

## **CHAPTER 81-04.1-03 MISCELLANEOUS SALES**

### Section

81-04.1-03-01	Sales to American Indians - Sales on an Indian Reservation
81-04.1-03-01.1	State-Tribal Tax Administration Agreement - Effect on Other Rules
81-04.1-03-02	Sales by Employers to Employees
81-04.1-03-03	Food and Food Products for Human Consumption
81-04.1-03-04	Sales in Interstate Commerce
81-04.1-03-05	Sales of Legal Tender Coins, Currency, and Precious Metals
81-04.1-03-06	Meal Tickets and Gift Certificates
81-04.1-03-07	Sales to Owners or Operators of a Building
81-04.1-03-08	Sales by Trustees, Receivers, Executors, and Administrators
81-04.1-03-09	Sales of Microfiche
81-04.1-03-10	Mailing Lists
81-04.1-03-11	Computers - Hardware and Software
81-04.1-03-12	Sales by Political Parties and Political Committees
81-04.1-03-13	Sales to a Person From Montana
81-04.1-03-14	Sales to Residents of Canada

### **81-04.1-03-01. Sales to American Indians - Sales on an Indian reservation.**

An Indian retailer whose place of business is on an Indian reservation in this state is not required to hold a North Dakota sales tax permit or to collect North Dakota sales tax on sales to any customer.

A non-Indian retailer whose place of business is on an Indian reservation cannot collect sales tax on sales to enrolled Indian customers but must collect and remit North Dakota sales tax on all sales to non-Indian customers.

Any retailer whose place of business is outside an Indian reservation may exempt sales made by delivery to an enrolled Indian customer living on an Indian reservation if the retailer maintains adequate records supporting the exempt status of the sale.

All sales to American Indians outside of an Indian reservation are subject to sales tax.

**History:** Effective June 1, 1984.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

### **81-04.1-03-01.1. State-tribal tax administration agreement - Effect on other rules.**

If an agreement is in effect between the state and a Native American tribal government under the authority of North Dakota Century Code chapter 54-40.2 or 57-39.8, then the provisions of that agreement apply with respect to retail sales to enrolled Native Americans on an Indian reservation in lieu of section 81-04.1-03-01.

**History:** Effective July 1, 2016.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.8

### **81-04.1-03-02. Sales by employers to employees.**

Purchases of tangible personal property by employees from their employer are subject to sales tax. Employers operating a restaurant or cafeteria exclusively for employees are retailers and the gross receipts from such sales are subject to sales tax. Employees ordering merchandise from an employer's wholesale catalog for personal use are subject to sales tax.

Employers who provide free meals to their employees are subject to tax on the cost of the items given away. When an employer is unable to determine the exact cost of a giveaway meal, tax is due on fifty percent of the retail selling price of the meal.

**History:** Effective June 1, 1984; amended effective March 1, 1988.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3

#### **81-04.1-03-03. Food and food products for human consumption.**

Food or food ingredients are exempt from sales tax. Food and food ingredients do not include alcoholic beverages, candy, dietary supplements, prepared food, soft drinks, or tobacco, which remain subject to sales tax. For purposes of this section:

1. "Alcoholic beverage" for human consumption means beverages containing one-half of one percent or more of alcohol by volume.
2. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation as described herein, containing flour, or any item requiring refrigeration.
3. "Dietary supplement" means a product subject to tax if the product label contains a "supplemental facts" box. If the product label contains a "nutrition facts" box, the product is regarded as food, and is exempt from tax.
4. "Prepared food" is subject to sales tax and includes food sold in a heated state or heated by the seller, or food that is prepared by mixing or combining two or more food ingredients for sale as a single item, or food sold with eating utensils, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws provided by the seller. Food sold in an unheated state by weight or volume as a single item is taxable only if sold with eating utensils. Food that ordinarily requires cooking, as opposed to just reheating, by the consumer prior to consumption is not prepared food. Generally businesses that sell prepared food include restaurants, convenience stores, delicatessens, concession stands, coffee shops, and caterers.
5. "Soft drinks" subject to sales tax include nonalcoholic beverages that contain natural or artificial sweeteners, and that do not contain milk or milk products, soy, rice, or similar milk substitutes, or that contain greater than fifty percent vegetable or fruit juice by volume. Soft drinks generally include pop and fruit drinks or fruit punches that are less than fifty percent juice by volume.
6. "Tobacco" means any cigarettes, cigars, chewing or pipe tobacco, or any other items that contain tobacco.

The exemption for food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store does not apply to food given away by restaurants or other businesses which regularly and primarily sell prepared food and beverages.

**History:** Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987; March 1, 1990; April 1, 2006; July 1, 2016.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04.1, 57-40.2-04.1

#### **81-04.1-03-04. Sales in interstate commerce.**

When tangible personal property is sold by a North Dakota retailer for use or consumption and delivered to the purchaser in another state and the goods are not to be returned to this state, the sale is not subject to sales tax. However, where the seller actually delivers possession of the goods to the buyer or the buyer's representative or agent within this state, the transaction is then terminated, and the tax applies. If a shipping company takes possession of goods on behalf of a purchaser, the purchaser has not taken possession of the goods.

Tangible personal property sold by a North Dakota retailer is not subject to sales tax if it is shipped from the source of supply in another state to the purchaser at a point outside this state or delivered to the purchaser at the source of supply outside the state. If the property is brought into this state, it is subject to use tax.

Sales of tangible personal property made within this state by salesmen, representatives, agents, persons, or firms residing outside this state and delivered in this state are subject to tax.

**History:** Effective June 1, 1984; amended effective July 1, 2016.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-04, 57-39.2-10, 57-39.4-12, 57-40.2-01, 57-40.2-03.3

#### **81-04.1-03-05. Sales of legal tender coins, currency, and precious metals.**

Coins or currency issued as legal tender by foreign nations are exempt from sales tax. Sales of precious metal that has been refined to a purity of not less than nine hundred ninety-nine parts per one thousand and is in such form or condition that its value depends upon its precious metal content and not its form are exempt from sales tax.

**History:** Effective June 1, 1984; amended effective July 1, 1985; April 1, 2006.

**General Authority:** NDCC 57-39.2-10

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

#### **81-04.1-03-06. Meal tickets and gift certificates.**

A meal ticket or gift certificate is not subject to sales tax when it is sold to the consumer. Sales tax is added when the meals or merchandise are purchased.

**History:** Effective June 1, 1984.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1

#### **81-04.1-03-07. Sales to owners or operators of a building.**

Purchases of tangible personal property by an owner or operator of a building for tenants' use in alterations, repair, or convenience are subject to sales tax.

**History:** Effective June 1, 1984.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1

#### **81-04.1-03-08. Sales by trustees, receivers, executors, and administrators.**

When trustees, receivers, executors, and administrators operate, manage, or control a business engaged in selling tangible personal property or services, they must collect and remit sales tax on the gross receipts. It is immaterial that the officer may have been appointed by a federal court.

Trustees, receivers, executors, or administrators engaged in liquidating the assets of the business are subject to sales tax if liquidation is by sales made in the usual and customary manner for use or consumption.

The trustee, receiver, executor, or administrator may not report and remit under a permit issued to the previous owner but must apply for and obtain a separate sales tax permit.

**History:** Effective June 1, 1984.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-14

#### **81-04.1-03-09. Sales of microfiche.**

The gross receipts from the sale of an original copy of microfiche are not subject to sales tax. This sale is exempt from sales tax as a nontaxable service.

The gross receipts from the sale of all copies of an original microfiche are subject to sales tax because they are sales of tangible personal property.

When a retailer sells an original copy of microfiche with additional copies, the original copy is exempt from sales tax as a nontaxable service if it is separately billed. The separately billed copies remain subject to sales tax. If a lump sum amount is billed to the purchaser, the total gross receipts, including labor charges, are subject to sales tax.

**History:** Effective October 1, 1986.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01(3), 57-39.2-01(7), 57-39.2-02.1

#### **81-04.1-03-10. Mailing lists.**

The gross receipts from the sale of a prepared mailing list are subject to sales tax if the retailer of the mailing list prepared the list for sale to a number of purchasers.

The gross receipts from the sale of a prepared mailing list are not subject to sales tax if the retailer of the mailing list prepared the list on a custom basis for a specific purchaser.

**History:** Effective October 1, 1986.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01(3), 57-39.2-01(7), 57-39.2-02.1

#### **81-04.1-03-11. Computers - Hardware and software.**

Computers, peripheral computer equipment, and computer software, with the exception of custom software, are subject to tax.

For purposes of administration of the sales and use tax law, unless the context otherwise requires, the following definitions apply:

1. "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
2. "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
3. "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.

4. "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
5. "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances computer software of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or the prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser of such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.
6. Sale, lease, or rental of prewritten computer software. The transfer of title, possession, or use for a consideration of any prewritten computer software is taxable.
  - a. Tax applies to the entire amount charged to the customer. When the consideration consists of license fees, royalty fees, or program design fees, all fees present or future, whether for a period of minimum use or for extended periods, are includable in the purchase price subject to tax.
  - b. The sale of prewritten computer software is a taxable transaction, even though the program is delivered electronically or by load and leave. Tax does not apply to the sale or lease of custom computer software regardless of the form in which the program is transferred. If the custom computer software is not separately stated from the sale or lease of equipment, it will be considered taxable as part of the sale.
  - c. Maintenance contracts sold in connection with the sale or lease of prewritten computer software required by the seller as a condition of the sale or rental of prewritten computer software will be considered as part of the sale or rental of the prewritten computer software, and the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for the software.
  - d. If the purchase of the maintenance contract is optional with the purchaser, but the purchaser does not have the option to purchase the consultation services separately from the upgrades or enhancements, then the charges for consultation services are taxable as part of the sale or lease of upgrades or enhancements. If, however, the purchaser may at the purchaser's option, contract for the consultation services separately from the upgrades or enhancements, then the charges for the consultation services are nontaxable.
  - e. The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information, produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property, unless the information from which such reports were compiled was furnished by the same person to whom the finished report is sold in which case the original report is not subject to tax.
  - f. When additional copies of records, reports, manuals, and tabulations are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in

excess of those produced simultaneously with the production of the original and on the same printer, when the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.

If no separate charge is made for additional copies by the service bureau or data processing firm, then tax applies to that portion of the gross receipts on which the cost of the additional computer time, the cost of materials, and labor costs to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax.

- g. Separately stated charges for training services are nontaxable. Tax applies to charges for training materials, including books and manuals furnished to trainees for a charge separate from the charge for training services.
7. Time sharing. The sale or lease of computer time through the use of the terminal or as a result of a batch service arrangement is a nontaxable service and is not subject to tax if separately billed or charged. However, any charges for computer machines and equipment remain subject to tax.
8. Data processing service. The charge for reports compiled by a computer exclusively from data furnished by the same person for whom the data is prepared is a service and is not subject to sales or use tax unless it is part of a unitary transaction which is subject to sales or use tax.

**History:** Effective March 1, 1988; amended effective April 1, 2006.

**General Authority:** NDCC 57-39.2-19, 57-40.2-13

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-40.2-01, 57-40.2-02.1

#### **81-04.1-03-12. Sales by political parties and political committees.**

Political parties and political committees organized for political purposes are considered to be conducting educational activities. Political party or political committee sales of tickets, admissions, or tangible personal property are exempt from sales or use tax provided the entire net proceeds are used for political purposes and provided the sales do not occur in a publicly owned facility.

"Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of the association, committee, or organization.

"Political committee" means any committee, club, association, or other group of persons which receives contributions primarily for political purposes.

"Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate for public office.

**History:** Effective March 1, 1988.

**General Authority:** NDCC 57-39.2-19, 57-40.2-13

**Law Implemented:** NDCC 16.1-08.1-01, 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-40.2-01, 57-40.2-02.1, 57-40.2-04

#### **81-04.1-03-13. Sales to a person from Montana.**

Sales of tangible personal property to a person from Montana are exempt from sales tax if the person is in North Dakota specifically to make a purchase and signs a certificate of purchase or a certificate of exemption authorized by the streamlined sales tax agreement, the sale is in an amount of

fifty dollars or more, and the goods are taken outside of North Dakota, for use entirely outside this state.

Sales of meals, onsale beverages, lodging accommodations, entertainment, and similar goods and services consumed in North Dakota do not qualify for the exemption.

Sales and installation of goods into personal property owned by a person from Montana are not taxable provided the goods are removed from North Dakota for use exclusively outside this state. Use which is incidental to removing the goods from North Dakota does not subject the goods to North Dakota use tax.

For purposes of this exemption, "person" means natural persons, Montana corporations, and other business entities when the owners, partners, or members are individual Montana residents.

**History:** Effective March 1, 1990; amended effective April 1, 2006; July 1, 2016.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-04(12)

#### **81-04.1-03-14. Sales to residents of Canada.**

Canadian residents are subject to sales and use tax on purchases made in North Dakota. Canadian residents may apply on forms prescribed by the tax commissioner for a refund of North Dakota sales tax.

Sales tax paid by residents of Canada is not refundable unless the goods are removed from North Dakota within thirty days of purchase and will be used permanently outside North Dakota. Sales tax paid on meals, onsale beverages, lodging accommodations, entertainment, and similar goods and services which are consumed in North Dakota is not refundable.

Requests for refunds of sales tax paid by Canadian residents must be accompanied by original sales receipts. The receipt must contain a description of the purchase, including the seller's name, the amount paid for the goods, and the date the goods were purchased.

A joint refund request is allowed for married couples, married couples and their dependents, and individuals and their dependents. A joint refund request by unrelated individuals is allowed only if the sales receipt contains the names of all parties and a letter explaining the joint refund request accompanies the request form.

**History:** Effective March 1, 1990.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-04, 57-39.2-28