



# Sales Tax Newsletter

News and developments

A publication of the Tax Administration Division

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Tax Commissioner

## NEW OR AMENDED LOCAL OPTION TAXES EFFECTIVE APRIL 1

**Cass County** has imposed a county sales, use and gross receipts tax of ½ percent. The local tax will be reported as local code 501 on the local option schedule of the sales tax return. The county ordinance does not provide retailer compensation, but it does include a maximum tax amount (refund cap) of \$12.50 per transaction.

The city of **Max** has imposed a city sales, use and gross receipts tax of 1 percent. The local tax will be reported as local code 227 on the local option schedule of the sales tax return. The city ordinance does not provide retailer compensation, but it does include a maximum tax amount (refund cap) of \$25 per transaction.

The city of **Williston** has reduced its city sales, use and gross receipts tax to 1 percent. The city ordinance also reduces the maximum tax amount (refund cap) to \$25 per sale. No additional changes were made to the ordinance.

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 local tax on the entire 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.

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## SALES TAX SEMINARS FOR SPRING 2011

The Office of State Tax Commissioner has scheduled two sales tax seminars this spring with the Revenue Departments in Minnesota and South Dakota. The seminars will present information on each state’s sales and use tax laws by focusing on similarities and differences in each state. The seminars will help businesses understand and comply with the sales and use tax laws in each state. There is no change for the seminars, but please register if you plan to attend because space is limited.

### Minnesota/North Dakota Border Workshop, April 26, 2011

- Registration begins at 8:30 a.m.
- Sales tax workshop 9:00 a.m. – 12:30 p.m.
- Located in West Acres Shopping Mall, lower level meeting room; 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 17, 2011

- Registration begins at 8:30 a.m.
- Sales tax workshop 9:00 a.m. – 12:00 p.m.
- Contractors’ workshop 1:00 p.m. – 3:30 p.m.
- Located at Northern State University, Williams Library, room 118; Aberdeen, SD.
- To Register, call the South Dakota Department of Revenue at 800.829.9188 or the North Dakota Tax Commissioner’s Office at 701.328.3475.



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## CONTRACTORS' RESPONSIBILITY FOR TAX

Contractors and subcontractors are the final users of all personal property they consume or incorporate into real property. As final users, contractors are liable for tax on the cost of the personal property they use including property provided by others unless the tax has already been paid on that property. The contractor's responsibility to pay sales or use tax includes projects performed for exempt entities. Because contractors are not making retail sales when they use tangible personal property, sales tax may not be identified as a separate line item on the invoice or request for progress payment provided to the customer. Sales and use taxes are a cost of the materials purchased and need to be incorporated into the base bid price of the project rather than itemized.

Except for the three situations identified below, contractors must pay sales or use tax on all property used in performance of a contract even if the contractor's customer is a government entity, hospital, or other entity that is exempt from paying sales and use tax. The three exceptions to a contractor's liability are as follows:

- The property installed is **medical equipment** purchased by a hospital or long-term care facility as tangible personal property and subsequently installed by a contractor.
- The property is installed into a project on an Indian reservation, the project is ultimately owned by the Indian tribe residing on the reservation, and the Tax Commissioner's Office has approved the project as exempt from sales and use tax. The Tax Commissioner issues an exemption letter to the Indian tribe for distribution to contractors to document the exempt status of the project.
- The property is installed into an agricultural commodity processing facility or a power plant that has been approved for exemption by the Tax Commissioner's Office under the sales and use tax statutes. The Tax Commissioner issues an exemption letter to the plant owner for distribution to contractors to document the exempt status of the project.

**Installation out-of-state:** When contractors take possession of materials in North Dakota for installation or other use outside of the state, North Dakota tax is due on the cost of those materials unless the property is exempt from sales and use tax in the state where it is installed. Local (city or county) tax may also apply to materials removed from the state. Some local ordinances allow contractors to remove goods from the local taxing jurisdiction for use elsewhere within or outside of North Dakota without paying the local tax if a *Contractor's Certificate* was issued at the time of purchase. See the *Local Option Taxes by Location* guideline for more detail on this limited exemption authorized by cities or counties.

**Construction materials from out-of-state:** Materials brought into North Dakota for use are subject to North Dakota and applicable local use taxes. However, contractors receive credit for any sales or use tax legally paid in the state of purchase if the state of purchase also provides a similar credit for North Dakota tax. For example, assume Contractor ABC purchases and takes possession of construction materials in South Dakota and pays sales tax of 4 percent on the purchase price. Contractor ABC transports the materials to Dickinson where the combined tax rate is 6½ percent (5% state + 1½% city). Contractor ABC is liable for an additional 2½ percent of tax on the materials transported into North Dakota. Tax of 1% state and 1½% Dickinson must be reported and remitted on Contractor ABC's next sales and use tax return.

**Construction equipment from out-of-state:** Contractors that transfer machinery and equipment, except for licensed motor vehicles, into North Dakota for use are liable for use tax on the fair market value of the equipment at the time it enters into North Dakota. Credit is provided for tax legally paid to another state in the same manner as described above for the construction materials. For example, assume Contractor XYZ purchases a backhoe in Montana for use in its excavation business. Two years later, contractor XYZ transports the backhoe from Montana to Williston for a contracted job. Because Montana does not have a sales tax and Contractor XYZ has not paid sales or use tax on the backhoe, 7½ percent (5% state + 2% Williston + ½% Williams County) use tax is due on the fair market value of the backhoe when it enters Williston. The Williston and Williams County tax ordinances both contain maximum tax amount provisions, so the local tax due in this example is limited to \$50 for Williston and \$12.50 for Williams County (see local option tax article on page 1 for description of maximum tax amounts). Motor vehicles licensed in another state may be subject to a temporary motor vehicle registration when brought into North Dakota for use; however, no sales or use tax is due on the vehicles. 

*Sales and use taxes are a cost of the materials purchased and need to be incorporated into the base bid price of the project rather than itemized.*

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## 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 the most current information regarding new and amended local taxes and city boundary changes see our web site [www.nd.gov/tax](http://www.nd.gov/tax), click on Sales and Use, then click on Streamlined Sales and Use. Changes to local taxes and city boundary changes are posted at least sixty days before the change becomes effective.
- If you have general sales tax questions, please call our Sales and Special Taxes Compliance Section at 701.328.1246. Please note the name of the person assisting with your question in the event you have follow-up questions later.
- 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. 

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