



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER GUIDELINE - ALCOHOL TAX: MICROBREW PUBS

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 microbrew pubs in North Dakota. A microbrew pub located in North Dakota may apply for a North Dakota Microbrew Pub License under N.D.C.C. § 5-01-14.

LICENSING

The North Dakota Microbrew Pub License is an annual license which allows for the manufacturing and sale of beer products at a specific licensed premises. No licensed microbrew pub may 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 to becoming a licensed North Dakota microbrew pub 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 Microbrew Pub 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 microbrew pub or revoked by the Office of State Tax Commissioner.

North Dakota Microbrew Pub 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 Microbrew Pub 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 microbrew pubs. A microbrew pub 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 Microbrew Pub License and the North Dakota Sales, Use, and Gross Receipts Tax Permit, a microbrew pub 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 microbrew pubs are authorized to engage in the following activities:

- Produce beer. To qualify as a microbrew pub, the microbrew pub may not sell at retail or wholesale in a calendar year more than 10,000 barrels of beer per year.
 - o For the purposes of calculating the 10,000-barrel annual production limitation, beer manufacturing is always credited to the brewery that made the beer.
- Sell the manufactured beer to licensed North Dakota wholesalers.
- Sell the manufactured beer to out-of-state wholesalers, if the microbrew pub is compliance with the receiving state's laws.
- Transfer beer manufactured to an affiliated microbrew pub in which they have at least 85% ownership interest, measured annually.
 - o The microbrew pub may not own more than three affiliated microbrew pubs.
 - o Affiliated microbrew pub receiving the beer must have produced no less than 5,000 gallons (18,927 liters) of beer on the licensed premises in preceding calendar year.
 - o Affiliated microbrew pub has annual production of no less than 50% of the total bulk beer gallons being received.
- 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) per day.
- Sell and direct ship the manufactured beer to individual consumers in North Dakota.
- Sell other alcoholic beverages regardless of the source manufactured for consumption on the licensed premises.
- Operate a restaurant contiguous to the brewery when granted an on-sale license for retailing alcoholic beverages.
- Enter a contract brewing arrangement as either the contractee or contractor. The contractee retains ownership of the beer, which will count towards the microbrew pub's annual production limits. The contractee or contractor must be licensed and owned separately.

Microbrew Pub Special Event Permits - A North Dakota Licensed Microbrew Pub may receive special event permits for no more than 40 events per calendar year from the Office of State Tax Commissioner. A Microbrew Pub Special Event Permit, subject to local ordinance, allows a microbrew pub 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 Microbrew Pub 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 occasion of limited duration, where the Microbrew Pub 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. Microbrew Pubs 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 microbrew pub.

TAX REPORTING AND RECORD KEEPING

Wholesale Excise Tax - The beverages manufactured and sold or provided as free samples by a microbrew pub are subject to the wholesale excise tax imposed under N.D.C.C. § 5-03-07. A microbrew pub 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 microbrew pub 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 microbrew pub 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 microbrew pub 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 microbrew pub that operates a restaurant contiguous to the microbrew pub must collect and remit sales, use, gross receipts, and local lodging and restaurant taxes.

Reporting Schedules and Returns – A microbrew pub must complete and submit the following reporting forms to the Office of State Tax Commissioner. The Schedule C and Schedule E reports 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.

Monthly Report - Schedule C: A monthly report for any sales a microbrew pub 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 electronically through ND TAP (www.tax.nd.gov/tap).

Monthly Report - Schedule E: A monthly report where a microbrew pub 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 E. This form must be filed electronically through 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 must be filed through ND TAP (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).

Record Keeping - A microbrew pub must maintain detailed records for purchases and ingredients used in the manufacturing process, manufactured beverages sold or sampled on premises, including any contiguous restaurant, and on each sale to wholesalers and retailers. The 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 microbrew pub to determine if the microbrew pub has fully complied with all statutes and rules pertaining to microbrew pubs.

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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