Guideline - Alcohol Tax: Liquor Wholesalers

Licensing

The North Dakota Wholesale Liquor License is an annual license which allows the purchasing and wholesale of liquor products, which is tied to a specific licensed premises. The applicant may not have any financial interest in any manufacturer, retailer, or supplier.

The first step to becoming a licensed alcoholic beverage wholesaler is to obtain a commercially zoned warehouse in North Dakota. This commercially zoned warehouse is subject to federal approval as the wholesaler must obtain a Basic Permit under the Federal Alcohol Administration Act from the Alcohol and Tobacco Tax and Trade Bureau (TTB) (www.ttb.gov/business-tools/qualify-with-ttb). After the appropriate Federal Basic Permit is received, the business may apply for Application for Wholesale Beer or Liquor License (www.nd.gov/tax/alcoholtax/forms). The following items must be submitted with the completed application:

- A copy of the federal basic permit issued by the TTB
- A copy of the business' organizational documents, i.e., articles of organization, LLC operating agreement, or partnership agreement
- $1,000.00 annual license fee

In addition to the Federal Basic Permit, the North Dakota Liquor Wholesale License and the North Dakota Sales, Use, and Gross Receipts Tax Permit, a liquor wholesaler must obtain a retail alcohol license to sell or dispense alcoholic beverages. Retail alcohol licenses are available from the North Dakota Attorney General, county, and city government agencies.

North Dakota Liquor Wholesaler Licenses are annual licenses with a December 31st expiration date. The renewal process will be completed through the taxpayer's North Dakota Taxpayer Access Point (ND TAP) account, with a notification being sent in November. License renewals must be submitted to the Office of State Tax Commissioner before December 1st for the licensed premises to maintain continuous operations.

A North Dakota Wholesaler License may be suspended or revoked, or denied for renewal, for a violation of any applicable N.D.C.C. Title 5 provision if the licensee engages in any activity that does not comply with all statutes or regulations pertaining to liquor wholesalers. A liquor wholesaler is entitled to an administrative hearing before its license may be suspended, revoked, or denied for renewal.

Operating Activities

North Dakota liquor wholesalers are authorized to engage in the following activities as allowed by N.D.C.C. Title 5:

- Purchase liquor products from licensed North Dakota suppliers and wholesalers.
- Sell liquor products to licensed North Dakota retailers.
- Conduct tasting or sampling activities at a retail establishment. Product being sampled must first be sold by the licensed North Dakota wholesaler to the retailer. The licensed wholesaler will purchase the alcohol used for sampling at retail. Credits may not be issued to a retailer for product used for a tasting/sampling.

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Under North Dakota Administrative Code (N.D.A.C.) § 81-12-01-10(3), licensed liquor wholesalers may engage in providing contest prizes, premium offers, refunds, and other like items for a consumer promotion. Retailers may distribute coupons and other consumer premiums to customers, but only for redemption by the manufacturer or wholesaler. Retailers may not be involved in the redemption of consumer premiums (for example IRCS (Instant Redeemable Coupons)) and may not be compensated or reimbursed for engaging is such consumer promotions. Officers, employees, and representatives of manufacturers, wholesalers, and retailers shall be excluded from participation in such promotions.

A liquor wholesaler may furnish retailers with miscellaneous materials not to exceed $100.00 per retailer, per calendar year. Miscellaneous materials are those items that bear conspicuous and substantial advertising material regarding the product of the supplier or wholesaler including: stamps, non-alcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors.

A liquor wholesaler may furnish retailers with point of sale advertising materials not to exceed $500.00 per retailer, per calendar year. Point of sale advertising materials are those materials that draw consumer attention to the products of the wholesaler including: posters, placards, designs, inside signs (electrical, mechanical, or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

Liquor wholesalers must maintain adequate records of all consumer promotions. In order to ensure compliance with North Dakota rules and regulations regarding consumer promotions prior approval is required. Prior approval requests can be emailed to alcoholtax@nd.gov.

North Dakota liquor wholesaler licensees are **prohibited** from engaging in the following activities:

- Furnishing, giving, renting, lending, or selling at a discount any equipment, fixtures, signs, supplies, money, service, or other things of value to a retailer because it constitutes a means to induce, including using a third-party arrangement where the resulting benefits flow to individual retailers.
  - Selling of equipment or supplies, including dispensing accessories and product displays, does not constitute a means to induce if the equipment, supplies, dispensing accessories, or displays are sold at a price not less than the cost to the wholesaler who initially purchased them, or at the fair market value, whichever reflects the true value of the item, and the invoice for these products is paid within thirty days of the date of the sale.
  - The installation of equipment, supplies, dispensing accessories, or displays at the retailer's establishment does not constitute a means to induce if the retailer bears the initial cost of installation. Examples include:
    - Equipment and supplies such as glassware, carbon dioxide, or ice.
    - Dispensing accessories such as faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves.
    - Product displays such as wine racks, bins, barrels, casks, and shelving.
    - Coil cleaning services.
- The act of paying or crediting a retailer for any advertising, display, or distribution services. This includes payments or credits to retailers that are reimbursements, in full or in part, for such services purchased by a retailer from a third party.

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- Payment to a retailer for any arrangement in which a wholesaler participates with a retailer in an advertisement placed by the retailer. (Cooperative Advertising)
- Purchases from a retail concessionaire of advertising on signs, scoreboards, programs, scorecards, and similar items at ballparks, racetracks, or stadiums. (Cooperative Advertising)
- Purchases of advertising in a retailer publication for distribution to consumers. (Cooperative Advertising)
- Payment to a retailer for setting up product or other displays, display shelf space rental, or any other related activity. (Slotting Fees)
- Requiring a retailer to accept and dispose of any product.
- Requiring a retailer to purchase one product, or take a minimum quantity of a product, in order to obtain another product. (Tie-in sales)
- Delaying the delivery of alcoholic beverages beyond the time payment for the product has been received. (Free Warehousing)
- Providing price promotions/quantity discounts to one retailer, and not providing the same discount to another retailer. (Discrimination)
- Suggest or imply the price at which a retailer should sell a product. (MSRP prohibited)
- Extensions of credit beyond thirty days for a liquor retailer, and extensions of credit for any period to a beer retailer.

Delinquent Account Notification

A Liquor Wholesaler shall notify the Office of State Tax Commissioner by email at alcoholtax@nd.gov, and all other liquor wholesalers:

- If any check provided by a retailer and returned NSF is not cleared within 48 hours. No wholesaler may sell liquor products to a retailer until the delinquency is paid in full.
- If any retail liquor account is unpaid beyond the 30-day credit limit. No wholesaler may sell liquor products to a retailer until the delinquency is paid in full.
- That deliveries may resume to the retailer.

Tax Reporting And Record Keeping

Wholesale Excise Tax - North Dakota liquor wholesalers are subject to North Dakota wholesale excise tax. When a licensed North Dakota wholesaler purchases and sells alcoholic beverage products to retailers they will remit the wholesale excise tax imposed under N.D.C.C. § 5-03-07.

Sales, Use, and Gross Receipts Tax – A liquor wholesaler selling additional items of tangible personal property, such as glasses, openers, carafes, literature, or other bar accessories, must collect state sales tax of 5% and local sales tax on these sales. Local gross receipts taxes and local sales taxes are calculated at the point of sale, which is the location where the purchaser consumes or takes possession of the goods.

A liquor wholesaler that purchases equipment or other tangible personal property for storage, use, or consumption in North Dakota, from a seller that did not collect sales tax on the purchase, must remit state and local use tax on the retail selling price which includes delivery charges of the items.

Information on North Dakota local sales, use, gross receipts, and lodging taxes is available at www.nd.gov/tax/salesanduse/localtaxes.

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Reporting Schedules and Returns – A liquor wholesaler must complete and submit the following reporting forms to the Office of State Tax Commissioner. The Schedule B must be filed through the ND TAP (www.nd.gov/tax/tap). These forms and instructions are available at www.nd.gov/tax/alcohol/efile and www.nd.gov/tax/salesanduse/forms.

Monthly Reports - Schedule B: A monthly report for any sales and purchases of liquor for a North Dakota Wholesaler. The Schedule B report due date is the 15th of each month, following the month of purchase/sale. Zero reports are required for the Schedule B. This report is required to be filed electronically through the ND TAP (www.nd.gov/tax/tap).

Form ST Sales, Use & Gross Receipts Tax Return: A periodic return to report state and local sales, use, and gross receipts tax. The periodic filing frequency is assigned at the time of registration. The due date is the last day of the month following the period end date. This form must be filed through ND TAP (www.nd.gov/tax/tap).

Record Keeping - A liquor wholesalers must maintain detailed records for all purchases from North Dakota suppliers, wholesales, and retailers. Liquor wholesalers must obtain and keep record of the State Retail Alcoholic Beverage License issued by the North Dakota Attorney General (attorneygeneral.nd.gov/licensing-and-gaming/licensing/alcoholic-beverage-license) for each retail account.

North Dakota liquor wholesaler license numbers can found using the Alcohol License Lookup (apps.nd.gov/tax/tap/?link=AlcLicense) provided by the Office of State Tax Commissioner.

Audit

The Office of State Tax Commissioner may at any reasonable time make an examination of the books of liquor wholesaler to determine if it has fully complied with all statutes and rules pertaining to liquor wholesalers.

Contact Information

For more information on North Dakota alcohol taxes, please visit Alcohol Tax (www.nd.gov/tax/user/businesses/formspublications/alcohol-tax). If you have questions, please contact our office at alcoholtax@nd.gov or 701-328-2702.

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