



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER

GUIDELINE - ALCOHOL TAX: DOMESTIC WINERY

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 wineries in North Dakota. A winery located in North Dakota may apply for a North Dakota Domestic Winery License.

LICENSING

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

The first step in becoming a licensed North Dakota domestic winery 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 Winery 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).
 - Once issued, the North Dakota sales and use permit does not expire. It stays active until closed by the domestic winery or revoked by the Office of State Tax Commissioner.

North Dakota Domestic Winery 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 Domestic Winery License may be suspended or revoked for a violation of any applicable N.D.C.C. Title 5 provisions.

- A domestic winery's license may be suspended or revoked if any of the Operating Activities listed on Page 2 of this guideline are violated, or the licensee does not comply with all statutes or administrative rules pertaining to domestic wineries.
- The Office of State Tax Commissioner may suspend or revoke a domestic winery's license, or deny a license renewal, only after conducting an administrative hearing. The taxpayer must be notified in advance of this hearing and asked to attend.

In addition to the Federal Basic Permit, the North Dakota Domestic Winery License and the North Dakota Sales, Use and Gross Receipts Tax Permit, a domestic winery 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 licensed domestic wineries may engage in the following activities as allowed by N.D.C.C. Title 5:

- Produce wine. To qualify as a domestic winery, the winery may not sell at retail or wholesale in a calendar year more than 25,000 gallons of wine produced at the licensed premises.
- Purchase up to 4,000 gallons in bulk of unfinished wine to utilize in their manufacturing process each calendar year.
 - o The bulk wine may not be in label approved containers.
- Sell the manufactured wine to licensed North Dakota wholesalers.
- Sell the manufactured wine to out-of-state wholesalers, if the domestic winery is compliant with the receiving state's laws.
- Sell and deliver the manufactured wine directly to licensed North Dakota retailers.
 - o The domestic winery must collect a copy of the retailer's current alcohol license and verify its validity annually.
 - o The domestic winery must deliver the manufactured wine using one of these options:
 - The winery's own equipment, trucks, and employees
 - This method of shipment may not exceed 4,500 cases per calendar year.
 - A case may not exceed 2.38 gallons (9 liters).
 - A common carrier
 - Individual shipments by a common carrier may not exceed three cases (27 liters) a day for each licensed retailer.
 - This method of shipment may not exceed 3,500 cases per calendar year.
 - A licensed distributor
- Sell and direct ship the manufactured wine to individuals inside or outside of North Dakota.
 - o If shipped outside of North Dakota, the domestic winery must be compliant with the receiving state's laws.
- Sell other authorized items of tangible personal property, such as wine glasses, wine openers, wine carafes, wine literature, or other bar accessories.
- Obtain a retail alcohol license allowing the on-premises sales of alcoholic beverages at a restaurant owned by the domestic winery and located on property contiguous to the winery.
- Sell the manufactured wine to individuals at the domestic winery's licensed premises or by special event permit.
 - o All sales of manufactured wine products must occur at the licensed premises unless the domestic winery receives a Special Event Permit License from the Office of State Tax Commissioner.

Domestic Winery Special Event Permits - A North Dakota licensed domestic winery may receive up to 40 special event permits per calendar year from the Office of State Tax Commissioner. A Domestic Winery Special Event Permit, subject to local ordinance, allows a domestic winery to give free samples of its wines and to sell its wine by the glass or in closed containers at off-premises events. Applications for a Domestic Winery Special Event Permit should be submitted to the Office of State Tax Commissioner on ND TAP (www.tax.nd.gov/tap) at least 10 days prior to the start of the event to ensure review and approval prior to the requested event.

A special event is an occasion of limited duration, where the domestic winery may, off-premises, display, give free samples of, and sell, its wine by the glass or in closed containers. Special events must be associated with a unique or temporary occasion. A special event at a retail location other than the domestic winery's premises must be held in conjunction with an established event of a limited duration at that retail location. A special event at any location may not be in excess of fifteen (15) days in duration and may not be consecutive. Domestic wineries 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 winery.

TAX REPORTING AND RECORD KEEPING

Wholesale Excise Tax - The wine manufactured and sold or provided as free samples by a domestic winery is subject to the wholesale excise tax imposed under N.D.C.C. § 5-03-07. A domestic winery must report and pay wholesale excise taxes due on all wines sold by the licensee at retail, including all wines 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 rates:

- Wine, including sparkling wine, containing less than 17% alcohol by volume - \$.50 per wine gallon (.132 per liter)
- Wine containing 17%-24% alcohol by volume - \$.60 per wine gallon (.159 per liter)

Sales, Use and Gross Receipts Tax – A retail sale of wine by the domestic winery 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 winery selling additional items of tangible personal property, such as wine glasses, wine openers, wine carafes, wine 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 winery that purchases equipment or other tangible 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 winery that operates a restaurant contiguous to the domestic winery must collect and remit sales, use, gross receipts, and local lodging and restaurant taxes.

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

Monthly Reports - Schedule A: A monthly report for any sales a domestic winery 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 F: An annual report for a domestic winery to report its production and sales activities for the calendar year. The Schedule F 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).

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

Form F10 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 (www.tax.nd.gov/tap).

Recordkeeping - A domestic winery must maintain detailed records for purchases of bulk wine and ingredients used in the manufacturing process, manufactured wine sold and sampled on the winery premises, including any contiguous restaurant, and on each sale to distributors and retailers. These records should include any samples given or sales made under a special event permit.

AUDIT

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

CONTACT INFORMATION

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

North Dakota Century Code: Domestic Winery License N.D.C.C. § 5-01-17; Direct sales by licensed wineries N.D.C.C. § 5-01-20 (www.ndlegis.gov/cencode/t05c01.pdf).

(Revised October 2019)