

Sales and Special Taxes Newsletter

NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER

Ryan Rauschenberger, Tax Commissioner



Photo credit: ND Tourism

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2021 LEGISLATIVE RECAP

The following are highlights of sales and special taxes legislation approved by the 2021 Legislative Assembly and signed into law by Governor Doug Burgum. The bill text and additional information for the 67th Legislative Assembly are available at www.legis.nd.gov/assembly/67-2021/regular.

SALES AND USE TAX LEGISLATION

HB 1195 – SPECIAL EVENT ORGANIZER REPORTING REQUIREMENTS

House Bill 1195 amends a special event organizer's requirement to submit a list of vendors attending an event to the Tax Commissioner. Previously, a special event organizer was required to submit a Special Event Vendor Reporting Form when the event had 10 or more vendors. Starting August 1, 2021, the number increases to 25 or more vendors. The Special Event Vendor Reporting Form is on the Office of State Tax Commissioner's website at www.nd.gov/tax/SpecialEvents.

The bill also allows the special event organizer to exclude a vendor from the form if the organizer included them on a form in the previous six months. All vendors at the event, new and previously submitted, count toward the event's vendor total.

Statutory change: Amended special event organizer reporting requirements under N.D.C.C. § 57-39.2-10.1.

Effective date: August 1, 2021

HB 1206 – PREPAID WIRELESS 911 FEE RETURN COMPENSATION

House Bill 1206 updates the return compensation allowance for new prepaid wireless service sellers who file and pay their returns on time. For periods ending July 31, 2021 and after, the compensation rate is 3% for each return. The previous compensation rate was 100% for the first three months and 3% for subsequent returns.

A prepaid wireless service is a mobile wireless telecommunication service, which includes downloading digital products and content. Prepaid wireless service must be paid in advance and is sold in predetermined units or dollars. As the predetermined units are used, the amount remaining available for use declines in a known

amount. Examples include prepaid calling cards and minutes added to "pay-as-you-go" phones. Prepaid wireless services are commonly sold by department stores, electronics stores, grocery stores, convenience stores, and many other businesses.

Statutory change: Amended prepaid wireless 911 fee compensation under N.D.C.C. § 57-40.6-14.

Effective date: August 1, 2021

HB 1309 – CONTRACTOR'S USE TAX

House Bill 1309 amends the use tax law for a contractor who enters a labor-only contract to incorporate tangible personal property (TPP) provided by another person into real property. When a contractor completes a labor-only contract, they will not be responsible for use tax on the TPP someone else provides that the contractor installs into real property. Sales or use tax is due from the person providing the TPP.

A contractor or subcontractor must pay sales tax at the time of purchase or accrue use tax on the cost of TPP they provide to be incorporated into real property. The cost of TPP includes freight, delivery, and other handling charges.

TPP used or consumed but not incorporated into real property during completion of a labor-only contract remains subject to sales or use tax.



Statutory change: Amended contractors use tax requirements under N.D.C.C. § 57-40.8-03.3.

Effective date: July 1, 2021

HB 1351 – SENIOR CITIZEN ORGANIZATIONS

House Bill 1351 creates a sales and use tax exemption for purchases made by qualified senior citizen organizations. To qualify as a sales and use tax exempt organization, the senior citizen organization must meet the following requirements:

- Provide informational, health, welfare, counseling, and referral services for seniors in North Dakota;
- Be designated as a 501(c)(3) by the IRS;
- Be registered as a charitable organization with the North Dakota Secretary of State; and
- Either
 - Provide services through the North Dakota Department of Human Service's Aging Service Division; or
 - Receive grant funds through the North Dakota Department of Transportation under a federal transit administration senior or disability program.

A senior citizen organization meeting these qualifications may apply for an exemption number and certificate by submitting the Application for Sales Tax Exemption Certificate available at www.nd.gov/tax/salesanduse/forms to salestax@nd.gov.

Statutory change: Creates new exempt entity under N.D.C.C. §§ 57-39.2-04 and 57-04.2-04.

Effective date: July 1, 2021



SB 2137 – QUALIFIED DATA CENTERS

Senate Bill 2137 creates a new sales tax exemption for enterprise information technology equipment and computer software purchased for use by an owner, operator, or tenant in a newly constructed or substantially refurbished qualified data center.

A qualified data center is a facility in North Dakota that is built or substantially refurbished after December 31, 2020. A qualified data center must meet these requirements:

- Consist of 15,000 sq. ft. or more with no fewer than 50% of area being used for data processing;
- Be located on a single or contiguous parcel of land;
- Have sophisticated fire suppression and prevention systems and enhanced security features;
- Be certified by the Office of State Tax Commissioner.

A qualified data center exemption recipient must file an annual report with the Office of State Tax Commissioner containing the amount of tax exemption received, the number of jobs created or retained, and information on any local incentives provided to the business entity.

To apply for the qualified data center sales tax exemption, a letter of application must be submitted to the Sales and Special Taxes Compliance section by mail or email (salestax@nd.gov). Detailed information on the application process is on the Office of State Tax Commissioner's website at www.nd.gov/tax/SalesTaxExemptions.

Statutory change: Creates new sales tax exemption for qualified data centers under N.D.C.C. § 57-39.2-04.17.

Effective date: July 1, 2021

SB 2152 – SECURE GEOLOGICAL STORAGE OF CARBON DIOXIDE

Senate Bill 2152 expands the sales and use tax exemption on sales of carbon dioxide used for enhanced recovery of oil or natural gas to include sales of carbon dioxide used for secure geological storage.

Statutory change: Amends sales and use tax exemption for carbon dioxide under N.D.C.C. §§ 57-39.2-04(49) and 57-40.2-04(24).

Effective date: July 1, 2021

SB 2226 – RESIDENTIAL END-OF-LIFE FACILITY

Senate Bill 2226 amends the sales tax exemption on purchases made by an eligible facility for the use or benefit of its patients or occupants to include residential end-of-life facilities.

A residential end-of-life facility is a freestanding facility that provides 24-hour residential and support services in a home-like setting for no more than 12 hospice patients receiving hospice services from a third-party hospice program.

The Application for Sales Tax Exemption Certificate is available at www.nd.gov/tax/salesanduse/forms.

Statutory change: Amends sales tax exemption for eligible facilities under N.D.C.C. § 57-39.2-04(24)(a).

Effective date: July 1, 2021

MOTOR VEHICLE EXCISE TAX LEGISLATION

SB 2277 – VEHICLE TRANSFER RESULTING FROM A DIVORCE DECREE

Senate Bill 2277 creates a motor vehicle excise tax exemption for a vehicle transferred from an individual to a former spouse as the result of a divorce decree. To be exempt, the transfer must occur within one year of the divorce finalization.

The Application for Certificate of Title & Registration of a Vehicle can be found on the North Dakota Department of Transportation's website by visiting www.dot.nd.gov and clicking on Forms at the top of the page.

Statutory change: Creates a new motor vehicle excise tax exemption under N.D.C.C. § 57-40.3-04.

Effective date: July 1, 2021



ALCOHOL TAX LEGISLATION AND UPDATES

HB 1099 – TAX COMMISSIONER ADMINISTRATIVE CHANGES

House Bill 1099, introduced by the Tax Commissioner, contains amendments to enhance sales and special taxes administration. The following alcohol tax amendment may impact North Dakota beer wholesalers:

- The North Dakota Century Code definition of beer is any malt beverage containing .5% or more alcohol by volume. HB 1099 expands the definition to include an alcoholic beverage made by the fermentation of malt substitutes, commonly referred to as “hard seltzer” or “spiked sparkling water.”

Statutory change: Amended subsection 3 of N.D.C.C. § 5-01-01, subsection 3 of N.D.C.C. § 5-03-09, N.D.C.C. § 57-01-06, and subsection 5 of N.D.C.C. § 57-39.2-23.

Effective date: July 1, 2021

HB 1286 – MANUFACTURING DISTILLERY LICENSE

House Bill 1286 creates a new category of manufacturing license. A North Dakota distillery can apply to be a Manufacturing Distillery effective March 19, 2021.

- A manufacturing distillery must lease or own a satellite location that is registered with the Tax Commissioner. An additional license fee of \$100 is assessed for this location.
- The spirits sampled or sold at the satellite location must be produced by the manufacturing distillery.
- The satellite location may be used to sell spirits produced by the distillery at off sale, in retail lots, and not for resale. They may also ship its spirits directly to consumers.
- All production and sale volume limits are the same as those for Domestic Distilleries.

- All sales to any other retail licensed premises must be made through a licensed North Dakota liquor wholesaler.
- A manufacturing distillery may apply for up to 40 special event days per calendar year.
- The manufacturing distillery will report annually using Schedule J, and any sales to North Dakota wholesalers will be reported monthly using Schedule A.
- An existing North Dakota Domestic Distillery may rescind their existing license and be issued a manufacturing distillery license only before August 1, 2022.

Statutory change: Created a new subsection to N.D.C.C. § 5-01-19.

Effective date: March 19, 2021

SB 2321 – MICROBREW PUB AND BREWER TAPROOM LICENSES

Senate Bill 2321 modifies existing provisions for microbrew pubs and brewer taprooms and provides clarification and guidance for additional production options via contract brewing.

The bill makes the following changes for microbrew pub and brewer taproom license holders:

- Allows a license holder to sell or direct ship their product to consumers in North Dakota. This provision has previously been available to Domestic Wineries and Distilleries.
- A license holder may sell brewery sealed containers for off-site consumption not exceeding 5.16 gallons (19.53 liters) per person, per day. This results in an increase of the container limit and the daily sale limit.

(cont.)

- Special event days are increased from 20 to 40 days per calendar year.
- A license holder may enter a contract brewing arrangement as either the contractee or contractor. The contractee retains ownership of any production, which will count towards their annual production limits.

Statutory change: Amends and creates new sub-sections to N.D.C.C. §§ 5-01-14 and 5-01-21.
Effective date: July 1, 2021

CHANGES TO NORTH DAKOTA TAXPAYER ACCESS POINT FOR ALCOHOL LICENSES

During the last year, there have been several changes and additions to ND TAP (www.nd.gov/tax/tap) to allow for more electronic submission options and improved efficiency and processing.

ANNUAL LICENSE RENEWAL

At the end of 2020, the Office of State Tax Commissioner introduced an electronic option for annual license renewals. Taxpayers received electronic communication reminders for the renewal requirement and advice to renew and pay online at ND TAP, instead of receiving paper forms in the mail. For 2021, all renewals will be processed only through ND TAP. Paper forms will be removed from the Office of State Tax Commissioner's website and replaced with instructions for the online process on October 1, 2021.

INITIAL LICENSE APPLICATION

Earlier this year, the ability to apply for a North Dakota alcohol license was added to ND TAP. This allows the applicant to submit their information and documentation electronically, with the ability to attach supplementary documents as required. A license will not be issued without the required license fee, so there is the option to make payment electronically. Paper alcohol license application forms will be removed from the Office of State Tax Commissioner's website on October 1, 2021.

ALCOHOL SPECIAL EVENT APPLICATIONS AND PERMITS

North Dakota domestic wineries and distilleries, microbrew pubs, and brewer taprooms may apply to attend 40 special events or special event days during a calendar year. This process is



now available exclusively through ND TAP, where applications can be completed and submitted electronically. Through the taxpayer's ND TAP account, special event history and tracking is available. Responses to applications are also electronic, whether it is approved or denied. A denial will be an email directly to the applicant with a reason. An approval will also be an email with the special event permit attached. The special event permit can also be found in the taxpayer's ND TAP account on the Message tab.

UPCOMING CHANGES

The Office of State Tax Commissioner is currently working to update the alcohol return submission process that alerts taxpayers when required information is missing or invalid. All North Dakota alcohol license permit numbers that are included on returns must be current and valid. Other licensees that a taxpayer does business with should provide this information along with any updates. The North Dakota Alcohol License Lookup is available on ND TAP at www.nd.gov/tax/tap.

CONTACT INFORMATION

NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER

600 E. Boulevard Ave., Dept. 127
Bismarck, ND 58505-0599
www.nd.gov/tax

SALES TAX AND MOTOR VEHICLE EXCISE TAX

Email: salestax@nd.gov
Phone: 701-328-1246

ALCOHOL WHOLESALE TAX

Email: alcoholtax@nd.gov
Phone: 701-328-2702



ADVANTAGES OF USING ND TAP

- View return and payment history at any time.
- Access all of your accounts in one place, even multiple tax accounts.
- File returns early but wait to pay by scheduling your payment for a future date.
- Electronic versions of correspondence, such as notices and letters, are kept in the system for easy viewing.
- Lose the paper and stamps! File returns online with instant confirmation your returns and payments have been received.



OUR VISION: To provide exceptional service while enhancing compliance with the tax laws of North Dakota.

OUR MISSION: To fairly and effectively administer the laws of North Dakota

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