



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER GUIDELINE - SALES TAX: NURSERIES, GREENHOUSES & FLORISTS

GENERAL APPLICATION OF SALES TAX

Nurseries, greenhouses and florists are retailers and must collect sales tax on sales of flowers, wreaths, plants, shrubs, roots, bulbs, trees, seeds, fertilizer, dirt, sod, tools, pots, supplies and garden accessories. However, there are certain products which are not subject to tax when sold to a *commercial vegetable producer* or to a farmer or rancher. Additional information on taxable and nontaxable sales is provided below.

Nurseries, greenhouses and florists also may act as contractors when they plant or transplant shrubbery, young trees and similar items. In these cases, the application of sales tax is not the same as under normal retail conditions. Additional information on contracting activity is provided below.

RETAIL SALES

Retail sales of tangible personal property in North Dakota are subject to North Dakota sales tax. Nurseries, greenhouses and florists who sell flowers, wreaths, plants, shrubs, roots, bulbs, trees, seeds, fertilizer, dirt, sod, tools, pots, supplies and garden accessories to final users and consumers must collect and remit sales tax on such items.

SALES TO COMMERCIAL GARDENERS, FARMERS AND RANCHERS

Certain agricultural products are exempt from sales tax when sold to commercial gardeners, farmers or ranchers. These products include fertilizer, seeds, roots, bulbs, small trees and similar items which are sold for agricultural purposes. The sale of garden seeds to a commercial vegetable producer is exempt while the sale of these same seeds for a personal garden is taxable. The same is true of fertilizer. If a farmer, rancher or commercial vegetable producer purchases fertilizer from a nursery, greenhouse or florist, the sale is exempt from sales tax while the sale of lawn or garden fertilizer for a private garden or lawn is taxable.

The sale of young trees and shrubs to a farmer or rancher for a wind break or wind erosion prevention is an exempt sale since this is for agricultural use. Sales of these same products for beautification purposes such as landscaping the farmer's or rancher's lawn are taxable. In cases where the sale is exempt because the sale is to a commercial vegetable producer, farmer or rancher, the seller's records should indicate that the products being sold are for agricultural purposes and are exempt. The nature of these transactions will determine whether or not the sales are for agricultural purposes and are exempt. For example, Tax Department auditors would question a transaction in which four or five young trees were sold to a farmer or rancher for *agricultural purposes*, since the quantity of the purchase does not seem sufficient to provide an adequate wind break or wind erosion protection. However, the limited purchase may have been replacement trees for an existing windbreak or wind erosion project and if that is the case, the farmer or rancher should provide the seller with a statement setting out those facts and the sale would be exempt from tax.

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SALES TO OTHER RETAILERS, CONTRACTORS AND LANDSCAPERS

Many nurseries, greenhouses and florists also sell their products at wholesale to other retailers of similar products. For example, if a nursery sells small plants or bulbs to a retail florist, it is likely that the florist is going to resell these products. The florist should have a sales tax permit and should execute a *resale certificate* which indicates that the products being purchased are for resale and that the retailer will be responsible to collect sales tax when the products are sold to the end user.

Nurseries, greenhouses and florists also sell small plants, shrubs and trees to contractors and landscapers. Such sales are sales to a final consumer and should be taxed by the seller unless the contractor or landscaper executes a *contractor's certificate* which certifies that the buyer is a construction contractor who holds a sales and use tax permit and that the buyer intends to pay use tax on such products. Again, the seller should have an executed *contractor's certificate* on file to verify any nontaxable sales which are made to a contractor or landscaper.

PLANTING AND TRANSPLANTING

Contracting and Landscaping

Many nurseries, greenhouses and florists also are engaged in the business of planting and transplanting seeds, roots, bulbs, shrubs, trees and small plants. They also may be engaged in providing landscaping services and the sale of black dirt, sod or fill. When personal property such as young trees or shrubs is planted they become part of real estate; therefore, the person or firm who does the actual planting or transplanting is regarded as a contractor. When a nursery, greenhouse or florist engages in these activities they are considered a contractor and are subject to use tax based on their cost of the personal property installed. The act of planting personal property into real estate is considered the taxable moment under North Dakota sales and use tax law and the contractor who plants or installs the personal property is the taxpayer. The tax is calculated on the contractor's cost of the personal property being installed.

In the case of a nursery which grows its own stock and then agrees to transplant that stock for a specified lump sum fee, no use tax is due. If the nursery, greenhouse or florist purchases stock from another nursery, greenhouse or florist and then agrees to plant or transplant the stock, tax should be figured on the cost of the stock when it is purchased.

For example: ABC nursery contracts with John Doe to plant several ornamental shrubs in Mr. Doe's back yard. ABC nursery agrees to do this for a total lump sum cost of \$300. ABC Nursery then contacts another nursery and purchases the necessary shrubs from the nursery and fulfills its contract with Mr. Doe. The cost of the shrubs purchased by ABC Nursery becomes the base upon which ABC Nursery must compute and pay use tax. The tax is not added on to the agreed contract price of \$300 but is paid by ABC Nursery to the nursery who sold the stock or to the Tax Department on the *Items Subject to Use Tax* line of ABC Nursery's sales and use tax return. This stock is a purchase for use by ABC Nursery who is the taxpayer.

Second example: ABC Nursery agrees to plant several ornamental shrubs in the back yard of Mr. John Doe for a lump sum contract price of \$300. The nursery has stock of its own which was grown in its nursery and takes that stock and plants it in the back yard of Mr. Doe. In this case, the transaction is not taxable because there is no taxable base upon which to apply use tax. Normally, the base would be the cost of the shrubs, but since they were grown by the nursery the base is zero.

Use tax is due when a nursery, greenhouse or florist agrees to sell and spread black dirt or gravel or if it agrees to lay sod. All of these are regarded as *construction contracts* and the cost of the products installed is taxable to the installer (nursery, greenhouse or florist).

CONTRACTING AND LANDSCAPING FOR PUBLICLY FUNDED PROJECTS

If a nursery, greenhouse or florist agrees to plant or transplant shrubs, plants or young trees, to deliver and spread black dirt or to lay sod, the nursery, greenhouse or florist is the user of the goods and must pay tax on the cost of the goods installed. If these goods are purchased from another nursery, greenhouse or florist, the cost of the goods becomes the base upon which tax is computed. The fact that these trees, shrubs, plants, black dirt, gravel or sod may be installed for a tax exempt entity does not relieve the contractor (nursery, greenhouse or florist) from payment of tax.

If these goods are grown or provided by the nursery, greenhouse or florist, there is no tax base and no use tax is due.

RENTALS

Some nurseries, greenhouses and florists also rent lawn equipment such as power lawn-mowers and power rakes. The rental of tangible personal property in North Dakota is subject to sales tax. The rental of power tools and other tangible personal property to a final user or consumer is subject to sales tax. If the nursery, greenhouse or florist purchases equipment to rent, it should purchase the equipment for resale without paying sales or use tax since tax will be collected on the rental fee for the equipment. The nursery, greenhouse or florist should provide a completed *resale certificate* to the seller to purchase the equipment without paying sales tax.

If a nursery, greenhouse or florist is not in the business of renting tangible personal property but has a piece of equipment which it utilizes in the business and occasionally may rent out to a final consumer, the rental is considered a casual sale and no sales tax applies provided the nursery, greenhouse or florist paid tax on the cost of the equipment when it was purchased.

RENTAL OF PLANTS

Some nurseries, greenhouses or florists place plants, planters or terrariums in offices and stores on a temporary basis. Usually, there is a monthly charge for this *plant rental*. The charge is a rental charge and not a service charge so the nursery, greenhouse or florist renting the plant must charge sales tax on the rental of the plant.

SALES OR RENTALS TO OUT-OF-STATE RESIDENTS

The sale of tangible personal property to an out-of-state resident is normally taxable if the sale takes place in North Dakota. An exception is made for the residents of Montana who come to North Dakota and make a purchase of \$50.00 or more in taxable merchandise. The resident of Montana can purchase personal property and take delivery in this state without payment of sales tax provided that person signs a *Certificate of Purchase*. This certificate states that the person is a resident of Montana, is here for the specific purpose of purchasing merchandise and will take the goods back to Montana for use exclusively outside of North Dakota.

Canadian residents must pay North Dakota sales tax on all purchases made in North Dakota. However, in some cases, the Canadian residents may be eligible for a refund of sales tax paid.

The refund is available under the following conditions:

- (1) The Canadian resident must be in North Dakota to make a purchase and not as a tourist or temporary resident.

- (2) The goods will be removed from North Dakota within 30 days of purchase and must be used permanently outside North Dakota.
- (3) Individual qualifying purchases (involving one or more items) must equal or exceed \$25.00.
- (4) The refund must be \$15.00 or more. (Qualifying purchases may be accumulated for periods not in excess of one calendar year in order to reach the \$15.00 limit.)
- (5) The Canadian resident must apply in writing to the Tax Commissioner on a form prescribed by the Tax Commissioner.

When a nonresident comes into North Dakota and orders merchandise to be delivered outside this state, the sale is made in interstate commerce and no North Dakota sales or use tax is due. If the nursery, greenhouse or florist makes it a practice to deliver into an adjoining state on a regular basis, it may be required to hold a sales or use tax permit in the adjoining state and collect tax on all deliveries made into that state. Nurseries, greenhouses or florists who are engaged in regular deliveries into another state should check with the taxing authorities of that state to determine their sales tax liability.

FLORIST TELEGRAPH DELIVERY SERVICE

The sales and use tax regulation governing the sale of flowers through a telegraph delivery service imposes the sales tax collection responsibility upon the sending florist. On all orders taken by a North Dakota florist and sent to a second florist for delivery, the sending florist is liable for sales tax on the receipts collected from the person ordering the flowers.

If a North Dakota florist receives telegraph or telephone instructions from another florist for the delivery of flowers, the receiving florist is not liable for sales or use tax, since the sending florist is the one liable for collection of sales taxes.

FREIGHT AND DELIVERY CHARGES

In general, North Dakota sales and use tax law taxes freight, delivery and other transportation charges when made in connection with the taxable sale of a product. If there is a separate delivery charge made to a customer for delivery of flowers, wreaths, plants and similar items sold by nurseries, greenhouses or florists, the delivery charge is part of the base upon which sales tax is computed. This is true regardless if the goods are delivered in vehicles owned and operated by the nursery, greenhouse or florist or if they are sent by common carrier, United States Postal Service or any other method of delivery or transportation.

PURCHASES FOR OWN USE

Most nurseries, greenhouses and florists purchase material, equipment and supplies for their own use and not for resale to their customers. Such items include garden tractors, tools, office equipment, office supplies, invoices and similar items which the business will use. If these items are purchased from a supplier who holds a North Dakota sales and use tax permit, North Dakota sales tax should be paid directly to the supplier. If these items are purchased from a supplier who fails to charge North Dakota sales or use tax, the purchaser should include the cost of the purchases on the *Items Subject to Use Tax* line of the North Dakota sales and use tax return and remit the use tax directly to the Office of State Tax Commissioner.