



# Sales Tax Newsletter

News and developments

A publication of the Tax Administration Division

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Tax Commissioner

## RATE CHANGE ON COAL AND NATURAL GAS EFFECTIVE JANUARY 1, 2008

The following sales and use tax rate changes will become effective January 1, 2008:

- Sales of coal used for heating purposes will be exempt from tax.
- The rate of tax on natural gas will be reduced from 2 percent to 1 percent.

The exemption and reduced rate were approved by the North Dakota Legislative assembly during the 2007 session as part of House Bill 1049. The bill will also exempt natural gas from sales and use taxes effective July 1, 2009.

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## NEW OR AMENDED LOCAL TAXES

The Office of State Tax Commissioner administers all local sales, use and gross receipts taxes imposed in North Dakota. The following changes will become effective October 1, 2007. All transactions within the city limits of these cities subject to North Dakota sales, use and gross receipts taxes will also be subject to the city’s sales, use and gross receipts tax except as noted below.

The city of **Kenmare** increased its local sales, use and gross receipts tax rate from 1 to 2 percent. The ordinance also increased the maximum tax (refund cap) from \$25.00 per transaction to \$50.00 per transaction. All other provisions of the ordinance remain the same effective October 1, 2007.

The city of **Kulm** increased its local sales, use and gross receipts tax rate from 1 to 2 percent. The ordinance also increased the maximum tax (refund cap) from \$25.00 per transaction to \$50.00 per transaction. All other provisions of the ordinance remain the same effective October 1, 2007.

The city of **Velva** increased its local sales, use and gross receipts tax rate from 1 to 2 percent. All other provisions of the ordinance remain the same effective October 1, 2007.

The city of **Wishek** amended its sales, use, and gross receipts tax ordinance to provide permit holder compensation of 3% of the tax due. Compensation may not exceed \$83.33 per month or \$250.00 per quarter. All other provisions of the ordinance remain the same effective October 1, 2007.

Maximum tax amounts (Refund Caps) allow purchasers to obtain a refund of the local tax paid to the retailer in excess of the cap amount. When retailers collect the entire local tax on the selling price, purchasers may apply to the Tax Commissioner for the refund or credit.



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*The contractor's responsibility to pay sales or use tax includes projects performed for exempt entities.*

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## **NEW CITY LODGING / CITY LODGING AND RESTAURANT TAX**

The city of **Parshall** imposed a 2% City Lodging Tax and a 1% City Lodging and Restaurant Tax effective October 1, 2007. Additional information has been mailed to Parshall restaurants and lodging facilities.

For a complete listing of all local taxes imposed in North Dakota see our *Local Option Taxes by Location* guideline. The guideline is available on our website or by mail upon request. 

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## **SALES TAX SEMINAR SCHEDULE FOR FALL 2007**

The Office of State Tax Commissioner will hold a sales tax seminar with the Minnesota Department of Revenue. The seminar will include presentations about the similarities and differences in each state's sales and use tax laws. There is no charge for the seminars, but please preregister if you plan to attend because space is limited.

### **North Dakota/Minnesota Sales Tax Issue Workshop, October 30, 2007:**

- Sales and Use Tax Seminar 9:00 a.m. - 12:30 p.m.
- Located in the basement of West Acres Shopping Mall in Fargo.
- To register, call the Minnesota Department of Revenue at 651-297-4213 or the North Dakota Tax Commissioner's Office at 701-328-3475. 

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## **CONTRACTOR'S 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, or
- 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, or
- 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.

Contractors and subcontractors have two options to pay tax on the materials used in performance of a contract. Tax may be paid to suppliers at the time of purchase or contractors may provide their suppliers a properly completed *Contractor's Certificate* at the time of purchase to defer payment of the tax. When a *Contractor's Certificate* is used to purchase materials tax free, the contractor must report the purchase and remit tax on its sales tax return.

**Example:** ABC Contracting, a general contractor, enters into an agreement to supply and install playground equipment for City Anywhere Public School. The agreement calls for City Anywhere School to provide some of the equipment and for ABC Contracting to provide the remaining equipment needed and to install all the components on the school grounds. As an exempt entity, City Anywhere School uses its tax exemption certificate to purchase the equipment it supplied without paying sales tax.

ABC Contracting is considered the final user of all the equipment installed, including the equipment supplied by City Anywhere School. Because City Anywhere School did not pay tax on the equipment it provided, ABC Contracting is liable for tax on the equipment supplied by the school as well as the equipment it purchased for the job. To remit the tax, ABC Contracting must report the fair market value of the equipment provided by the school on its sales tax return and remit the appropriate state and local use tax due. Fair market value is normally the purchase price. For the equipment it purchased, ABC Contracting may pay sales tax to its suppliers or issue a *Contractor's Certificate* to its supplier and report the purchase price on its sales tax return and remit the tax due.

**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. 

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## FILE YOUR SALES TAX RETURN ELECTRONICALLY

If you haven't registered to file your sales tax returns electronically, please check out our WebFile. WebFile is our free, secure, on-line service that allows you to file your returns over the Internet. There are so many advantages to WebFile – here are just a few:

- View previously filed returns for the past three years on-line, including those you filed on paper. Returns may be viewed or printed at any time.
- Pay your return electronically by ACH debit, ACH credit, or credit card. If you use ACH debit, you may submit your return early and delay the payment until the return due date.
- File returns twenty-four hours a day, seven days a week.
- Calculate your return with ease. All calculations are completed automatically by WebFile.
- Save time, paper and postage.
- Upload your return into WebFile from an XML file to avoid keying the data.
- Receive an e-mail reminder notice a month before each return due date.
- Avoid delays and late fees. Returns are filed on time if submitted through WebFile by midnight of the due date.

For more information or to register for WebFile, go to our website, click on *Sales and Use* and then *Electronic Filing*. 

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## RETAILERS MAY NOT "ABSORB" TAX

The sales tax law provides that "No retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by this chapter shall be assumed or absorbed by the retailer or that it will not be considered as an element in the price to the consumer or if added, that any part thereof will be refunded." This means retailers may not absorb sales tax for a customer but instead must assess tax to their customers on all retail sales. Because of this law, sales tax may not be included in the stated price of the product or service but should instead be added to the retail price and stated separately on the sales invoice. 

*WebFile is our free, secure on-line service that allows you to file your returns over the Internet.*

*Any charge for parts that is passed onto the customer and not included in the itemized contract price is subject to tax.*

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## RENTAL CHARGES

Hourly, daily, weekly, monthly or annual charges for the rental of tangible personal property are subject to sales tax. Additional charges that a customer is required to pay when renting taxable property is also subject to sales tax if the charge is mandatory or if the charge is for the delivery, set-up, or pick-up of the taxable property.

Optional charges for cleaning, maintenance, repair parts and labor, insurance, or damage waiver are not subject to sales tax. 

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## EXTENDED WARRANTY OR MAINTENANCE CONTRACTS

When an optional extended warranty or maintenance contract is sold to a customer in conjunction with the sale of tangible personal property, no sales or use tax will apply to a separately stated charge for the extended warranty or maintenance contract. However, the seller of the extended warranty or maintenance contract is responsible for payment of sales or use tax on the cost of all parts used under the terms of the agreement and covered under the itemized contract charge.

In those instances where an extended warranty or maintenance company is billed by a third-party repairer for the repairs completed under the contract, the third-party repairer has the option of billing sales tax on the separately stated charges for parts just like any other repair billing. If the repairer does not itemize the parts from the repair labor, the repairer is responsible for payment of sales or use tax based upon the repairer's cost of the parts.

If an extended warranty or maintenance agreement is mandatory in conjunction with the sale of tangible personal property, the agreement is part of the selling price and subject to tax in the same manner as the tangible personal property. In this scenario, parts used under the terms of the contract are not subject to sales or use tax because the contract price has already been taxed.

Any charge for parts that is passed onto the customer and not included in the itemized contract price is subject to tax. When a charge is made for a "deductible," which the customer is obligated to pay under the contract, the deductible is first applied to the nontaxable service or labor charges. If the deductible amount paid by the customer exceeds the nontaxable service or labor charges, the remaining amount applies to parts and is subject to sales tax. 

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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 Streamlined Sales and Use Tax information and updates on our web site [www.nd.gov/tax](http://www.nd.gov/tax), click on **Sales and Use**, then click on **Streamlined Sales & Use** on the drop down list. The information includes up-to-date rate and boundary tables.
- If you have general sales tax questions, please call our Sales and Withholding 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@nd.gov](mailto:salestax@nd.gov). 



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