



Guideline

Sales Tax Rental and Leasing Companies

Cory Fong
Tax Commissioner

January 2006

Rentals Subject to Tax

A retail sale, as defined by North Dakota sales and use tax law, includes the lease and rental of tangible personal property for storage, use or consumption in this state. Gross receipts derived from the hourly, daily, weekly, monthly or annual lease or rental of tangible personal property are subject to sales tax, including additional charges a customer is required to pay if the charges are mandatory or if the charges are for the delivery, set-up, or pick-up of the taxable property. Special rules apply to rental and lease of motor vehicles (see back side for details). In the case of a lease-purchase agreement, sales tax is charged on the lease payments until the purchase option is exercised. Sales tax also must be charged on any additional amount that the purchaser is obligated to pay to complete the purchase.

A person leasing tangible personal property to the public (for example: garden equipment, camping supplies, tools, formal wear) is a retailer and the rental receipts from this activity are taxable. When property is purchased by the retailer to be held for rental purposes, it is a purchase for resale and sales tax should not be paid on the purchase price.

If the item being leased is used in North Dakota, the lease is a North Dakota sale and is subject to North Dakota sales tax. If the item also is used outside North Dakota, it is exempt from North Dakota sales tax while being used outside the state. If the lessor delivers the leased item to a point outside North Dakota for use outside North Dakota, the lease is exempted by federal law governing sales in interstate commerce. The lease is transacted or finalized outside North Dakota and, therefore, is subject to the sales and use tax laws of the state in which delivery is made. If the leased property is returned to North Dakota by the lessee, the lease is subject to North Dakota sales tax from the date the property is brought back into North Dakota.

Rental of Equipment with an Operator

In certain instances, equipment may be rented with an operator. In these cases, the renter is not engaged in a taxable transaction, instead, the renter is providing a nontaxable service in which the renter's operator uses equipment owned by the renter in the performance of the agreement.

Example: Contractor A agrees for a certain consideration to provide an earth mover and an operator to Contractor B to do some landscaping. Since both the equipment and operator are provided by Contractor A, the agreement between Contractors A and B is an agreement requiring a landscaping service and not a rental of tangible personal property. In this example, Contractor A should have paid sales or use tax on the earthmover when it was purchased.

Casual Rentals

On occasion, a business not engaged in lease or rental activity may make a short lease or rental of business owned equipment. Such rentals are not taxable. Rental of property not originally purchased for lease or rental purposes is not a retail sale and is exempt from sales tax as a casual sale provided the retailer has purchased the property for final use, has paid sales or use tax on the original purchase price and does not regularly lease or rent the property.

Example: Contractor A leases a pay loader to Contractor B for thirty days in consideration of \$1000. This is recorded as a nontaxable sale if the pay loader was originally purchased by Contractor A for final use, and sales or use tax was paid on the pay loader at the time of purchase.

22082

Retailers Who Also Rent Property

It is fairly common practice for a retailer who maintains an inventory of goods for sale to also rent goods on a regular basis. Men's clothing stores rent formal wear in many cases or a hardware store may rent a machine used for shampooing carpets. These transactions are taxable and the retailer is required to collect and remit sales tax on all such rentals. Other typical examples of taxable rentals include the rental of bowling shoes at a bowling alley, the rental of golf carts at a golf course and the rental of bicycles and sporting goods.

Rentals of Installed Equipment

Charges for rental or lease of installed equipment are not subject to North Dakota sales tax. When tangible personal property is installed or affixed to the ground or to a building by means of bolts, nails, glue, cement or other means of affixing it temporarily or permanently to a building or to the ground, it is generally regarded as real property. Since North Dakota sales tax generally applies only to the sale, lease or rental of tangible personal property, the rental of equipment which has been installed into real estate is not subject to North Dakota sales and use tax.

Contractors purchasing equipment for installation or contractors supplying and installing tangible personal property into real property are regarded as the final users of the personal property. As the final user, a lessor or contractor is subject to sales or use tax on the purchase price of the tangible personal property.

Local Sales Tax

Rental and leasing companies with property (except motor vehicles) located in cities or counties that impose local option taxes must collect and remit the local sales tax. Local option taxes are reported and remitted to the Office of State Tax Commissioner with the state sales and use tax return.

Rental of Motor Vehicles

North Dakota sales tax applies on the rental charges of **any** licensed motor vehicle, including every trailer or semi trailer as defined in subsection 2 of N.D.C.C. § 57-55-10, for periods less than 30 days in this state. In addition to the general sales tax rate, a 3 percent rental surcharge also applies on the rental charges of any motor vehicle having a gross vehicle weight of **ten thousand pounds** (4535.92 kilograms) **or less**, and is required to be registered for use on the streets and highways of this state.

The general sales tax and the 3 percent surcharge are computed and collected on the total rental charge, excluding taxes, fuel collections, collision damage waiver charges, supplemental liability protection, personal accident insurance, personal effects coverage and airport authority fees. Both taxes are collected at the same time as the rental fees and each tax must be listed separately on the invoice. The entire rental is subject to tax if the renter takes possession of the vehicle in North Dakota. City and county sales taxes do **not** apply to motor vehicle rentals. The general sales tax is reported on the North Dakota sales tax return. The 3 percent surcharge is reported annually on a special surcharge return.

Rentals of motor vehicles for 30 days or more are not subject to the general sales tax or the 3 percent surcharge.

Lease of Motor Vehicles

The lease or purchase of a motor vehicle is subject to North Dakota motor vehicle excise tax rather than sales tax. The owner of the vehicle is responsible to remit the motor vehicle excise tax to the North Dakota Department of Transportation's Motor Vehicle Division at the time the vehicle is titled and registered. The tax is calculated on the vehicle purchase price or the total of the lease consideration depending on the lease period and vehicle weight.

For more detailed information about sales tax on vehicle rentals or motor vehicle excise tax on vehicle leases, see our *Lease or Rental of Motor Vehicles* guideline.