



# NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER GUIDELINE - ALCOHOL TAX: BREWER TAPROOMS

The North Dakota Office of State Tax Commissioner is responsible for the administration of North Dakota Century Code (N.D.C.C.) Title 5 laws relating to the licensing, taxation, and regulation of brewer taprooms in North Dakota. A brewer taproom located in North Dakota may apply for a North Dakota Brewer Taproom License under N.D.C.C. § 5-01-21.

## LICENSING

The North Dakota Brewer Taproom License is an annual license which allows the manufacturing and sale of beer products at a specific licensed premises. A brewer taproom may not engage in the manufacturing or sale of beer products outside of its authorized licensed premises. There may be local government ordinances and licensing requirements that the microbrew pub may need to comply with to be able to operate legally.

The first step in becoming a licensed North Dakota brewer taproom is to obtain a Basic Permit under the Federal Alcohol Administration Act from the Alcohol and Tobacco Tax and Trade Bureau (TTB) at [www.ttb.gov/business-tools/qualify-with-ttb](http://www.ttb.gov/business-tools/qualify-with-ttb).

After the Federal Basic Permit is received, the business may apply for a North Dakota Alcoholic Brewer Taproom License at [www.tax.nd.gov/AlcoholLicenseApplication](http://www.tax.nd.gov/AlcoholLicenseApplication). The following items must be submitted with the completed application:

- A copy of the federal basic permit issued by the TTB
- A blueprint or diagram of the premises to be licensed
- A copy of the business' organizational documents, i.e., articles of organization, LLC operating agreement, or partnership agreement
- \$500.00 annual license fee
- A North Dakota Sales and Use Permit application or proof of application ([www.tax.nd.gov/apply](http://www.tax.nd.gov/apply)).
  - o Once issued, the North Dakota sales and use permit does not expire. It stays active until closed by the brewer taproom or revoked by the Office of State Tax Commissioner.

North Dakota Brewer Taproom Licenses are annual licenses with a December 31 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 1 for the licensed premises to maintain continuous operations.

A North Dakota Brewer Taproom 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 brewer taprooms. A brewer taproom is entitled to an administrative hearing before its license may be suspended, revoked, or denied for renewal.

In addition to the Federal Basic Permit, the North Dakota Brewer Taproom License and the North Dakota Sales, Use, and Gross Receipts Tax Permit, a brewer taproom 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.

## OPERATING ACTIVITIES

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

- Produce beer. To qualify as a brewer taproom, the brewer taproom may not sell at retail or wholesale in a calendar year more than 25,000 barrels of beer per year.
- Sell manufactured beer to licensed North Dakota wholesalers.
- Sell manufactured beer to out-of-state wholesalers, if the brewer taproom is compliant with the receiving state's laws.
- Sell beer manufactured on the licensed premises for consumption on or off the premises.
  - o Off-sales are limited to brewery sealed containers of not more than 5.16 gallons (19.53 liters).
- Sell beer manufactured on the licensed premises to licensed retailers.
  - o The brewer taproom's own equipment, trucks, employees
    - This method of shipment may not exceed 8 barrels or 248 gallons (938.78 liters), per retailer, per day. This limitation excludes beer in bulk containers.
    - Does not exceed 10,000 barrels or 310,000 gallons (1,173,477.65 liters) in total deliveries to retailers per calendar year.
    - Annual production limitation of 10,000 barrels for beer manufacturing is credited to the brewery who manufactured the beer.
  - o Common Carrier
    - This method of shipment is **not** allowable to brewer taprooms for deliver to licensed North Dakota retailers.
- Sell and direct ship the manufactured beer to individual consumers within North Dakota.
- Transfer beer manufactured to an affiliated brewer taproom in which they have at least 85% ownership interest. The brewer taproom may not own more than three affiliated brewer taprooms.
  - o The affiliated brewer taproom receiving the beer has produced no less than five thousand gallons (18,927.06 liters) of beer on the licensed premises in the preceding calendar year.
  - o The affiliated brewer taproom has annual production of no less than 50% of the total bulk beer gallons being received.
  - o Annual production limitation of 25,000 barrels for beer manufacturing is credited to the brewery who manufactured the beer.
- Operate a restaurant contiguous to the brewery where only beer manufactured by the brewer taproom may be served.
- Enter a contract brewing arrangement as either the contractee or contractor. The contractee retains ownership of the beer, which will count towards the brewer taproom's annual production limits. The contractee and contractor must be licensed and owned separately.

**Brewer Taproom Special Event Permits** - A North Dakota Licensed Brewer Taproom may receive special event permits for no more than 40 events per calendar year from the Office of State Tax Commissioner. A Brewer Taproom Special Event Permit, subject to local ordinance, allows a brewer taproom to give free samples of its beverages and to sell its beverages by the glass or in closed containers at off-premises events. Applications for a Brewer Taproom Special Event Permit should be submitted to the Office of State Tax Commissioner through ND TAP ([www.tax.nd.gov/tap](http://www.tax.nd.gov/tap)) at least 10 days prior to the start of the event to ensure review and approval of the requested event.

A special event is an occasion of limited duration, where the Brewer Taproom may display, give free samples of, and sell, its product by the glass or in closed containers. A special event at any location may not be in excess of 15 days in duration and may not be consecutive. Brewer Taprooms must also comply with any other state or local laws, ordinances, or requirements associated with the provision or sale of alcoholic beverages. The issuance of special event permits may not create a permanent off-premises retail location for a licensed brewer taproom.

## TAX REPORTING AND RECORD KEEPING

**Wholesale Excise Tax** - The beverages manufactured and sold or provided as free samples by a brewer taproom are subject to the wholesale excise tax imposed under N.D.C.C. § 5-03-07. A brewer taproom must report and pay wholesale excise taxes due on all spirits sold by the licensee at retail. This tax must be paid to the Office of State Tax Commissioner annually. The amount of this tax shall be determined by the gallonage at the following rates:

- Beer in bulk containers – per wine gallon     \$.08 (\$.021 per liter)
- Beer in bottles and cans – per wine gallon     \$.16 (\$.042 per liter)

**Sales, Use, and Gross Receipts Tax** – A retail sale of beverages by a brewer taproom is subject to North Dakota state alcoholic beverage gross receipts tax of 7% and local gross receipts and local lodging and restaurant taxes. Information on North Dakota local sales, use, gross receipts, and lodging taxes is available at [www.tax.nd.gov/LocalTaxes](http://www.tax.nd.gov/LocalTaxes).

A brewer taproom 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 brewer taproom 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. A brewer taproom that operates a restaurant contiguous to the brewer taproom must collect and remit sales, use, gross receipts, and local lodging and restaurant taxes.

**Reporting Schedules and Returns** – A brewer taproom must complete and submit the following reporting forms to the Office of State Tax Commissioner. The Schedule C and Schedule T reports must be filed electronically through the ND TAP ([www.tax.nd.gov/tap](http://www.tax.nd.gov/tap)). These forms and instructions are available at [www.tax.nd.gov/AlcoholTax](http://www.tax.nd.gov/AlcoholTax).

Monthly Report - Schedule C: A monthly report for any sales a brewer taproom makes to a North Dakota wholesaler. The Schedule C report due date is the last day of the month following the month of sale. Zero reports are not required for the Schedule C. This form must be filed through ND TAP ([www.tax.nd.gov/tap](http://www.tax.nd.gov/tap)).

Monthly Report - Schedule T: A monthly report where a brewer taproom reports its production and sales activities. The Schedule E is due the 15th of each month following the month of sales/production. Zero reports are required for the Schedule T. This form must be filed through ND TAP ([www.tax.nd.gov/tap](http://www.tax.nd.gov/tap)).

Form ST Sales, Use & Gross Receipts Tax Return: A periodic return to report the local lodging and restaurant tax collected for on-sale alcohol sales and food sales made at the licensed premises. 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.tax.nd.gov/tap](http://www.tax.nd.gov/tap)).

Form F10 Local Lodging and Local Restaurant Tax Return: A periodic return to report the local lodging and restaurant tax collected for on-sale alcohol sales and food sales made at the licensed premises. 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.tax.nd.gov/tap](http://www.tax.nd.gov/tap)).

**Record Keeping** - Brewer taprooms must maintain detailed records for all manufacturing. Detailed records must also be kept for produced beer sold both on the brewery premises, and on any contiguous restaurant premises. Detailed records must also be maintained detailing each invoice sold to distributors, retailers, and transferred to an Affiliated Brewer Taproom.

## AUDIT

The Office of State Tax Commissioner may at any reasonable time make an examination of the books and premises of any brewer taproom to determine if the brewer taproom has fully complied with all statutes and rules pertaining to brewer taprooms.

## CONTACT INFORMATION

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

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