



# NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER GUIDELINE - SALES TAX: HOME FURNISHINGS SUPPLY STORE

## Retail Sales

A retail sale is the sale of tangible personal property to a person who will be the final user and consumer of the tangible property purchased. The seller is required to collect sales tax on the sale to the final user. Sales tax will apply to the selling price of the tangible personal property, less any trade-in allowance on tangible personal property taken in trade. Subsequent sales of used property by the seller also are subject to sales tax. (See Installation by Home Furnishings Supply Store.)

A sale for resale is made when the home furnishings supply store sells to another retailer for resale. The home furnishings supply store is not required to collect sales tax from the retailer making the purchase for resale provided a signed Certificate of Resale is obtained from the purchasing retailer. A completed Certificate of Resale accepted by the home furnishings supply store will relieve the seller from the responsibility of collecting sales tax from the retailer from whom the Certificate of Resale was accepted. The Certificates of Resale should generally be obtained from the retailers at least once a year.

## Delivery Charges

Many home furnishings supply stores are required, as a normal part of their business, to deliver furniture, carpeting and appliances to their customer. If there is a delivery charge to the customer, sales tax should be charged on the total selling prices including any charges for delivery or setup.

For example: A furniture dealer sells a bedroom set to a customer living in another city. The store agrees to deliver the new bedroom set and set it up in the customer's home for an additional \$25 over and above the agreed selling price of the furniture. The \$25 charge is subject to sales tax even if it is billed separately to the customer. The proper billing is as follows:

New bedroom set	\$ 1,000.00
Delivery charge	25.00
Less trade-in of used bedroom set	( 100.00 )
Subtotal	\$ 925.00
5% state sales tax	46.25
1% city sales tax, if applicable	9.25
Total amount due	\$ 980.50

## Rentals Of Tangible Personal Property

The term sale also includes the leasing or rental of tangible personal property leased or rented for final use within this state; therefore, leases or rentals of furniture or appliances are subject to sales tax. Items such as carpet cleaning machines, carts, dollies used for moving furniture or appliances or other items of tangible personal property rented to final users are taxable.

## Sales To Construction Contractors

Home furnishings supply stores make sales to construction contractors. Generally, sales to construction contractors include sales of appliances, built-in furniture or carpeting which will be installed by the contractor. These sales are always taxable to the construction contractor. The contractor cannot buy these appliances and other furniture items for resale.

### **Sales To Out-of-State Residents**

Delivery to a customer outside of North Dakota constitutes a sale in interstate commerce and is not a taxable sale in North Dakota. If a home furnishings supply store in North Dakota sells merchandise to an out-of-state resident and, as a condition of the sale, agrees to deliver the merchandise or have the merchandise delivered to the customer at a point in another state, North Dakota sales tax does not apply. The North Dakota dealer may be obligated to charge and collect tax for the state into which the delivery is made if the dealer's activity in that state is sufficient to require the dealer to hold that state's tax permit. For sales to out-of-state residents, the home furnishings supply store must be certain that company records contain proof of delivery, such as delivery records, bills of lading and statements by the customer.

### **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 taxable goods is \$50.00 or more.
- (3) The goods are removed from the state of North Dakota for use exclusively outside this state.

Resident 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. 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 \$25.00 or more.
- (4) The refund request is \$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 applies in writing to the North Dakota Office of State Tax Commissioner on a form prescribed by the Office of State Tax Commissioner.

### **Installation By Home Furnishings Supply Store**

Any transaction where a home furnishings supply store sells and installs tangible personal property, including carpet, draperies and drapery hardware, will constitute a construction contract. Like the construction contractor, the home furnishings supply store will be subject to sales or use tax on its cost of all materials.

The home furnishings supply store may complete the installation or have a representative, such as a subcontractor, complete the installation. In either instance, the home furnishings supply store is responsible for the sales or use tax on the cost of the materials and supplies used in the performance of the contract.

The following example is an acceptable method for determining the sales or use tax obligation to the home furnishing store (retailer) and for invoicing the customer when an installation has occurred:

Retailer's Job Cost On Materials:	Carpeting	\$ 750.00
	Pad	100.00
	Adhesive/Misc. Materials	15.00
	Subtotal <sup>1</sup>	<u>\$ 865.00</u>
	5% State Use Tax	43.25
	1% City Sales Tax, if applicable	<u>8.65</u>
	Total	\$ 916.90

<sup>1</sup> If the retailer did not pay sales tax to its supplier at the time of purchase, the cost of materials installed should be reported on the Items Subject to Use Tax line on the sales and use tax return.

The invoice to the customer from the retailer will not set out a charge for sales tax. An example of an invoice is as follows:

Invoice to Customer:	Carpeting, Pad, Misc. <sup>2</sup>	\$ 1,125.00
	Labor	<u>175.00</u>
	Total Charge	\$ 1,300.00

<sup>2</sup> Include the retailer's cost of materials, overhead expense including sales/use tax expense, profit on materials.

For installation for government agencies, schools or other tax-exempt institutions, the home furnishings supply store must pay sales or use tax on the purchase price of all materials installed. This is true even if the exempt institution purchases the materials and then contracts separately with the home furnishings supply store to install the materials. Acceptance of an Exemption Certificate or Certificate of Resale will not relieve the home furnishings supply store of its responsibility to pay the sales or use tax on the cost of materials if the home furnishings supply store sold and installed tangible personal property.

### Items Subject To Use Tax

Businesses purchasing supplies and equipment for their own use in running their businesses are responsible for sales or use tax on the cost of these purchases. Taxable purchases for a business's own use may include office supplies, office equipment, fixtures, display cases, samples, maintenance items and cleaning supplies, delivery equipment, special installation tools or equipment.

If such items are purchased from a supplier who holds a North Dakota sales and use tax permit, sales tax should be paid directly to the supplier. If the supplier fails to charge the North Dakota sales or use tax, the home furnishings supply store must 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.