



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

Auctioneers Are Retailers

An auctioneer who makes sales of tangible personal property in the State of North Dakota may be required by the Sales and Use Tax Law to register for a sales and use tax permit as a retailer and to collect and report sales tax on taxable sales. Sales tax may be reported by the auction clerk or the auctioneer, however, in cases where sales tax is not paid, and in the absence of an agreement to the contrary, the auctioneer is liable for any sales taxes due.

Taxable Sales

The auctioneer is always liable for sales tax on sales of any item auctioned whose principal was not disclosed.

If the principal was disclosed, sales tax is not due on the auctioning of any item owned by that principal as long as the principal does not normally sell the item at retail.

In auctions in which some principals are disclosed and some are undisclosed, the auctioneer is liable for sales tax on any item whose principle was undisclosed.

Consignment Sales

The auctioneer is liable for sales tax on any items auctioned whose principal was not disclosed. If the principle was disclosed, sales tax is due from the principle on consignments of retail inventory; but sales tax is not due on consignments of non-retail items.

Auctioneers who sell their own property or inventory at auction are considered to be retailers and such sales are always subject to sales tax.

Sales For Resale

When an auctioneer sells tangible personal property to a purchaser for resale, the auctioneer must obtain a completed certificate of resale or authorized certificate of exemption from the purchaser to substantiate the sale as a sale for resale.

Foreclosure Sales

The sale at a public auction of tangible personal property secured under the Uniform Commercial Code is not subject to sales tax if the sale is made by a court decree of foreclosure by an officer appointed by the court for that purpose or if the property is bid by the mortgagee. The receipts from other foreclosure sales where goods and chattels are sold at retail are subject to sales tax.

Adding Tax To Sales Price

An auctioneer responsible for the collection of sales tax may not advertise or hold out to the public that sales tax will not be charged or that it will be absorbed by the retailer, or that, if charged, it will be refunded. The sales tax, if due, must be added to the amount bid.

Local Sales And Use Tax

Various cities in the state also impose local sales and use taxes, which an auctioneer must collect in addition to the state's sales and use taxes. The city taxes are imposed locally. However, the North Dakota Office of State Tax Commissioner administers the local option sales and use taxes. Please contact the Office of State Tax Commissioner for additional information regarding the city taxes which may affect you.

Sales To Residents Of Montana

Sales of tangible personal property to residents of Montana are exempt provided (1) the Montana customer is in the state of North Dakota to make a specific purchase and not as a tourist, (2) the sale of goods is \$50 or more, and (3) the goods are removed from the state of North Dakota for use exclusively outside this state. "Residents of Montana" means a person maintaining a resident status in Montana for income tax purposes. It also includes Montana partnerships, corporations, and limited liability companies. However, to qualify for exemption, all partners of a partnership must be Montana residents. In the case of a Corporation or LLC, the company must be registered as a domestic Montana Corporation or LLC.

Sales To Residents Of Canada

North Dakota sales and use tax laws provide that a Canadian resident must pay North Dakota sales tax on all purchases, however, the law also provides that in some cases a Canadian resident may apply for a refund of tax paid. The refund is available under the following conditions:

- (1) The Canadian resident was 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 will be used permanently outside North Dakota.
- (3) Individual qualifying purchases (involving one or more items) must equal \$25 or more.
- (4) The refund request is \$15 or more. (Qualifying purchases may be accumulated for periods not in excess of one calendar year in order to reach the \$15 limit.)
- (5) The Canadian resident applies in writing to the Office of State Tax Commissioner on a form prescribed by the Office of State Tax Commissioner.

Purchases Subject To Use Tax

Auctioneers purchasing supplies and equipment for their own use in running their business are responsible for the payment of sales or use tax at the time of purchase based upon the cost of the item. If these items are purchased from a business which does not collect North Dakota sales tax, the auctioneer must report the untaxed purchase amount on line four of the sales and use tax report and pay use tax on that total. Examples of taxable purchases include, but are not limited to, office supplies, office equipment, maintenance items, cleaning supplies, delivery equipment and tools.