



Guideline

Sales Tax Out of State Retailers

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Tax Commissioner

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Sales and Use Tax Liability

The purpose of this guideline is to help inform out of state retailers about their possible use tax obligation in North Dakota. North Dakota Century Code § 57-40.2-07 (Use Tax law) requires **an out of state retailer maintaining a place of business located** in North Dakota to obtain a sales and use tax permit and to collect sales or use tax.

Out of state retailers are liable to the State of North Dakota for any tax that they are required to collect under the use tax law. Unregistered retailers risk possible assessment of tax, penalty and interest because of failure to collect use tax on sales made in this state. In addition, out of state companies may also be liable for use tax on tangible personal property brought into North Dakota for storage, use, or consumption within this state.

Sales tax is collected by North Dakota retailers selling goods within this state. Use tax complements the sales tax and is collected by out of state vendors selling goods in North Dakota. If an out of state retailer is not required to collect use tax, North Dakota use tax law obligates the North Dakota customer to pay the use tax to the Office of State Tax Commissioner.

Who Must Register?

Out of state retailers with "nexus" in this state must register and collect North Dakota use tax. Nexus is a connection or minimum presence within North Dakota. The most common measure of nexus is a physical presence within the state. Out of state companies that have employees, agents, or property in North Dakota either temporarily or on a long term basis are deemed to have nexus in this state. Some examples (but not an all inclusive list) of a physical presence in North Dakota include the following:

Location

Any retailer having a permanent or temporary presence in this state is required to register with the Office of State Tax Commissioner. A retailer having any type of physical presence in this State requires registration. Operating or maintaining an office, distribution house, sales house, warehouse, or other place of business will establish a physical presence, or nexus, in this state.

Employee or Agent

A retailer is required to register with the Office of State Commissioner even if no real property is maintained in this State, if an employee or agent travels within the State to conduct business activity for the retailer. "Business activity" includes but is not limited to soliciting sales, providing repair and maintenance services, and regular or frequent delivery of goods (however, delivery by a common or contract carrier on the US mail does not constitute delivery by the retailer.)

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Leasing/Renting

A retailer engaged in the leasing of tangible personal property within North Dakota is required to register with the Office of State Tax Commissioner.

Other companies with a less obvious presence in this state may also have nexus and, therefore, must register and collect North Dakota use tax. N.D.C.C. § 57-40.2-01(7) states that a **retailer maintaining a place of business in this state** “also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.” Retailers engaged in this type of sales solicitation in North Dakota should contact the Office of State Tax Commissioner about their possible obligation to collect North Dakota use tax.

Voluntary Registration

An out of state retailer that does not have a presence in this state would not have a requirement to be registered. However, businesses may voluntarily apply for a North Dakota sales and use tax permit. Once registered, the retailer must collect tax and remit taxes collected to the Office of State Tax Commissioner in the same manner as retailers engaged in business in North Dakota.

Use Tax on Storage, Use or Consumption

Use tax applies to more than the sale of goods by an out of state company. Use tax also applies to the fair market value of tangible personal property brought into North Dakota by an out of state company for storage, use, or consumption in this state. Examples of use tax on storage, use, or consumption are a contractor’s equipment used to construct or modify real property, building materials temporarily stored in a North Dakota warehouse, or supplies consumed during the performance of a maintenance contract.

Use tax is not due to North Dakota if 1) the property has already been subjected to an equal or greater rate of sales or use tax in another state and 2) that state reciprocates with a similar credit for sales or use tax paid to North Dakota. If the rate of sales or use tax paid to another state is less than the use tax rate in North Dakota, a reduced rate of use tax is due to North Dakota. The reduced rate is calculated by subtracting the rate of tax paid to another state from the North Dakota use tax rate (i.e., use tax due = [ND tax rate minus the other state’s tax rate] times the fair market value of the property). Out of state companies that regularly store, use, or consume tangible personal property in North Dakota must register for a North Dakota sales and use tax permit. Once registered, the company will receive periodic sales and use tax returns for remitting any use tax due.

Obtaining a Permit

If you believe that your organization may be required to register in North Dakota or you wish to voluntarily register to collect and remit North Dakota use tax, please contact the Sales Tax Compliance Section of the Office of State Tax Commissioner.