirement. A record of where and when the ingredients were obtained, the seller, and the volume or weight of the ingredients must be maintained.
 - Upon completion of fermentation or blending, and when the wine is ready to be bottled or shipped in bulk, the domestic winery must accurately determine, record, and report the volume of wine produced by that domestic winery.
 - U.S. Food and Drug Administration Regulations may require ingredients obtained by the domestic winery be assigned a tracking number which can be matched to records on file showing how much wine was produced with the ingredients, the date produced, and be traceable to actual wine bottles by the use of serial numbers, lot numbers, or other tracking systems.
 - If ingredients grown and produced outside North Dakota are added to wine made from North Dakota ingredients, records must show the volume attributable to both North Dakota and non-North Dakota ingredients. If such records are not kept, and production volumes cannot be determined, wine produced by the domestic winery containing both North Dakota and non-North Dakota ingredients will not be counted toward the majority ingredient utilization requirement.
- The Tax Commissioner may grant an exemption from the majority ingredient utilization requirement for a period of one year when weather conditions, pest infestations, plant disease epidemics, or other natural causes reduce the quantity or quality of produce grown in North Dakota to an extent that renders compliance with the majority ingredient utilization requirement infeasible.
 - The exemption may be granted upon the Tax Commissioner's own motion or upon request by a domestic winery.
 - The Tax Commissioner may consult with other state and federal agencies and officials when considering whether to grant an exemption.
- Domestic wine sold or direct shipped in bulk to any person or entity inside or outside of North Dakota is subject to the majority ingredient utilization requirement.

Special Events Permits

- The Tax Commissioner may issue a special events permit to a domestic winery.
 - A special events permits allow the domestic winery to give free samples of its domestic wine and sell its domestic wine by the glass or in closed containers at off-premises events.
 - Special events permits may be issued for not more than twenty events per calendar year.
 - Special event permits will be issued for Pride of Dakota events sponsored by the Department of Agriculture and do not count against the twenty special events limitation.
 - Special events permits are subject to local ordinance and restrictions.
 - The special events permit application is available on the Tax Commissioner's website at www.nd.gov/tax/ under Alcohol/Forms.

Tax Imposition, Reporting, and Remittance Requirements

- Domestic wine sold by the winery is subject to the wholesalers tax provided in N.D.C.C. § 5-03-07.
 - Donated wine is considered sold and is taxable.
- Detailed records for all domestic wine sold by the domestic winery must be maintained. These records must include domestic wine for samples or sale and wine sold at a restaurant owned by the licensee of a domestic winery.
- The following reports must be submitted in an electronic format approved by the Tax Commissioner. These reports are available on the Tax Commissioner's website at www.nd.gov/tax/ under "Alcohol/Electronic Filing."
 - Schedule A, Liquor Suppliers Monthly Report
 - Must be electronically filed for any month in which sales of domestic wines were made to wholesalers.
 - Due on the last day of the month following the month of sale.
 - Schedule F, Domestic Winery Annual Liquor Tax Report
 - Must be electronically filed and wholesaler tax due paid on all domestic wine sold by the licensee at retail or direct to retail locations.
 - The report is due on January 15th of the year following the year sales were made.
 - Electronic reports, payment, and the payment voucher must be filed by the due date to be considered timely.
- When a report due date falls on a Saturday, Sunday, or legal holiday, the due date is extended to the next working day.
- Domestic wineries are subject to the requirements of N.D.C.C. § 5-03-06 which imposes penalty and interest for improper or late returns, and penalty for late payment of tax.
 - A penalty of \$100.00 a day is imposed for each day a report is delinquent.
 - A penalty of five percent of the total tax due or \$5.00, whichever is greater, is imposed for failure to pay the tax on or before the date payment is due.
 - Interest of one percent of the total tax due per month or fraction of a month of delay accrues and is due, except for the first month after the return or tax became due.
- A home wine-making center's kit wine production is not subject to tax imposed under N.D.C.C. § 5-03-07 if the wine-making center is operated on the domestic winery's premises and detailed records are kept pertaining to its production and sales activity.
 - Separate accounting records must be maintained for production and sales activity of both the domestic winery and home wine-making center.
 - Accounting records for all business activity on the winery premises must be made available for inspection by the Tax Commissioner upon request.
- State and, if applicable, local sales tax applied by a domestic winery to sales at retail of domestic wine, glassware, wine literature and accessories, and related tangible personal property, cheese, cheese spreads, and other snack food items must be reported and remitted to the Tax Commissioner.
 - A domestic winery must report sales and use tax activity using the report format available on the Tax Commissioner's website located at www.nd.gov/tax/ under "Sales and Use/Forms/Form ST Sales and Use Tax Return."

- Alternatively, a domestic winery may electronically file their returns following the instructions located at www.nd.gov/tax/ under TAP (Taxpayer Access Point).

Audit, Suspension, and Revocation of Domestic Winery License

- N.D.C.C. § 5-03-06 provides that the Tax Commissioner may audit the records and premises of a domestic winery to determine if the licensee has fully complied with all of the statutes and rules pertaining to domestic wineries.
- A domestic winery may have its license suspended or revoked for a violation of any of the provisions of the state alcoholic beverages laws in Title 5, N.D.C.C.
 - The Tax Commissioner may not suspend or revoke a domestic winery's license or deny a renewal prior to conducting a hearing.
 - The hearing must be in accordance with the Administrative Agencies Practices Act, N.D.C.C. ch. 28-32.
 - The provisions of the Taxpayer Bill of Rights apply to determinations made by the Tax Commissioner.