



# Guideline

## Sales Tax Exemptions

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### I. Products which are Exempt from Sales Tax

- A. Prescription Drugs:** The gross receipts from sales of drugs which are sold under a doctor's prescription for human consumption or use are not subject to North Dakota sales tax. Medicines which can be purchased without a prescription are subject to North Dakota sales tax.
- B. Oxygen and Anesthesia Gases:** The gross receipts from the sales of oxygen to any person for medical purposes are exempt if sold under a doctor's prescription. Sales of anesthesia gases to hospitals, clinics and similar institutions also are exempt since these gases are administered under the order of a doctor.
- C. Newspapers - Newsprint and Printers Ink:** The gross receipts from sales of newspapers are exempt from North Dakota sales tax. Newsprint and printers ink used in the publication of a newspaper also are exempt from sales tax when purchased by the newspaper publisher.
- D. Commercial Fertilizer:** The gross receipts from the sale of commercial fertilizers are exempt from North Dakota sales tax when sold to a farmer, to a rancher or to a commercial vegetable garden grower. Sales of commercial fertilizer for lawns, for landscaping or for a householder's garden are subject to sales tax.
- E. Livestock and Poultry Feed:** The gross receipts from the sale of feed for livestock or poultry and the sale of feed for draft or fur bearing animals are not subject to North Dakota sales tax. The word feed shall include generally recognized animal feeds as well as drugs which are used as part of a feed ration for animal health purposes.
- Dog food, cat food, bird seed, fish food and other foods normally sold as pet foods are not livestock feed and are subject to North Dakota sales tax.
- F. Seeds for Planting:** The gross receipts from sales of seeds, roots, bulbs and small plants to users or consumers for planting or transplanting commercial vegetable gardens or for agricultural purposes are not subject to sales tax. Sales of flower seeds, vegetable garden seeds as well as roots, bulbs and small plants to householders for personal gardens are subject to North Dakota sales tax.
- G. Fungicides, Herbicides and Insecticides:** The gross receipts from sales of fungicides, seed treatments, inoculants, fumigants, herbicides, insecticides and chemicals used to protect or preserve agricultural crops are exempt from North Dakota sales and use tax when sold to commercial applicators or agricultural or commercial vegetable producers. Adjuvants necessary for the application of exempt chemicals also are exempt from tax.
- H. Farm Machinery Repair Parts:** Gross receipts from the sales of new or used farm machinery repair parts intended for farm machinery or irrigation equipment used exclusively for agricultural purposes is exempt from North Dakota sales tax. New farm machinery used exclusively for agricultural purposes is subject to the 3% North Dakota farm machinery gross receipts tax; and used farm machinery for agricultural purposes is exempt from the gross receipts tax. See the *Farm Machinery and Farm Irrigation Equipment* guideline for additional information.
- I. Gasoline and Combustible Fuels:** Gross receipts from the sale of gasoline, heating fuel, diesel fuel, propane, kerosene, aviation fuel, jet fuel and other similar combustible fuels subject to either a motor fuels or special fuels tax are not subject to North Dakota sales and use tax.

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**J. Containers:** The gross receipts from the sale of containers, labels, cartons, packing cases, wrapping paper, wrapping twine, bags, bottles, shipping cases and similar articles and receptacles are not subject to North Dakota sales tax provided that the charge made for the merchandise sold includes the container and title (ownership) to the container passes to the purchaser along with the merchandise sold.

Receipts from the sale of containers, labels, cartons, packing cases, wrapping paper, twine bags, shipping cases and similar articles and receptacles sold to businesses that render a service, such as dry cleaners, laundries and similar businesses, are subject to sales tax since these businesses are the final users of such items.

**K. Food and Food Products:** Gross receipts from sales of food and food products for human consumption are exempt from North Dakota sales tax unless such products are purchased by consumers for consumption on or near the premises where purchased. This exemption normally applies to food and food products purchased in grocery stores. It does not include candy, chewing gum, carbonated beverages, and fruit drinks which contain less than 50 percent pure fruit juice, which are subject to sales tax. Receipts from coin-operated vending machines and sales of food products in a bar, tavern, bowling alley, auditorium or ball park are subject to sales tax since the products being purchased at these places are products purchased for immediate consumption.

All food or food products, including otherwise taxable soft drinks and candy, purchased for human consumption with food coupons issued by the United States Department of Agriculture are exempt from tax. Qualifying Department of Agriculture coupons include food stamps and purchase vouchers issued by the Women, Infant and Children (WIC) Program.

The exemption does not include alcoholic beverages or any mixed drinks made from alcoholic beverages nor does it include medicines or preparations which are sold as dietary supplements or products for nonhuman consumption such as pet food or bird seed.

The exemption does not extend to the sale of meals or other sales of food products which are prepared for immediate consumption on or near the premises of the seller.

**L. Bibles, Hymnals, Textbooks and Prayerbooks:** The gross receipts from sales of bibles, hymnals, textbooks and prayerbooks are exempt from sales tax when made to a nonprofit religious organization. This exemption extends to churches and nonprofit groups within the church as well as other religious organizations as long as they are nonprofit. It does not apply to individual clergy or other individual purchasers of these same items.

**M. Medical Devices and Equipment:** The sales of the follow are exempt from North Dakota sales tax.

- Durable medical equipment for home use that is primarily used to serve a medical purpose, and is not useful to a person in the absence of illness or injury.
- Mobility-enhancing equipment does not include durable medical equipment, and is primarily used to provide or increase the ability to move from one place to another, and is not generally used by persons with normal mobility.
- Prosthetic device includes artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correct or substitute for a bodily structure, including the extremities of the individual, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning part of the body, artificial teeth sold by a dentist, and eyeglasses prescribed by an ophthalmologist, physician, oculist or optometrist.

**N. Coal:** All mined coal which has been subject to North Dakota coal severance tax is exempt from sales tax. Coal sold for heating is not subject to coal severance tax; therefore, sale of coal for heating purposes are subject to sales tax when sold in this state. Coal used for processing agricultural products is exempt from both coal severance tax and state sales tax. Sales of beneficiated coal also are exempt from tax.

**O. Electricity:** The gross receipts from sales of electricity are exempt from sales tax.

**P. Money:** The gross receipts from the sale of domestic or foreign legal tender coins, currency and precious metal bullion that has been refined to a purity of not less than nine hundred ninety-nine parts per one thousand are exempt from North Dakota sales tax.

- Q. Water:** Sales of water, including bottled water, are exempt from sales and use tax.
- R. Used Mobile Homes:** Used mobile homes are not subject to North Dakota sales tax. Because of this exemption, a trade-in allowance for a used mobile home traded in on a new mobile home does not reduce the taxable price of the new mobile home.
- S. Magazine Subscriptions:** The gross receipts from sales of magazine subscriptions are not subject to North Dakota sales tax. However, magazines sold at news stands and over the counter are taxable.
- T. Diabetic and Bladder Dysfunction Supplies:** Gross receipts from sales of diabetic supplies and bladder dysfunction supplies are exempt from North Dakota sales tax.
- U. Agricultural By-products for Manufacture or Generation of Steam or Electricity:** Sales of agricultural by-products for use in the manufacture or generation of steam or electricity are not subject to North Dakota sales tax.
- V. Ostomy Devices and Supplies:** Sales of ostomy devices and supplies are exempt from North Dakota sales tax.

## II. Services which are Exempt from Sales Tax

- A. Transportation Services:** The receipts from the sale, furnishing or service of transportation are exempt from sales tax. Public transportation companies such as buses, trains, air lines and taxis providing passenger service are not required to collect and remit sales tax on the receipts from these services. Transportation companies such as truck lines, railroads, air freight or moving vans are engaged in the business of transporting personal property and their charges for such service are not subject to sales tax.

This exemption does not extend to freight and delivery charges which are rendered in connection with the sale of a product.

- B. Hospital and Nursing Home Services:** The gross receipts from the sale of services furnished by any hospital, infirmary, sanitarium, nursing home or home for the aged to any patient or occupant are exempt from sales tax.
- C. Repair Services:** Persons engaged in the business of repairing, altering, restoring or cleaning tangible personal property which belongs to others are rendering a service, and the receipts for providing that service are not subject to sale tax. Because the repair person is the final user of equipment and goods purchased for use in providing the repair services, the repair person is responsible to pay sales or use tax based on the cost of the items purchased.

If a person who is engaged in repairing, altering, restoring or cleaning tangible personal property also is engaged in selling tangible personal property at retail, then that person must hold a retail sales tax permit.

- D. Furnishing Steam:** The gross receipts from furnishing steam used to process agricultural products are exempt from North Dakota sales tax.

## III. Organizations or Institutions which are Exempt from Sales Tax:

- A. State and Local Fairs:** The receipts from sales of tickets or admissions to state, county, district and local fairs are exempt from sales tax during fair week. This exemption does not apply to any concessionaire or to any activities which are not directly and entirely controlled by the fairboard association or to fairboard activities conducted outside of fair week.
- B. Private and Parochial Schools:** Private nonprofit schools are exempt from sales tax when purchasing items to be used exclusively in the operation of their school. These items include textbooks, yearbooks, school supplies and items purchased by the school for use in classrooms, gymnasiums, athletic fields and offices. It also includes items such as office supplies, equipment, school supplies furnished but not sold to students, utilities services, janitorial supplies, building maintenance supplies and ground maintenance supplies.

**C. Public Schools:** Public schools are regarded as instrumentalities of state government and as such are exempt from North Dakota sales and use tax on all purchases made by them. Retailers are cautioned that exempt sales to a public school must be sales which are purchased by a school district check or warrant and may not simply be purchases by a teacher or other representative of the school. The purchase must be paid for by district warrant or check to qualify for this exemption.

**D. Exemption for Governments:**

- 1. Federal Government:** Sales of tangible personal property or providing a taxable service directly for the United States Government or its agencies, departments or instrumentalities are not subject to sales tax. Sales, for example, to a United States Post Office, a United States Veteran's Hospital, United States Army Engineers and similar agencies are exempt.
- 2. State and Local Government:** The gross receipts from sales of tangible personal property or providing taxable services to the State of North Dakota, or any of the subdivisions, departments, agencies or institutions thereof are specifically exempt from sales tax.

**E. Federal Corporations:** The federal statutes which create federal corporations contain provisions which have been construed by the United States Supreme Court to exempt them from the imposition of retail sales or use tax in connection with their purchases. These federal corporations include: Farm Credit Service Corporation, Federal Deposit Insurance Corporation, Commodity Credit Corporation, Federal Home Loan Banks, American National Red Cross and Federal Credit Unions.

**F. Hospitals, skilled nursing facilities, intermediate care facilities, basic care facilities, and emergency medical services provider:** Hospitals, skilled nursing facilities, intermediate care facilities, basic care facilities, and emergency medical services provider licensed by the North Dakota Department of Health are exempt from sales tax for all purchases of goods and services for the use or benefit of patients or occupants.

Purchases of goods or service for recreational or promotional purposes are subject to tax as are purchases made for any commercial purposes other than patient or occupant care.

**G. Assisted living facilities:** Sales of tangible personal property to an assisted living facility licensed by the North Dakota Department of Human Services are exempt from sales tax.

**H. Nonprofit Music or Dramatic Arts Organizations:** The gross receipts from admissions charged for public performances by a nonprofit music or dramatic arts organization are exempt from tax. To qualify, the organization must be organized and operated for the presentation of live public performances.

## IV. Conditional Exemptions

**A. Receipts from Vending Machines:** The gross receipts from coin-operated amusement devices also are subject to tax, however, tax is due only on 80 percent of the gross receipts.

**B. Interstate Commerce:** When tangible personal property is sold and, as an essential part of the sale, the seller is obligated to and actually does deliver such property from a point in North Dakota to the purchaser at a point in another state and if those goods are not to be returned to this state, the sale is made in interstate commerce and is not subject to North Dakota sales tax. This is true regardless if the seller, in transporting the goods, does so by means of their own employees or vehicles, or if the retailer places them in possession of a common carrier or with the United States Postal Service for delivery outside this state.

**Caution:** Any North Dakota retailer who claims an exemption on a sales and use tax return for sales made in interstate commerce must have documentation in the company records which verify the interstate nature of that sale.

**C. Motor Vehicles:** Receipts from the sale of any motor vehicle to be used on the streets and highways of North Dakota are not subject to North Dakota sales tax provided that the vehicle has been subjected to the Motor Vehicle Excise Tax.

**D. Rental of Hotel and Motel Accommodations:** Hotel, motel and tourist court accommodations occupied by the same individual or individuals for residential housing for periods of 30 or more consecutive days are exempt from tax.

- E. Rental of Mobile Homes:** Lease or rental receipts from leasing or renting mobile homes for residential purposes are exempt under North Dakota sales and use tax law. Leases or rentals of mobile homes which are used for offices or purposes other than residential housing are taxable sales.
- F. Film Rental:** The lease or rental of motion picture film is not subject to sales tax provided that the film is to be exhibited and that tickets or admissions are charged to the exhibition of the film. The tickets and admissions are subject to sales tax; therefore, the lease of the film is exempt.
- G. Casual Sales:** Sales made by those who are not engaged in the business of selling at retail, that is, the occasional or casual sales made by an individual, are not subject to North Dakota sales tax.
- H. Sales for Processing or Resale:** Tangible personal property is exempt from sales tax when sold for processing. This exemption applies only when it is intended that the property, by means of fabrication, compounding, manufacturing, producing or germination shall become an integral ingredient or component part of other tangible personal property intended to be sold ultimately at retail.

The gross receipts from the sale of tangible personal property for the purpose of *resale* by the purchaser are not subject to sales tax provided the buyer has furnished a resale certificate which the seller has accepted in good faith.

In applying the exemption for processing and resale, a certificate is required of the buyer indicating that the buyer is in fact purchasing the tangible personal property either for processing or for resale purposes.

- I. Sales to Residents of Montana:** Residents of the state of Montana are exempt from North Dakota sales tax on purchases made in this state provided the following conditions are met:
1. Purchases must equal or exceed \$50.
  2. The resident of Montana must be in North Dakota for the express purpose of making a purchase and not as a tourist or temporary resident.
  3. The property purchased must be removed from the state of North Dakota for use exclusively outside this state.
  4. The purchaser must provide to the North Dakota retailer a certificate of purchase exemption form (Form 21854) containing sufficient facts establishing the exempt status of the sale. These certificates are available upon request from the Office of State Tax Commissioner and on our website

(*Note* - Canadian residents are not exempt from North Dakota sales tax. However, for some purchases, Canadian residents may apply to the Tax Commissioner for a refund of sales tax paid. Contact the Office of State Tax Commissioner or consult our website for additional information for refunds available to residents of Canada.)

- J. Sales to Native Americans:** Under a ruling by the North Dakota Supreme Court, the State of North Dakota may not impose a sales tax on American Indians within the boundaries of the reservation on which they are an enrolled member. The Court decision has the following effects on sales tax transactions with Native Americans:
1. A Native American retailer whose place of business is located within the boundaries of an Indian reservation in this state cannot be required to hold a North Dakota sales tax permit and cannot be required to collect North Dakota sales tax on sales to any customer - Native American or non-Native American if the sale is completed within the boundaries of the reservation on which the Native American is an enrolled member.
  2. A non-Native American retailer whose place of business is located within the boundaries of an Indian reservation may not collect sales tax on sales to Native American customers, but must continue to collect and remit North Dakota sales tax on sales to non-Native American customers.
  3. Any retailer, Native American or non-Native American, whose place of business is outside the boundaries of an Indian reservation, but who makes deliveries to Native American customers living within the boundaries of an Indian reservation, may exempt those sales provided that the retailer maintains adequate records supporting the exempt status of each sale.

(*Note* - Native Americans are subject to sales or use tax when taking possession of goods or using goods outside an Indian reservation.)

- K. Admission Receipts:** When the *net receipts* from admissions to entertainment, amusement or athletic events are expended entirely for educational, religious or charitable purposes, and the event is held in a *privately* owned facility, the receipts are exempt from North Dakota sales tax. However, the gross receipts from educational, religious or charitable activities are taxable if the activities are 1) held in a *publicly* owned facility and the gross receipts from the event are \$5,000 or more or, 2) if the activity is regular retail sales in direct competition with other retailers.
- L. Auctions:** Auctioneers are retailers if they conduct a sale at which tangible personal property owned by another retailer is sold. Sales of property submitted to the auction by disclosed nonretailers are casual sales and are not subject to sales or use tax. Casual sales include household, estate and farm auctions provided the owner of the goods is disclosed on all promotional material.
- Sales of goods normally defined as casual sales are taxable when made through consignment auctions unless the principals and their specific consigned property are disclosed on all promotional material. Casual sales of consigned goods that were not part of any promotional material may be exempt from tax provided a verbal disclosure of the owner is made at the time of the sale and that the auction was not promoted as a consignment sale.
- M. Finance Leasing Agreements:** Gross receipts from leasing or renting of any tangible personal property under a finance leasing agreement are exempt from sales tax if North Dakota sales or use tax has been paid on the purchase price.
- N. Recreational Travel Trailers:** Gross receipts from all sales of recreational travel trailers not exceeding 8 feet in width or 32 feet in length designed to be used principally as temporary vacation dwellings are exempt from North Dakota sales tax. This exemption applies only if the sale is made to a resident of another state that imposes an excise tax when the recreational travel trailer is registered.
- O. Manufacturing, Processing and Recycling Equipment:** Manufacturing or processing equipment purchased by new or expanding manufacturers or agricultural processors is exempt from tax. Recycling machinery or equipment used directly in recycling of tangible personal property also is exempt from sales or use tax. The exemption must be approved by the Tax Commissioner's office.
- P. Primary Sector Business:** Telecommunications and computer hardware and software purchased by a new or expanding primary sector business is exempt from tax. The Department of Commerce must approve the primary sector status of the business and the exemption must be approved by the Tax Commissioner's Office.