



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

CONTRACTORS ARE FINAL USERS

A contractor is responsible for sales and use tax on the purchase price of tangible personal property used in their business activity. For contractors, tangible personal property may include machinery, equipment, materials, construction supplies, and office supplies. If sales tax is not paid to the seller, use tax should be reported on the *Items Subject to Use Tax Line* on the Sales, Use, and Gross receipts tax return.

A contractor or subcontractor entering any contract, except for a labor only contract, is regarded as the final user or consumer of all tangible personal property installed into real property. A contractor or subcontractor is responsible for paying sales and use tax on tangible personal property used or consumed to complete any contract.

There are numerous sales and use tax exemptions for tangible personal property used in projects that are approved by the North Dakota Office of State Tax Commissioner. An approval letter confirming the exemption is provided to the project owner by the Office of State Tax Commissioner. The project owner should provide this letter to the contractor(s) to purchase tangible personal property tax free, for the exempt project. See the *Tax Incentives for Businesses* for available exemptions and the application process – www.tax.nd.gov/publications.

Contracts for Labor Only

A contractor or subcontractor who is hired for **labor only** to install tangible personal property into real property is **not** responsible for sales and use tax on the cost of the property installed. The contractor or subcontractor providing the tangible personal property is responsible for paying sales and use tax. The effective date of this applies for contracts entered into after June 30, 2021.

Example: Contractor A is hired by the County to complete a culvert project, which includes providing both tangible personal property and labor to install the culvert into real property. Contractor A subcontracts with Subcontractor B for the labor to install the culvert. Contractor A would be responsible for paying sales and use tax on the cost of the culvert. Subcontractor B would not be responsible for the tax because they were hired for labor only.

Contractors Engaged in Retail Sales

A contractor making retail sales is required to purchase the tangible personal property that they intend to sell, tax free by providing a valid *Certificate of Resale* to the seller. Sales tax must then be charged on the tangible personal property sold to their customer. See the *Guideline – Sales, Use, and Gross Receipts Tax Requirements* for additional information – www.tax.nd.gov/guidelines.

A contractor should supply the *Certificate of Resale* or other multijurisdictional exemption certificate only to the sellers that they are making purchases from to resell. A contractor should pay sales tax to their other sellers for tangible personal property used in their business.

See www.tax.nd.gov/forms to obtain a copy of the:

- Certificate of Resale
- Streamlined Sales Certificate Exemption
- Multistate Tax Commission Uniform Sales & Use Tax Resale Certificate Multijurisdictional Form.

Contracts With Government Entities

A contractor performing any contract, including service contracts, for the United States Government, State of North Dakota, Counties, Cities, Villages, School Districts, Park Boards, or any other municipal corporations in North Dakota is **not exempt** from payment of sales and use tax on tangible personal property used or consumed in completing the contract. The contractor is required to pay sales and use tax just as required for contracts with non-exempt entities. An exception exists for contractors or subcontractors who are hired for labor only and do not provide any tangible personal property to be installed into real property.

Contracts On An Indian Reservation

There may be circumstances in which a project qualifies for a sales and use tax exemption. There are a number of factors that impact whether the project qualifies, such as whether the contract is with the tribe, tribal entity, or tribal member, as well as where the goods and services are purchased. If the project is determined to be exempt, the Office of State Tax Commissioner will issue a letter to the tribal government to document the exempt project. A contractor should obtain a copy of this letter to document the exempt project. For additional information, please contact the Sales Tax Compliance Section at salestax@nd.gov or **701-328-1246**.

Contracts Outside of North Dakota

Contractors purchasing tangible personal property in North Dakota for installation into real property outside of North Dakota are required to pay sales and use tax to North Dakota.

An exception applies when purchasing tangible personal property to be installed into real property in Montana or in another state that has exempted tangible personal property used in the project. In these situations, the contractor is not responsible for paying North Dakota sales and use tax on the tangible personal property. Contractors must keep documentation to support these exceptions.

Contracts for Sand, Rock, Dirt, or Scoria

The sale of sand, rock, dirt, or scoria is an installation into real property if the contractor is required to place or spread the tangible personal property. The contractor must pay sales and use tax on the total cost of the tangible personal property used, which includes delivery and handling. Sales and use tax **should not** be itemized to the contractor's customer when installing into real property.

If the tangible personal property is only dumped in a pile, this is a retail sale and sales tax **should** be charged to the contractor's customer. The total charge to the customer for tangible personal property, which includes delivery and handling charges, is taxable.

See the *Guideline – Sand, Gravel, and Scoria* for additional information – www.tax.nd.gov/guidelines.

Contracts with Businesses Holding a Direct Pay Permit

The purchases of tangible personal property used or consumed by a contractor performing under any contract, including service contracts, for businesses that provide a Direct Pay Permit in North Dakota is **not exempt** from payment of sales and use tax.

PAYMENT OF SALES AND USE TAXES

If a seller of tangible personal property does not charge sales tax at the time of purchase, use tax is due on the purchase price. Use tax should be reported on the *Items Subject to Use Tax Line* on the Sales, Use, and Gross receipts tax return. In order to file a Sales, Use, and Gross receipts tax return, a Sales Tax Permit is required. To apply for a Sales and Use Tax Permit, visit the North Dakota Taxpayer Access Point (ND TAP) at www.tax.nd.gov/apply.

Sales and Use Tax Paid to Another State, City, or County

When tangible personal property is purchased with sales and use tax paid, additional tax may be due if the tangible personal property is stored, used, or consumed in a North Dakota location. If the tax paid is **equal to or higher** than the tax due in the location the tangible personal property is stored, used, or consumed, no additional tax is due. If the tax paid is **less** than the tax due in the location the tangible personal property is stored, used, or consumed, the additional tax must be reported directly to the Office of State Tax Commissioner.

North Dakota does not recognize taxes paid to other countries. If tax was paid to another country, North Dakota state and applicable local sales and use tax is due.

Records should be maintained to verify tax was paid to another state, city, or county.

Local Sales and Use Taxes

Most cities and counties have local sales and use taxes. See the *Guideline – Local Option Taxes by Location* for detailed information on local tax rates and maximum tax amounts - www.tax.nd.gov/guidelines.

Since tax is due on tangible personal property at the location that the contractor takes possession, it is important to identify the tax due in the location the tangible personal property is stored, used, or consumed. Additional tax is due on tangible personal property stored, used, or consumed in a location that has higher taxes due.

Maximum Local Tax Cap

Many cities and counties in North Dakota have a maximum local tax that applies to a retail sale. The maximum local tax limits, or caps, the amount of city or county tax that may be collected. The seller may limit the local tax to the cap amount or collect at the full rate. If the seller collects the local taxes at the full rate and if a maximum local tax cap applies, the purchaser may file a request for refund with the Office of State Tax Commissioner. If tax was not collected by the seller, use tax must be paid up to the maximum local tax cap. Visit North Dakota Taxpayer Access Point (ND TAP) for additional information on this refund process - www.tax.nd.gov/LocalTaxRefund.

If a seller charges local taxes in **error**, the purchaser must request to be rebilled and refunded by the seller for the taxes paid in error. Tax collected by the seller in error does not qualify for the maximum local tax cap refund.

Limited Exemption for Use Outside of the City or County

Some cities and counties offer a limited exemption for tangible personal property purchased within the city or county limits, to be installed into real property outside of that city or county.

To qualify for the limited exemption, a contractor must provide the seller with a *Contractor’s Certificate* at the time of purchase. When the tangible personal property is used, the contractor must pay state and local use tax on the cost based on the location used. If there is not a local tax based on the location used, only the state tax is due. See the *Guideline – Local Option Taxes by Location* for a list of cities and counties that offer this limited exemption - www.tax.nd.gov/guidelines. A copy of the *Contractor’s Certificate* is available at www.tax.nd.gov/forms.

Situations to Consider

Example 1: Contractor A purchases tangible personal property from a seller in Fargo for \$20,000 and pays tax at the North Dakota state rate of 5%, Fargo city rate of 2%, and Cass County rate of 0.5%. The seller opted to “cap” the Fargo tax collected at \$50.00 and the Cass County tax at \$12.50. The tangible personal property is taken to West Fargo and used for a job. Additional local tax would be due to West Fargo since they do not have a maximum tax “cap” in place.

Paid to the Seller

Taxable Sales Amount:	\$ 20,000.00
State sales tax (5%)	1,000.00
Fargo sales tax (2% cap applied)	50.00
Cass County sales tax (0.5% cap applied)	12.50
Total	\$ 21,062.50

Tangible Personal Property taken to West Fargo

West Fargo city sales tax due (2%)	\$ 400.00
Less: Fargo city sales tax previously paid	50.00
Additional Tax Due to West Fargo	\$ 350.00

Since West Fargo is also in Cass County, no additional tax at the county rate is due since the maximum tax cap was met at the time of purchase.

Example 2: Contactor B purchases tangible personal property from a seller located outside the city limits and is charged sales tax at the North Dakota state rate of 5% and the Burleigh County rate of 0.5% at the time of purchase. Contractor B uses the tangible personal property within Bismarck city limits. Contractor B is responsible for remitting use tax on the cost of the tangible personal property used at the Bismarck city rate of 1.5%, up to the Bismarck maximum tax cap of \$37.50.

Paid to the Seller

Taxable Sales Amount:	\$ 2,000.00
State sales tax (5%)	100.00
Burleigh county sales tax (0.5%)	<u>10.00</u>
Total	\$ 2,110.00

Additional Tax Due

Bismarck city sales tax (1.5%)	\$ 30.00
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NORTH DAKOTA CONTRACTOR'S TAX CLEARANCE

A contractor must receive a *North Dakota Contractor's Tax Clearance* to enter a contract with any state governmental institution or political subdivision of North Dakota. If no delinquent taxes exist, the *North Dakota Contractor's Tax Clearance* will be issued by the Office of State Tax Commissioner. Contact the Registration Section at **701-328-1241** or apply using the *Application to Obtain Contractor's Request for Clearance* found at **www.tax.nd.gov/forms**.

CONTACT INFORMATION

If you have questions, please contact the Sales Tax Compliance Section at **salestax@nd.gov** or **701-328-1246**.