



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER SALES TAX NEWSLETTER

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Local Tax Changes

October 1, 2017: Casselton

The city of Casselton city sales, use, and gross receipts tax will increase from 1 percent to 2 percent effective October 1, 2017. The maximum tax (refund cap) will remain at \$25 per sale.

Tioga

The city of Tioga will eliminate the exemption for new farm machinery effective October 1, 2017.

A history of rate changes and a listing of current tax rates for all local sales, use, and gross receipts taxes imposed within North Dakota are available at www.nd.gov/tax/salesanduse/streamlinetax/ratechange.

The maximum tax is the amount of tax that may apply to a single transaction. If the purchaser pays more than the maximum tax amount on a purchase, the purchaser may apply to the Tax Commissioner for a refund of any tax paid in excess of the maximum tax. Retailers may voluntarily collect up to the maximum tax amount as a convenience to their customers so the purchasers do not need to apply for a refund. Retailers are not required to calculate maximum tax and may continue to collect tax without regard to the maximum tax. Retailers should be consistent in the method they choose to calculate local taxes.

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Please note:

Beginning in 2018, all local sales tax rate change notifications will be made electronically and will no longer be provided by mail. Information regarding local tax changes is available through email updates. You may sign up for email notifications online at www.nd.gov/tax. In the lower-left of the homepage, click on “Subscribe” under Email Updates, and follow the instructions. There are nine lists to which you may subscribe. To receive the sales tax rate change notifications, make sure you are subscribed to the “ND Sales and Special Taxes” list. You may also view the local sales tax rate change notifications at www.nd.gov/tax/salesanduse/streamlinetax/ratechange.

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Farm Machinery Leases and Rentals

Leases

The purchase, lease or rental of new farm machinery or new farm machinery attachments is subject to 3 percent farm machinery gross receipts tax when the machinery is used exclusively for agricultural purposes. Local taxes may also apply to the purchase, lease or rental of farm machinery if the customer takes possession of the machinery within a local taxing jurisdiction. The purchase, lease or rental of used farm machinery or used farm attachments used exclusively for agricultural purposes is exempt from state and local sales, use and farm machinery gross receipts taxes.

Farm machinery will qualify as exempt used machinery if one of the following has occurred:

1. Sales, use, or farm machinery or gross receipts tax has been paid on the original sale of the equipment.
2. Farm machinery gross receipts tax has been paid on a lease of the equipment under the current provisions of the farm machinery gross receipts tax law.
3. The farm machinery was originally purchased by a farmer for use in another state.
4. The farm machinery has been under rental for three years or more.

When a lease of new farm machinery is initiated, the farm machinery gross receipts tax must be paid or collected by one of the following methods:

1. If the lease is for a period of three years or more, the lessor must collect tax on the first three years of lease payments.
2. If the lease is for a period of less than three years, the lessor must collect tax on the equivalent value of three years of lease payments. To calculate the equivalent value of three years of lease payments, sum the value of all the lease payments under the term of the lease. Divide the sum of the lease payments by the number of months in the term of the lease to calculate an equivalent monthly payment. Multiply the equivalent monthly payment by thirty-six.
3. The lessor may pay tax on the purchase price of the farm machinery purchased for the purpose of lease to a farmer.

Under lease arrangements where tax is collected on the lease payments, the lessor is required to collect tax on three years of lease payments or the equivalent value of three years of lease payments even if the lease is terminated early. If sufficient tax has not been collected at termination, the lessor must collect the remaining tax at the date of termination.

Delivery charges for the lease of new farm machinery are subject to tax. If a farmer replaces the leased machinery with new farm machinery that will also be leased, a trade-in credit is available.

The farm machinery gross receipts tax law defines a lease of farm machinery as “an agreement with a term of more than eleven months between two persons for the possession and use of property and which may or may not include provision for a transfer of ownership of the property.” An agreement for a term of eleven months or less is defined as a rental.

Rentals

Rental of new farm machinery, which is an agreement period of eleven months or less, is subject to 3 percent gross receipts tax, plus applicable local gross receipts tax until the machinery has been rented for three years.

- The farm machinery will qualify as used after three years of rental, and future rental transactions will be exempt from tax.
- Delivery charges for rental of new farm machinery are subject to tax.

For further details, please refer to the website address below to find the memo, “Farm Machinery Gross Receipts Tax on Leases Effective July 1, 2013” and Farm Machinery and Farm Irrigation Equipment guideline. www.nd.gov/tax/salesanduse/pubs

Tangible Personal Property Lease and Rentals

Lease and rental of tangible personal property, other than motor vehicles and farm machinery, are retail sales subject to sales tax. Taxable rental charges include mandatory charges under the terms of the rental agreement, delivery charges, pick-up charges, set-up charges and tear down charges. Optional charges for cleaning/maintenance, repair parts and labor, refueling, insurance coverage or damage waiver are not subject to sales tax if the charges are separately stated. A charge is optional if the lessee or the renter may provide or obtain the items or services from another vendor and is not required to pay for these items to the lessor. Charges are mandatory if the lessee or renter is required to pay the charges to the retailer in order to rent the tangible personal property.

For a rental that includes more than one billing period, sales tax for the first period applies where the customer takes possession of the property. Subsequent rental periods are taxed at the property location during the rental period. If first possession of the rental property takes place outside of North Dakota, North Dakota tax does not apply to the first rental period.

Rental with an Operator

Rental of tangible personal property with an operator is not a rental of tangible personal property subject to sales tax. Rental with an operator is a nontaxable service. To be considered an operator, the individual must do more than maintain, inspect or set-up the tangible personal property. When a service provider uses tangible personal property to provide a service to customers, the service provider is the final user of the property and liable for sales or use tax on the property's cost.

Purchase of Rental Merchandise

When a rental or lease company purchases tangible personal property to rent or lease, it may purchase the property for resale without payment of tax. In addition, repair and replacement parts purchased to maintain rental property may also be purchased for resale. To qualify for the resale exemption, the parts purchased must be a component of the tangible personal property that is rented or leased to customers.

A rental or lease company may pay sales or use tax on the purchase price of tangible personal property to be leased or rented rather than collect sales tax on the rental charges. A retailer that pays sales or use tax on the cost of its lease or rental inventory must disclose that sales or use tax has been paid on the purchase price of the property leased or rented. The disclosure must be placed on an invoice, contract, lease agreement or other supporting sales document provided to the customer.

Snowmobiles, Off-Highway Vehicles and Ice Houses

Snowmobiles and Off-Highway Vehicles

Sales of snowmobiles and off-highway vehicles are required to be titled and registered through North Dakota Department of Transportation unless they are used exclusively on land owned or leased by the vehicle owner. All vehicles titled and registered by the Department of Transportation are subject to 5 percent motor vehicle excise tax. Purchasers of snowmobiles and off-highway vehicles used exclusively on land they own or lease are not required to title and license the vehicle. However, the purchase price of snowmobiles and off-highway vehicles that are not titled and registered are subject to 5 percent sales tax and any applicable local taxes. Snowmobiles and off-highway vehicles do not qualify for the 3 percent farm machinery gross receipts tax rate. An off-highway vehicle is defined as, "any motorized vehicle not designed for use on a highway and capable of cross-country travel on land, snow, ice, marsh, swampland or other natural terrain.

If motor vehicle excise tax or sales tax is not collected from the purchaser by the dealer at the time of sale, the dealer must enter the sale information on the Snowmobile/Off-Highway Vehicle Sales Summary, which is available on the Department website at www.nd.gov/tax/salesanduse/forms. Please mail or email the Summary to the Sales Tax Compliance Section of the Office of State Tax Commissioner.

Ice Houses

Basic ice fishing shelters, which are available in several styles including flip-overs, folding, mounted or homebuilt, are subject to 5 percent state sales tax and any applicable local tax. These basic ice fishing shelters are easily moved and intended to provide shelter.

Premium ice houses with wheel chassis have evolved from the basic ice fishing shelter and have features much like any RV camper trailer. A premium ice fishing house that is a trailer with features such as a bed or bunk, stove or cooktop, refrigerator or heating system are required to be titled and registered as a travel trailer through the North Dakota Department of Transportation. As a registered vehicle, the premium ice houses are subject to 5 percent motor vehicle excise tax and exempt from sales and use tax.

Returns, Restocking Fees and Refunds

Returns

When taxable merchandise is sold and later returned to the seller by a customer, the seller will refund or grant credit for the purchase price including the sales tax previously paid. If only a portion of the purchase price is credited or refunded to the customer, the amount of the tax to be credited or refunded to the customer shall be computed based upon the amount of the purchase price to be credited or refunded exclusive of the tax. For example, if delivery charges are not refunded to the customer on a returned product, the sales tax on the delivery charges are not refunded.

Restocking

A restocking charge is a fee charged by the seller to a customer when the customer cancels a sale and returns the merchandise. Generally restocking fees are charged to reimburse the seller for costs associated with repackaging and returning the goods to the seller's resale inventory. Restocking charges are not taxable nor do they reduce the sales tax refunded to the customer. The customer is to be given full credit for sales taxes previously paid. To calculate the credit due to the customer who has returned the merchandise, subtract the restocking charge from the total amount originally collected for the sales price plus the sales tax.

Refunds

When merchandise is returned to a retailer and the purchase price plus tax is refunded to the buyer, the retailer may claim a credit on the sales and use tax return for the period when the return occurred. Return sales may be recorded as a reduction to the current period's taxable sales or as a nontaxable sale.

Repair Services

Businesses that repair, alter, restore or clean property belonging to others perform a service. The service is not taxable, but the repair business is subject to sales or use tax on all tangible personal property used or consumed during the repair service.

If a repair service consists of separately stated parts and labor (itemized billing method), the repair business must collect sales tax on the separately itemized repair parts. The labor charges are not taxable. Itemized parts must be tangible personal property where ownership of the parts transfer to the customer.

If parts or labor charges are not separately stated (lump-sum billing method), or if the parts are attached to real property, the repair business must pay sales or use tax on the tangible personal property used to complete the service. Repair service providers must consistently use the same billing method to invoice customers for services.

Third-Party Repair

If a repair service business does not repair tangible personal property itself, but authorizes a third-party repairer to perform the service, the third-party repairer's charges for itemized repair parts to the repair service business are not subject to tax if the repair service business provides the third-party repairer a properly completed certificate of resale. If the third-party repairer does not receive a certificate of resale, itemized charges for the repair parts are subject to sales tax. If a lump-sum billing is made by the third-party repairer for the sublet repair, the third-party repairer will be responsible for paying sales or use tax on the cost of the repair parts and may not collect sales tax from the repair service business.

Warranty Repair

If a maintenance or service contract is required as part of the sale of the tangible personal property, the price of the maintenance or service contract is part of the selling price of the goods and subject to sales tax. Parts replaced under the mandatory maintenance or service contract are not subject to sales or use tax. The parts are considered to have been taxed when the warranty or service agreement was sold. The seller of the warranty or service agreement may purchase replacement parts for resale and exempt from tax.

If an optional maintenance or service contract is sold to a customer with the sale of tangible personal property, no sales or use tax is applied to the optional maintenance or service contract. However, the company that offers the service or maintenance contract is responsible for the payment of sales or use tax upon the cost of all parts or other tangible personal property used or consumed under the terms of the contract.

Repair to Real Property

Repair of furnaces, water heaters, water softeners, garbage disposals, air conditioners, plumbing or wiring systems are repairs to real property. The repair service provider is the final user and is responsible for sales or use tax on the cost of materials required for the repair and should not itemize or collect sales tax from the customer.

Did You Know?

- ***You can file your sales and use tax return electronically through our TAP system?***
- ***You can pay the tax due with your sales and use tax return electronically even if you filed a paper return?***
- ***You can find the state and local sales tax rate for any nine digit ZIP Code on our website at www.nd.gov/tax?***

Contact us:
Sales Tax Compliance
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