



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER GUIDELINE - ALCOHOL TAX: OUT-OF-STATE WINERY DIRECT TO RETAIL

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 direct sales to retail by an out-of-state winery into North Dakota. A winery located outside of North Dakota may apply for a North Dakota Out-Of-State Winery License to Sell Direct To North Dakota Retailers under N.D.C.C. § 5-01-20.

LICENSING

The North Dakota Out-of-State Winery License is an annual license which allows the sale of wine produced outside of North Dakota directly to licensed North Dakota retailers.

The first step in becoming a licensed out-of-state 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 Out-Of-State Winery License To Sell Direct To North Dakota Retailers, 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 copy of the business' organizational documents, i.e., articles of organization, LLC operating agreement, or partnership agreement
- A copy of the permit issued by your state of residence

North Dakota Out-of-State 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 Out-Of-State Winery 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 out-of-state wineries. An out-of-state winery is entitled to an administrative hearing before its license may be suspended, revoked, or denied for renewal.

OPERATING ACTIVITIES

North Dakota licensed out-of-state wineries may engage in the following activities as allowed by N.D.C.C Title 5:

- Sell and deliver wine produced out-of-state directly to licensed North Dakota retailers.
 - o The out-of-state winery must collect a copy of the retailer's current alcohol license and verify its validity annually.
 - o The out-of-state winery must deliver 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 gallon (9 liters).

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- A common carrier
 - This method of shipment may not exceed 3,500 cases per calendar year
- A licensed distributor

TAX REPORTING AND RECORD KEEPING

Wholesale Excise Tax - The wine manufactured out-of-state and sold to retailers in North Dakota is subject to the wholesale excise tax imposed under N.D.C.C. § 5-03-07. An out-of-state winery must report and pay wholesale excise taxes due on all wine 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:

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

Wine sold to retailers by a North Dakota licensed Out-of-State Winery is subject to wholesale excise tax imposed under N.D.C.C. § 5-03-07.

Reporting Schedules and Returns – An out-of-state winery must complete and submit the following reporting form to the Office of State Tax Commissioner. The Schedule N Report must be filed electronically through the ND TAP (www.tax.nd.gov/tap). These forms and instructions are available at www.tax.nd.gov/AlcoholTax.

Annual Report - Schedule N: An annual report for an out-of-state winery to report its sales direct to North Dakota retailers for the calendar year. The Schedule N report due date is January 15th of the year following the year of production sales and activities. Zero reports are required for the Schedule N. This report is required to be submitted electronically on ND TAP (www.tax.nd.gov/tap).

Record Keeping - An out-of-state winery must maintain detailed records of manufacturing and sales to North Dakota retailers.

AUDIT

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

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.

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