



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER GUIDELINE - SALES TAX: RESTAURANTS

SALES TAX APPLIES ON MOST RESTAURANT SALES

Virtually all sales made by restaurants, cafes, caterers, drive-in eating places and dairy product stores are subject to North Dakota sales tax. All sales of meals, lunches, snacks, candy, chewing gum, coffee, tea, milk, soft drinks, ice cream, cigarettes, cigars, tobacco, alcoholic beverages and sundries are subject to sales tax when sold to final consumers. Sales of prepared meals for take-out or delivery service also are subject to sales tax.

RESTAURANTS, CAFES AND CATERERS

A business or person who engages in the business of providing meals to the general public, either in a restaurant, a cafe or as a caterer, is liable for collection of North Dakota sales tax. Sales tax must be added to the selling price of all meals, lunches, snacks, candy, chewing gum, coffee, soft drinks, ice cream, cigarettes, cigars and tobacco sold by these businesses.

Sales of food products which are prepared for immediate consumption are subject to sales tax even though such products are packaged or wrapped and are sold on a take-out or to-go basis. However, bulk items not purchased for immediate consumption are not taxable. Examples of bulk items are whole pies or cakes, large quantities of bakery items and bulk ice cream.

COIN-OPERATED VENDING MACHINES

The gross receipts from coin-operated vending machines are subject to sales tax. Receipts from cigarette vending machines are taxable as are the receipts from soft drink vending machines, candy or gum vending machines or other vending machines which dispense merchandise. The only exception is for those vending machines which dispense peanuts, gum balls or other products for 15 cents or less.

Sales tax is included in the gross receipts from coin-operated vending machines and must be deducted before calculating gross receipts subject to sales tax (taxable sales). Taxable sales from coin-operated vending machines are calculated as follows:

- a) 5% State Sales Tax only
 - b) 5% State Sales Tax and City Sales Tax
- Example: 1% city sales tax
1½% city sales tax
1¾% city sales tax

Taxable Sales = Gross Receipts ÷ 105% (1.05)
Taxable Sales = Gross Receipts ÷ [105% + city tax percent]
Taxable Sales = Gross Receipts ÷ 106% (1.06)
Taxable Sales = Gross Receipts ÷ 106½% (1.065)
Taxable Sales = Gross Receipts ÷ 106¾% (1.0675)

The owner of the coin-operated vending machine is the one responsible for sales tax on receipts from the machine. Sales tax should be subtracted from total receipts by the machine owner before calculating the percentage of receipts which go to the location owner.

AMUSEMENT SALES

State sales tax is due on 80% of the gross receipts collected from coin-operated amusement devices. Grand Forks provides for city sales tax on 56% of the gross receipts. All other cities that tax coin-operated amusement, tax 80% of the gross proceeds. Sales tax is included in the gross receipts from coin-operated amusement devices and must be deducted before calculating gross receipts subject to sales tax (taxable sales).

Taxable sales from coin-operated amusement machines are calculated as follows:

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|---|--|
| a) 5% State Sales Tax only | Taxable Sales = Gross Receipts x 76.92 (.7692) |
| b) 5% State Sales Tax and 1% City Sales Tax | Taxable Sales = Gross Receipts x 76.34 (.7634) |
| c) 5% State Sales Tax and | (State) Taxable Sales = Gross Receipts x 76.20 (.7620) |
| 1.75% Grand Forks City Sales Tax | (City) Taxable Sales = Gross Receipts x 76.92 (.7692) |

The owner of the coin-operated amusement device is the one responsible for sales tax on the receipts from the machine. Sales tax should be subtracted from total receipts by the machine owner before calculating the percentage of receipts which go to the location owner.

EMPLOYEE MEALS

The selling price of meals to employees is subject to sales tax. Meals given to employees or provided free as compensation are subject to use tax. The employer's cost of meals given to employees at no cost must be reported as items subject to use tax on the employer's sales tax return. If records are not available to document the employer's cost, the fair market value (normal selling price) is the reportable value.

PURCHASES SUBJECT TO SALES OR USE TAX

Restaurants, cafes, drive-ins and dairy stores buy quantities of food and grocery items from wholesale grocers under the theory of resale. Each of these businesses should have a retail sales and use tax permit number and should sign a Certificate of Resale and present it to the wholesale grocer indicating that certain items purchased from that wholesale grocer are for resale.

Restaurants, cafes, drive-ins and dairy stores also buy numerous items which they do not intend to sell. It should be evident from the nature of these items that they are being purchased by these businesses for final use and the wholesale grocer should charge sales tax on these items. Examples of these items are shown below.

There are certain items which are not classified as food or grocery items but which do not pass to the customer with the purchase of a meal. These items are purchased for resale when purchased by restaurants, cafes, drive-ins and dairy stores.

The following lists are examples of taxable and nontaxable purchases made by restaurants, cafes, drive-ins and dairy stores:

Nontaxable Purchases for Resale

Food, including seasonings, etc.
Sandwich bags
Doggie bags
Paper cups
Paper plates
Paper napkins
Toothpicks
Butterchips
Creamer cups
Hot cups and lids
Sandwich wrap
Plastic or wood utensils
Drinking straws
To-go containers

Taxable Purchases for Final Use

Soap
Bleach
Disinfectant
Paper towels
Ammonia
Toilet tissue
Brooms
Cleansers
Grill bricks
Aluminum foil
Scouring pads
Banquet paper
Placemats (paper & others)
Tablecloths (paper & others)
Can liners
Dishwashing soap
Softener salt
Towel dispens ers
Sweeping compound
Saniflush
Oven cleaner
Menus
String
Tableware
Insect spray
Bathroom plunger
Sales tickets

February 2004
(Reviewed May 2019)