



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER

GUIDELINE - ALCOHOL TAX: MANUFACTURING 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 manufacturing distilleries in North Dakota. A distillery located in North Dakota may apply for a North Dakota Manufacturing Distillery License under N.D.C.C. § 5-01-19.2.

LICENSING

The North Dakota Manufacturing Distillery License is an annual license which allows the manufacture of distillery products at a licensed manufacturing premises and grants certain wholesale privileges. A manufacturing distillery may not manufacture distilled products outside its manufacturing premises.

The first step in becoming a licensed North Dakota manufacturing 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 Manufacturing 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 annual license fee for the manufacturing location.
- \$100 annual license fee for the satellite retail location.
- 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 manufacturing distillery or revoked by the Office of State Tax Commissioner.

North Dakota Manufacturing 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.

A North Dakota Manufacturing Distillery 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 manufacturing distilleries. A manufacturing distillery is entitled to an administrative hearing before its license may be suspended, revoked, or denied for renewal.

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In addition to the Federal Basic Permit, the North Dakota Manufacturing Distillery License and the North Dakota Sales, Use, and Gross Receipts Tax Permit, a manufacturing 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.

OPERATING ACTIVITIES

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

- Produce distilled spirits. To qualify as a manufacturing distillery, the distillery may not manufacture more than 25,000 gallons (94,635 liters) of manufacturing spirits per year.
- Sell the manufactured spirits to licensed North Dakota liquor wholesalers.
- Sell the manufactured spirits to out-of-state wholesalers if the manufacturing distillery is compliant with the receiving state's laws.
- Sell and deliver the manufactured spirits directly onsite to licensed North Dakota retailers provided:
 - o The manufacturing distillery produces no more than 12,000 proof gallons (42,000 liters) of spirits per year.
 - o The manufacturing distillery may deliver the manufactured spirits offsite if the manufacturing distiller uses:
 - The distillery's own equipment, trucks, and employees to deliver the spirits.
 - This method of shipment may not exceed 200 cases per calendar year.
 - A case may not exceed 2.38 gallons (9 liters).
 - A common carrier
 - Individual shipments by common carrier may not exceed three cases (27 liters) a day for each licensed retailer.
 - This method of shipment may not exceed 200 cases per calendar year.
 - A licensed distributor
- Sell and direct ship the manufactured spirits to persons inside or outside of North Dakota.
 - o If shipped outside of North Dakota, the manufacturing distillery must be compliant with the receiving state's laws.
- Obtain a retail alcohol license allowing the on-premises sales of alcoholic beverages at a restaurant owned by the licensee and located at the manufacturing distillery's satellite location.
- Sell the spirits produced by the distillery at off sale, in retail lots, and not for resale, and provide free samples, to persons at the manufacturing distillery's location.
- Sell the spirits produced by the manufacturing distillery at a licensed satellite location owned or leased by the manufacturing distillery at on sale, and off sale, and provide free samples.

Manufacturing Distillery Special Event Permits - A North Dakota licensed manufacturing distillery may receive special event permits for no more than 40 events per calendar year from the Office of State Tax Commissioner. A Manufacturing Distillery Special Event Permit, subject to local ordinance, allows a manufacturing distillery to give free samples of its product and to sell its product

by the glass or in closed containers at off-premises events and at its satellite location. Applications for a Manufacturing 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 may not be in excess of 15 days in duration and may not be consecutive. Special events held at the manufacturing distillery's satellite location do not count toward the 40 event per calendar year limit and may be consecutive.

Manufacturing distilleries and their satellite locations participating in or conducting a special event must comply with any other state or local laws, ordinances, or requirements associated with the provision or sale of alcoholic beverages.

TAX REPORTING AND RECORD KEEPING

Wholesale Excise Tax – The spirits manufactured and sold or provided as free samples by a manufacturing distillery are subject to the wholesale excise tax imposed under N.D.C.C. § 5-03-07. A manufacturing 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 rates:

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

Sales, Use, and Gross Receipts Tax – A retail sale of spirits by a manufacturing distillery is subject to North Dakota's alcoholic beverage gross receipts tax of 7% and applicable 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 manufacturing 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 applicable 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 manufacturing 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 manufacturing distillery that operates a restaurant at the satellite location must collect and remit sales, use, gross receipts, and local lodging and restaurant taxes.

Reporting Schedules and Returns – A manufacturing 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). The following forms and instructions are available at www.tax.nd.gov/AlcoholTax.

Monthly Reports - Schedule A: This is a monthly report for any sales a manufacturing 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 manufacturing distillery to report its production and sales activities for the calendar year. The Schedule J report due date is January 15 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 applicable 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 applicable local lodging and restaurant tax collected for on-sale alcohol sales and food sales made at the licensed satellite location. 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).

Record Keeping – A manufacturing distillery must maintain detailed records for all manufacturing, including documentation substantiating compliance with the 51% of North Dakota farm products requirement. Detailed records must be kept for produced spirits sold on the manufacturing distillery premises, at any satellite location owned or leased by the manufacturing distillery licensee, and on any restaurant owned by the manufacturing distillery licensee and located at that distillery's satellite location. Detailed records must also be maintained detailing each invoice sold to wholesalers and retailers.

AUDIT

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

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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