



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER GUIDELINE - ALCOHOL TAX: DOMESTIC DISTILLERIES

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 domestic distilleries in North Dakota. A distillery located in North Dakota may apply for a North Dakota Domestic Distillery License under N.D.C.C. § 5-01-19.

LICENSING

The North Dakota Domestic Distillery License is an annual license which allows the manufacture and sale of domestic distillery products at a licensed North Dakota premises and grants certain wholesale and retail privileges. A domestic distillery with multiple distillery premises must have domestic distillery licenses for each location. A domestic distillery may not manufacture distilled products outside its licensed premises.

The first step in becoming a licensed North Dakota domestic distillery 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**. After the Federal Basic Permit is received, the business may apply for a North Dakota Domestic Distillery License, which is included in the Alcohol License Application at **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.
- \$100.00 annual license fee.
- A North Dakota Sales and Use Permit application or proof of application (**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 domestic distillery or revoked by the Office of State Tax Commissioner.

North Dakota Domestic Distillery 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.

Failure to comply with any N.D.C.C. Title 5 provisions, or any other statute or regulation related to domestic distilleries, can result in the suspension, revocation, or non-renewal of your North Dakota Domestic Distillery license. A domestic distillery 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 Domestic Distillery License and the North Dakota Sales, Use and Gross Receipts Tax Permit, a domestic distillery 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.

If a domestic distillery exceeds the production limit of 25,000 gallons (94,635 liters) within a calendar year, they must apply for a North Dakota Manufacturing Distillery License.

OPERATING ACTIVITIES

North Dakota licensed domestic distilleries may engage in the following activities as allowed by N.D.C.C. Title 5:

- Produce no more than 25,000 gallons (94,635 liters) of manufactured domestic spirits per year.
- Sell the manufactured spirits to individuals at the domestic distillery's licensed premises.
- Sell the manufactured spirits to individuals at a special event, if a special event permit license is obtained from the Office of State Tax Commissioner.
- Sell and direct ship the manufactured spirits to individuals within North Dakota and individuals outside North Dakota if the domestic distillery is compliant with the receiving state's laws.
- Sell the manufactured spirits to licensed North Dakota wholesalers.
- Sell the manufactured spirits to out-of-state wholesalers if the domestic distillery is compliant with the receiving state's laws.
- If the domestic distillery produces no more than 12,000 proof gallons (45,425 liters) annually, it may sell and deliver up to 200 cases of no more than 2.38 gallons (9 liters) each, per year, to retailers as follows:
 - o Onsite.
 - o Delivered offsite using the domestic distillery's own trucks, equipment, and employees.
 - o Shipped to a retailer by a licensed distributor.
 - o Shipped and delivered by a common carrier in individual shipments of no more than 3 cases (27 liters) per retailer, per day from the domestic distillery or the domestic distillery's warehouse.
- Sell alcoholic beverages at a restaurant owned by and located on property contiguous to the domestic distillery if a retail alcohol license is obtained.

Domestic Distillery Special Event Permits - A North Dakota licensed domestic distillery may receive special event permits for no more than 40 events per calendar year from the Office of State Tax Commissioner. A Domestic Distillery Special Event Permit, subject to local ordinance, allows a domestic distillery to give free samples of its product and to sell its product by the glass or in closed containers at off-premises events. Applications for a Domestic Distillery Special Event Permit should be submitted to the Office of State Tax Commissioner through ND TAP (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 off-premises occasion of limited duration, where the domestic distillery may display, give free samples of, and sell, its products by the glass or in a closed container. A special event at any location may not be in excess of 15 days in duration and may not be consecutive. Domestic distilleries 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 domestic distillery.

TAX REPORTING AND RECORD KEEPING

Wholesale Excise Tax – The spirits manufactured and sold or provided as free samples by a domestic distillery are subject to the wholesale excise tax imposed under N.D.C.C. § 5-03-07. A domestic distillery must report and pay wholesale excise taxes due on all spirits sold by the licensee at retail, including spirits shipped directly to consumers. 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 rate:

- Distilled spirits – per wine gallon: \$2.50 (\$0.66 per liter).

Sales, Use, and Gross Receipts Tax – A retail sale of spirits by a domestic distillery 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.

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

Reporting Schedules and Returns – A domestic distillery must complete and submit the following reporting forms to the Office of State Tax Commissioner. The Schedule A and Schedule J reports must be filed electronically through ND TAP (www.tax.nd.gov/tap). These forms and instructions are available at www.tax.nd.gov/AlcoholTax.

Monthly Reports - Schedule A: This is a monthly report for any sales a domestic distillery makes to a North Dakota Wholesaler. The Schedule A report due date is the last day of the month following the month of sale. Zero reports are not required for the Schedule A. This report is required to be submitted electronically on ND TAP (www.tax.nd.gov/tap).

Annual Reports - Schedule J: An annual report for a domestic distillery to report its production and sales activities for the calendar year. The Schedule J report due date is January 15th of the year following the year of production and sales activities. This report is required to be submitted electronically on ND TAP (www.tax.nd.gov/tap).

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 may be filed through ND TAP at

(www.tax.nd.gov/tap).

Local Lodging and Local Lodging and 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 may be filed through ND TAP at (www.tax.nd.gov/tap).

Record Keeping – A domestic distillery must maintain detailed records for all manufacturing. Detailed records must also be kept for produced spirits sold both on the distillery premises and on any contiguous restaurant premises. Detailed records must also be maintained for every invoice sold to wholesalers and retailers.

AUDIT

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

CONTACT INFORMATION

Please visit Alcohol Tax at www.tax.nd.gov/AlcoholTax for more information on North Dakota alcohol taxes. If you have questions, please contact our office at alcoholtax@nd.gov or 701-328-2702.