CHAPTER 81-01.1-04
MODEL RECORDKEEPING AND RETENTION REGULATION

81-01.1-04-01. Purpose.

The purpose of this regulation is to define the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information. It is also the purpose of the regulation to address these requirements where all or a part of the taxpayer's records are received, created, maintained, or generated through various computer, electronic, and imaging processes and systems.

History: Effective June 1, 2002.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-01-02

81-01.1-04-02. Definitions.

For purposes of this chapter, these terms shall be defined as follows:

1. "Data base management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a data base.

2. "Electronic data interchange" or "EDI" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

3. "Hardcopy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hardcopy or as an optical image.

6. "Taxpayer" as used in this chapter means an individual, partnership, firm, corporation, joint venture, association, estate, fiduciary, trust receiver, or any other group or combination acting as a unit and the plural as well as the singular number who is or may be required to file a tax return under North Dakota Century Code title 57 or who has or may have information relating to any matter which the tax commissioner deems relevant to a determination of tax liability under North Dakota Century Code title 57.

81-01.1-04-03. Recordkeeping requirements - General.

1. A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability under North Dakota Century Code title 57. All required records must be made available on request by the tax commissioner or its authorized representative. Such records shall include any original and nonidentical copy of any communication or other transmission of information that has been reduced by any means into any tangible form or medium or is electronically stored information, including written, electronic, magnetic, or photographic form, of any kind or description and including all records, reports, papers, accounting schedules, books, letters, notes, memoranda, e-mail, and other correspondence, reports and recordings of telephone and other conversations, tape recordings, contracts, evaluations, ledgers, journals, books or records of accounts, summaries of accounts, desk calendars, minutes, drawings, photographs, inspection reports, test reports, diaries, notebooks, sketches, graphs, charts, and press releases, all whether in the taxpayer's possession or under the control of any other individual or entity with knowledge of the information requested.

2. If a taxpayer retains records required to be retained under this regulation in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the tax commissioner in machine-sensible format upon the tax commissioner's request.

3. Nothing in this regulation shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. However, this subsection shall not relieve the taxpayer of the obligation to comply with subsection 2.

81-01.1-04-04. Recordkeeping requirements - Machine-sensible records.

1. **General requirements.**

   a. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the tax commissioner upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this regulation are met.

   b. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

   c. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

2. **Electronic data interchange requirements.**

   a. When a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained

records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the tax commissioner to interpret the coded information.

b. The taxpayer may capture the information necessary to satisfy subdivision a at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the tax commissioner. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

3. **Electronic data processing systems requirements.** The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

4. **Business process information.**

a. Upon the tax commissioner's request, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

b. The taxpayer shall be capable of demonstrating:

(1) The functions being performed as they relate to the flow of data through the system;

(2) The internal controls used to ensure accurate and reliable processing; and

(3) The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c. The following specific documentation is required for machine-sensible records retained pursuant to this regulation:

(1) Record formats or layouts;

(2) Field definitions, including the meaning of all codes used to represent information;

(3) File descriptions (e.g., data set name); and

(4) Detailed charts of accounts and account descriptions.

History: Effective June 1, 2002.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-01-02

81-01.1-04-05. Records maintenance requirements.

1. The tax commissioner recommends but does not require that taxpayers refer to the national archives and record administration's standards [36 CFR, part 1234, July 1, 1995, edition], for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of backup copies, and the use of periodic testing to confirm the continued integrity of the records.

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

History: Effective June 1, 2002.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-01-02

81-01.1-04-06. Access to machine-sensible records.

1. The manner in which the tax commissioner is provided access to machine-sensible records as required in subsection 2 of section 81-01.1-04-03 may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Such access will be provided in one or more of the following manners:

    a. The taxpayer may arrange to provide the tax commissioner with the hardware, software, and personnel resources to access the machine-sensible records.

    b. The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

    c. The taxpayer may convert the machine-sensible records to a standard record format specified by the tax commissioner, including copies of files, on a magnetic medium that is agreed to by the tax commissioner.

    d. The taxpayer and the tax commissioner may agree on other means of providing access to the machine-sensible records.

History: Effective June 1, 2002.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-01-02

81-01.1-04-07. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of section 81-01.1-04-04, a taxpayer may create files solely for the use of the tax commissioner. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the date base management system and that meets the requirements of section 81-01.1-04-04. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

History: Effective June 1, 2002.
General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-01-02

81-01.1-04-08. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this regulation to microfilm, microfiche, or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche, and other storage-only imaging systems must meet the following requirements:

    a. Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. Such documentation must, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

    b. Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under section 81-01.1-04-10.

    c. Upon request by the tax commissioner, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

    d. When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral which enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

    e. All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

    f. There is no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

History: Effective June 1, 2002.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-01-02

81-01.1-04-09. Effect on hardcopy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this regulation do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in section 81-01.1-04-08.

2. If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in section 81-01.1-04-04.

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the tax commissioner from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

History: Effective June 1, 2002.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-01-02

81-01.1-04-10. Records retention - Time period.

Nothing contained in this chapter modifies any previous policy adopted by the tax commissioner relating to the period of time records must be retained by the taxpayer, unless the tax commissioner had provided in writing that the records are no longer required. All records required to be retained under this chapter shall be retained according to the record retention schedule required for each tax type.

History: Effective June 1, 2002.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-01-02