



# NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER

## GUIDELINE - SALES TAX: SAND, GRAVEL, AND SCORIA

### **Operators are Retailers**

Operators of sand, gravel, and scoria pits are retailers and are liable for sales tax on receipts from sales. When sand, gravel, or scoria is procured at the pit for delivery to one who has employed a trucker or hauler, the operator of the pit must collect and remit the tax. (The sales & use tax rate includes the North Dakota state rate of 5% and any applicable local option taxes.)

### **Delivery Cost of Retail Sale - Subject to Sales Tax**

When a pit operator agrees to deliver sand, gravel, or scoria to the purchaser's location, the entire selling price, including the cost of delivery, is subject to sales tax.

### **Sales to Truckers, Haulers, and Resellers**

Sales to truckers, haulers or other businesses who resell the materials are not taxable provided the seller obtains a completed certificate of resale form. The truckers' or haulers' sales price, including the cost of delivery, is subject to sales tax.

Sales to truckers and haulers who do not have an established place of business and are not engaged in the business of selling at retail are taxable sales.

### **Sand, Gravel, and Scoria Sold Severed - Royalty**

When a land owner institutes a royalty based on the severed tonnage, cubic yard, or any other means of measurement, a unit price is established based on the royalty payment. If the severed product is used for the purchaser's own use, the transaction is treated like the sale of personal tangible property and use tax is due based on the royalty price.

If the severed product is resold, the royalty is a cost of production and not subject to use tax. The subsequent sale of severed sand, gravel, or scoria, including the cost of delivery, is subject to sales tax.

### **Sand, Gravel, and Scoria Sold Unsevered - Lease**

When sand and gravel is sold unsevered (i.e. a real estate lease) and is severed for the purchaser's own use, the severing is subject to use tax. It is presumed that the selling price is \$0.08 per ton of 2,000 pounds [905 kilograms], and the tax must be computed upon this value unless the contrary is shown.

If severed sand and gravel is sold by the lessee, sales tax is based on the selling price including delivery costs.

When other minerals (including scoria) are severed and used by the person who severs them, the severance is subject to use tax. The price upon which the tax is based is the prevailing market price for such minerals in that geographic area of the state.

If other minerals (including scoria) are severed and sold by the lessee, sales tax is based on the selling price including delivery costs.

### **Contractors - Installation Into Real Property**

The sale of sand, rock, dirt or scoria is regarded as an installation into real property if the sales contract requires the contractor to move or place the product after it has been dumped. Charges, in this situation, are not taxable to the customer but the contractor or subcontractor has the responsibility to pay sales or use tax on the cost of these materials. If installed by the contractor as stated above, the pit operator collects tax from the contractor. The contractor is not operating as a retailer so they should not charge sales tax to the customer as a documented line item.

If the sand, rock, dirt or scoria is simply dumped in a pile and the contractor or subcontractor is not required to level the materials with another piece of equipment, the sale is regarded as a retail sale subject to sales tax. The total charge to the customer for the materials, including delivery, is subject to sales tax.