

CHAPTER 81-04.1-04 SPECIFIC OCCUPATIONS

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81-04.1-04-01. Agriculture - Commercial chemicals and seeds for planting.

Sales of agrichemical tank cleaners and foam markers, agricultural chemicals, including adjuvants, seeds, roots, bulbs, and small plants for commercial vegetable gardens or agricultural purposes are not subject to the tax, but such sales for noncommercial purposes are taxable. A householder's garden is not a commercial vegetable garden.

The term "adjuvant" includes surfactants, phytobland oils, stickers, spreaders, spreader-stickers, thickening agents, and antifoam agents.

The term "small plants" includes potted plants, set plants, small young trees, shrubs, herbs, slips, cuttings, flower seeds, flower plants, and small saplings.

Small young trees, including fruit trees, and shrubs, when sold for the purpose of rural windbreaks, shelterbelts, soil erosion prevention, and other agricultural purposes, are exempt from sales tax.

History: Effective June 1, 1984; amended effective November 1, 1987; 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

81-04.1-04-02. Agriculture - Farm machinery and irrigation equipment - Farm machinery and irrigation equipment repair parts.

Farm machinery and irrigation equipment used principally for producing agricultural crops or livestock, including leasing or renting of farm machinery and equipment, are subject to a special gross receipts tax in lieu of sales tax at a reduced rate, as provided by North Dakota Century Code chapter 57-39.5.

Machinery sold for nonagricultural purposes is subject to sales tax at the full rate. Motor vehicles required to be registered with the motor vehicle department, including vehicles such as trucks, pickups, cars, snowmobiles, all-terrain vehicles, and garden tractors, do not qualify as farm machinery. Irrigation equipment sold for nonagricultural purposes is subject to sales tax at the full rate. Tires, accessories, communication equipment, tools, shop equipment, grain bins, feed bunks, fencing material, and other farm supplies are subject to sales tax at the full rate.

Contractors installing barn cleaners, milking systems, automatic feeding systems, irrigation systems, and similar installations which become a part of real property are subject to use tax on the cost of the materials.

Parts, excluding tires, used to repair qualifying farm machinery or farm irrigation equipment, are exempt from the special gross receipts tax. These same parts are subject to the general North Dakota sales and use tax rate when sold to contractors or others who do not use the machinery exclusively for agricultural purposes.

Farm repair parts include any durable goods, except tires, used to repair qualifying farm machinery or farm irrigation equipment. Durable goods do not include fluids, gases, oils, greases, lubricants, paints, and waxes. Farm machinery and farm irrigation repair parts do not include items like tools, lumber, twine, fencing material, or storage tanks.

Sales of parts not clearly identified for use in farm machinery or farm irrigation equipment are subject to the reduced rate when used by the seller to repair farm machinery or farm irrigation equipment.

When parts are sold over the counter, the seller should use discretion but should generally accept in good faith the purchaser's word as to their intended use. When the purchaser intends to use the parts on a qualifying farm machine or qualifying farm irrigation equipment, the qualifying parts are exempt from sales tax. If the parts are for nonfarm use, the general sales tax rate must be charged.

History: Effective June 1, 1984; amended effective July 1, 1985; July 1, 1987; March 1, 1988; June 1, 2002; April 1, 2006; July 1, 2016.

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

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-08.2, 57-39.5-01, 57-39.5-01.1, 57-39.5-02, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.3, 57-40.2-05, 57-40.2-12

81-04.1-04-03. Agriculture - Livestock and poultry feeds.

Pet foods, including wormers and tonics, are not livestock feeds and are subject to sales tax whether or not such animals are kept as pets. Horse feed and rabbit feed are exempt from 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

81-04.1-04-04. Amusement - Admission receipts - Public school districts.

The receipts of public school districts from entertainment or events are exempt from sales tax if the net receipts after necessary operating expenses are deposited in the school district treasury. It is immaterial whether the receipts are expended directly from the school district treasury or through an incidental revolving fund.

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

81-04.1-04-05. Amusement - Fair operators and concessionaires.

When a fair enters into a percentage basis contract with concessionaires for the privilege of conducting exhibitions, games, or entertainment, the concessionaire is responsible for payment of tax on gross receipts. Sale of tickets for activities operated during the fair and entirely controlled by a state, county, district, or local fair board are not subject to sales tax.

All concessionaires operating under licensed carnivals, circuses, show troupes, and similar organizations are agents of the licensed operator and must report their gross receipts and sales tax to the licensed operator. The licensed operator must maintain a record of the gross receipts and tax of each concessionaire and remit the sales tax to the tax commissioner when the operator's own payments are made. The records must be available to the tax commissioner.

Operators of carnivals, circuses, show troupes, and similar organizations traveling from place to place and with tangible personal property not permanently located in North Dakota must furnish security in the form of surety, cash, or negotiable bond to the tax commissioner before starting operations in the state.

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, 57-39.2-04, 57-39.2-20

81-04.1-04-06. Amusement - Games of chance.

Receipts from games of chance operated by nonprofit organizations are exempt from sales tax. Instruments for gambling purchased by these organizations are subject to sales and use tax unless the organization is exempt from sales and use tax.

History: Effective June 1, 1984; amended effective March 1, 1990; July 1, 2016.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.3, 57-39.2-04, 57-39.2-20, 57-40.2-02.1

81-04.1-04-07. Amusement - Materials purchased by religious, educational, and charitable organizations.

Purchases by nonprofit, religious, educational, or charitable organizations of materials needed to conduct entertainment or athletic events are subject to sales tax. Items such as programs which are given away, advertising posters, tickets, and similar items are taxable when purchased by these organizations. Programs which are sold may be purchased tax exempt by the organization if the organization presents a certificate of resale to the seller.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-04

81-04.1-04-07.1. Educational, religious, or charitable sales activities.

Repealed effective July 1, 2016.

81-04.1-04-08. Amusement - Skating rinks.

The admission charge and the charge for the rental or use of skates is subject to sales tax whether or not they are separately stated.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

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

81-04.1-04-09. Amusement - Tickets and admissions to places of amusement - Charges for participation in amusement.

Tax is imposed upon the gross receipts from the sale of tickets or admission for participation in amusement, entertainment, or athletic events. Admission includes regular dues or fees which entitle one to usual club or similar organization privileges. Complementary tickets are taxable on the same amount as the regular admission charge.

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, 57-39.2-04, 57-39.2-20

81-04.1-04-09.1. [Reserved]

81-04.1-04-10. Vending machines.

Gross receipts derived from coin-operated vending machines are subject to sales tax if the price per article exceeds fifteen cents. In the absence of a written agreement stipulating division of gross

receipts between the vending machine owner and the location operator, the vending machine owner is responsible for sales tax on gross receipts derived from the vending machine.

The purchaser of a vending machine is liable for sales tax on a vending machine purchased in this state or for use tax on a vending machine purchased outside of this state regardless of whether a license fee is paid to any governmental authority for operating the vending machine.

History: Effective June 1, 1984; amended effective November 1, 1987; March 1, 1990; July 1, 1998.

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, 57-40.2-02.1

81-04.1-04-10.1. Amusement - Coin-operated amusement devices.

Repealed effective July 1, 2016.

81-04.1-04-11. Auctions - Auctioneers, agents, and public auctions.

Every auctioneer or agent acting for an unknown or undisclosed principal, entrusted with the possession of any bill of lading, customhouse, or warehouseman's receipt for delivery of any tangible personal property for the purpose of sale, is the owner. Upon the sale of such property, the individual is required to file a return and pay sales tax. This rule applies to lienholders, such as storagemen, pawnbrokers, mechanics, and artisans.

Auctioneers are retailers if they conduct a sale at which tangible personal property owned by any other retailer is sold. Sales of property submitted to the auction by nonretailers are casual sales and are not subject to sales or use tax.

Sales of goods not taxable as a casual sale are taxable if made through consignment auctions or multiparty auctions unless the principals and their specific consigned property are disclosed on all promotional material. Casual sales of consigned goods not part of any promotional material are exempt from tax if a verbal disclosure of the owner is made at the time of the sale, and if the auction is not promoted as a consignment sale.

Community sales and auction houses are retail establishments, the gross receipts of which are subject to sales tax. If the auctioneer is employed by the operator of a public auction, the operator is liable for the payment of sales tax. A public auction held to dispose of tangible personal property of an individual is a casual sale, the receipts of which are not taxable.

History: Effective June 1, 1984; amended effective November 1, 1987.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.3, 57-39.2-04

81-04.1-04-12. Auctions - Foreclosure sales.

Receipts from the sale at public auction of tangible personal property secured under the Uniform Commercial Code are not taxable if the sale is made by a court decree of foreclosure by an officer appointed by the court for that purpose or if the property is bid in by the mortgagee. Receipts from other foreclosure sales where goods and chattels are sold at retail 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, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04

81-04.1-04-13. Automobiles - Sales.

Motor vehicles, including snowmobiles and all-terrain vehicles, purchased or acquired in or outside of the state of North Dakota for use on the streets and highways of this state are required to be

registered with the North Dakota department of transportation and are subject to motor vehicle excise tax in lieu of sales and use tax.

Motor vehicles which are not legal for use on the streets and highways of this state or which are not registered for use on the streets and highways of this state are subject to sales and use tax.

North Dakota dealers of snowmobiles and all-terrain vehicles may be required to provide lists of purchasers to the office of state tax commissioner. Such information may be used to verify the proper payment of motor vehicle excise tax or sales and use tax.

History: Effective June 1, 1984; amended effective March 1, 1990.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 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

81-04.1-04-14. Automobiles - Tire and tube repairing.

Repealed effective September 1, 1997.

81-04.1-04-15. Automobiles - Washing, waxing, and lubrication.

If lubricants are sold separately from the rendering of lubrication service, and the customer is billed separately for greases or lubricants, the tax applies upon the gross receipts from such sale.

Receipts from coin-operated automobile washes are not 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

81-04.1-04-16. Banks - Federal and state credit unions.

Any credit union organized under the Federal Credit Union Act [12 U.S.C.A. 1751] is exempt from North Dakota sales tax on purchases of tangible personal property for its own use.

Credit unions organized under North Dakota Century Code chapter 6-06 are subject to North Dakota sales and use tax.

History: Effective June 1, 1984; amended effective March 1, 1990.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 6-06-29, 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-17. Banks - Purchases and sales by national banks, state banks, trust companies, and savings and loan associations.

When financial institutions are engaged in the business of purchasing tangible personal property for lease or rental at retail, they are required to collect and remit the tax from their customers on all periodic lease or rental payments unless the financial institution paid sales or use tax on the purchase price of the property at the time of purchase.

To qualify for the exemption on periodic lease or rental payments, the financial institution leasing or renting the tangible personal property must disclose on an invoice, contract, or lease agreement, or other supporting sales document provided to the customer that the financial institution paid sales or use tax on its purchase price. Financial institutions are required to collect sales tax on a payment made to exercise a purchase option.

When financial institutions acquire tangible personal property to offer as an inducement to deposit funds, sales tax applies on the full purchase price. If the seller fails to collect the sales tax, the financial

institution must report the purchase of such merchandise and pay use tax. If such merchandise is subsequently sold at a reduced price to depositors, no sales tax applies.

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, 57-39.2-20, 57-40.3

81-04.1-04-18. Banks - Sales by loan or finance companies.

Companies which repossess or acquire tangible personal property in connection with their loan or finance business and sell such tangible personal property at retail are required to hold a retail sales tax permit and collect and remit sales tax on such sales.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-14, 57-39.2-20

81-04.1-04-19. Blacksmith and machine shops.

When a blacksmith or machine shop makes or fabricates and sells a finished article to a customer, the sales tax applies to the full selling price of such article, with no deduction for labor or material used.

History: Effective June 1, 1984.

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

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11

81-04.1-04-20. Contractors.

A contractor or subcontractor installing materials into real property located in North Dakota must pay sales or use tax on those materials regardless of who owns them. If the materials are sold for installation into real property located outside of this state, sales or use tax must be paid if such sales would be subject to tax in the state of attachment. For example, delivery of tangible personal property within this state to a South Dakota contractor for installation in South Dakota is subject to tax because the delivery of tangible personal property to a North Dakota contractor in South Dakota would be subject to tax there. This also applies to a contractor or subcontractor engaged in retail sales who removes all or part of the machinery, equipment, material, or supplies used in carrying out a contract from stock purchased for resale.

A contractor or subcontractor is subject to sales tax on the cost of any items incorporated into or used in assembling articles used or consumed in carrying out a construction contract.

A business which holds a contractor's license issued by the North Dakota secretary of state may not contract with itself to install material into real property. A contractor or subcontractor who purchases or takes possession of construction material in North Dakota for its own use in another state must pay North Dakota sales or use tax on the goods.

For purposes of this rule, the terms "contractor" and "subcontractor" have the meaning ascribed to the term "contractor" in subsection 3 of North Dakota Century Code section 43-07-01. This rule applies to any person thus defined as a "contractor", regardless of whether the person is licensed under North Dakota Century Code chapter 43-07.

History: Effective June 1, 1984; amended effective March 1, 1990; September 1, 1997.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-40.2-03.3

81-04.1-04-20.1. Highway contractor's tax.

Repealed effective April 1, 2006.

81-04.1-04-21. Florists and nurserymen.

When the seller transplants for the buyer, the transaction is as an installation into real property, and the tax is computed on the cost of the merchandise.

When florists conduct transactions through a florists' telegraphy delivery association, the following rules apply:

1. On all orders taken by a North Dakota florist and sent to a second florist for delivery in any state, the sending florist is liable for sales tax on the receipts for the total amount collected from the customer.
2. When North Dakota florists receive telegraphic instructions from florists located within or outside of this state, the receiving florist is not liable for 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, 57-39.2-20

81-04.1-04-22. Funeral homes - Memorial stones.

When the seller of a memorial stone agrees to erect a stone upon a foundation, the total gross receipts from the sale, including the erection of the foundation, are taxable.

Charges for inscription or work incidental to preparing a stone for a customer are subject to tax. Charges for inscription upon a stone subsequent to erection are sales of service rendered in the alteration of tangible personal property and not 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

81-04.1-04-23. Health - Drugstores, druggists, and pharmacists.

Druggists and pharmacists selling nonprescription medicines and merchandise are liable for the collection and remittance of sales tax on the gross receipts from such sales.

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, 57-39.2-20

81-04.1-04-24. Health - Hospitals and infirmaries.

Health institutions operating cafeterias, gift shops, or novelty shops open to the public are required to collect and remit sales tax on their gross receipts. If the cafeteria is operated solely for convenience of the staff, the proceeds are not subject to tax. Sales to these institutions of food supplies used in the cafeteria operation and sales of inventory for gift shops or novelty shop purposes are sales for processing or resale and are not subject to tax.

Hospital sales of lodging accommodations to nonpatients, including sales to families of registered patients, are subject to sales tax.

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

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

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-20, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.2, 57-40.2-05, 57-40.2-07, 57-40.2-09, 57-40.2-13

81-04.1-04-25. Health - Physicians.

Drugs prescribed, compounded, and sold by a physician are not 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, 57-39.2-20

81-04.1-04-26. Hotel, restaurant, and lodging.

The sale of a meal by a hotel, restaurant, or other eating place is a sale of tangible personal property and is subject to sales tax. A sale of food supplies and beverage products to an eating place for use in preparing and serving meals is a sale for processing or resale and is not subject to tax.

When a hotel, restaurant, or other eating place furnishes meals to its employees as part compensation, it is liable for the tax upon the cost of the meals furnished. If records to substantiate the cost of meals to employees are not available, the tax commissioner will accept figures from records kept by competing hotels, restaurants, and other eating places, as a basis on which to compute the tax.

A cover charge made exclusively for the privilege of occupying space within an eating place is included in the gross receipts.

A hotel, motel, or lodging accommodation used for residential housing for thirty or more consecutive days is exempt only when the accommodation includes continuous residency by at least one specific individual for thirty or more consecutive days. Any break in the continuous occupancy of the room by that individual which results in a continuous occupancy of less than thirty consecutive days subjects the accommodation to tax. If an occupancy break results in one continuous occupancy period of thirty or more consecutive days and one continuous occupancy period of less than thirty consecutive days, the exemption applies only to the occupancy period of thirty or more consecutive days.

A business which rents a lodging accommodation is not exempt from tax unless the same worker or workers occupy the accommodation for thirty or more consecutive days.

History: Effective June 1, 1984; amended effective November 1, 1991.

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, 57-39.2-21

81-04.1-04-27. Laundries and drycleaners.

Gross receipts from coin-operated laundry or drycleaning machines are not subject to sales tax. Sale of soaps, bleaches, and other tangible personal property is subject to sales tax unless dispensed by a vending machine for fifteen cents or less. Sales of these items directly are taxable.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.3, 57-39.2-04

81-04.1-04-28. Military - Army or navy personnel and veterans.

Gross receipts from retail sales to persons in the army, navy, or other service of the United States are subject to tax regardless of whether the delivery of the merchandise is at the retailer's place of business or elsewhere. Merchandise delivered to a military base is taxable. Gross receipts from retail sales to all veterans are subject to 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, 57-39.2-03.2, 57-39.2-03.3

81-04.1-04-29. Minerals - Coal.

Coal mined and sold in this state subject to the coal severance tax is exempt from sales tax. Coal mined outside this state is not subject to sales tax when sold in this state.

History: Effective June 1, 1984; amended effective June 1, 2002; 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, 57-61

81-04.1-04-30. Minerals - Coke and natural gas sold to industrial users.

All sales of natural gas are exempt from sales tax. Sales to industrial users of coke and other fuels not subject to a special tax are sales at retail and subject to sales tax if they do not become an integral, ingredient, or component part of a manufactured product sold at retail.

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, 57-39.2-04

81-04.1-04-31. Manufactured homes.

Manufactured homes, not sold in conjunction with installation, are tangible personal property subject to sales tax at a reduced rate on the gross receipts. Installation of a manufactured home includes any method established under North Dakota Century Code section 54-21.3-08. A manufacturer or seller who permanently attaches manufactured homes to a foundation or provides installation by any method established under North Dakota Century Code section 54-21.3-08 is subject to tax in the same manner as a construction contractor and is liable for tax based on the cost of materials to the manufacturer or seller.

Trade-ins are not to be deducted from the gross sales price prior to application of the sales tax.

A manufactured home that is sold and will be installed in another state is not subject to tax.

History: Effective June 1, 1984; amended effective July 1, 1985; 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

81-04.1-04-32. Manufactured homes - Sales and rentals.

Leasing or renting manufactured homes for nonresidential purposes is subject to sales tax. A manufactured home dealer using a manufactured home as an office must pay sales or use tax based on the dealer's cost. Sales tax is applied on the lease or rental of a new manufactured home at a reduced rate. The lease or rental of a used manufactured home is not subject to sales or use tax.

History: Effective June 1, 1984; amended effective July 1, 1985; 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

81-04.1-04-33. Moving and storage companies.

Materials of a permanent and reusable nature are subject to North Dakota sales tax when purchased by a moving or storage company. Materials intended for one-time usage are subject to North Dakota sales tax when used to pack, preserve, load, or store a shipment from one point in this state to

another. These materials are exempt from sales tax when used to pack, preserve, load, or store a shipment from a point in this state to a point outside this state.

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

81-04.1-04-34. Pawnbrokers.

When a customer does not redeem property from a pawnbroker within the statutory period, title passes to the pawnbroker who must collect and remit the sales tax when the item is sold.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-20

81-04.1-04-35. Pit operators - Sand and gravel - Truckers and haulers.

Operators of sand and gravel pits are retailers and are liable for sales tax on receipts from sales. Sales to truckers and haulers who do not have an established place of business and are not engaged in the business of selling at retail are taxable sales. When sand or gravel is procured at the pit for delivery to one who has employed a trucker or hauler, the operator of the pit must collect and remit the tax.

Sales to truckers and haulers who sell tangible personal property are not taxable if the pit operator obtains a certificate of resale. The trucker's or hauler's sales price, including the cost of delivery, is subject to sales tax. When a pit operator agrees to deliver sand or gravel to the purchaser's home, place of business, or other designated place, the entire cost, including the cost of delivery, is subject to sales tax.

When sand or gravel is sold unsevered and is severed for the purchaser's own use, the severing is subject to use tax. It is presumed that the selling price is eight cents per ton of two thousand pounds [905 kilograms], and the tax must be computed upon this value unless the contrary is shown.

When other minerals are severed and used by the person who severs them, the severance is subject to use tax. The price upon which the tax is based is the prevailing market price for such minerals in that geographic area of the state.

History: Effective June 1, 1984.

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

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-10, 57-39.2-20, 57-40.2-01, 57-40.2-02.1, 57-40.2-05, 57-40.2-13

81-04.1-04-36. Picture framers.

When a picture framer sells a frame and agrees to frame or install a picture for a lump sum, the total gross receipts are subject to sales tax. The gross receipts from services of installing a picture owned by a customer into a frame owned by that customer are exempt from 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

81-04.1-04-37. Photographers and photofinishers.

Commercial photographers are the producers and sellers of tangible personal property which is subject to sales tax.

Sitting or camera charges are not subject to sales tax if they are separately stated and are reasonable in relation to the total charge.

A photographer selling tangible personal property such as cameras, lenses, film, frames, photo equipment, and supplies may purchase them for resale. Sales tax must be collected when these items are sold to customers.

When photofinishers develop and print pictures, they are producing a completed article of tangible personal property and must collect the tax on the total selling price. Photofinishers engaged in the processing of color film who mount such film in frames are engaged in the production of tangible personal property and must collect the tax on the total charge or selling price.

The materials which become an integral part of the finished product are not taxable to the photofinisher. Chemicals which are used in the process of photofinishing and which do not become a part of the finished product are subject to tax when purchased by the photofinisher.

Charges for developing movie films are subject to sales tax.

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

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01

81-04.1-04-38. Printers, mimeographers, duplicators, and lithographers.

Printers, mimeographers, duplicators, and lithographers are engaged in producing tangible personal property, and sales of printed matter are subject to tax. Tax applies to the full selling price of such property, including cost of labor or service rendered in its production. A separate charge made for addressing, folding, enclosing, and sealing is subject to sales tax.

Commercial printing involving the use of United States postcards or stamped envelopes purchased by the printer is taxed on the basis of the selling price of the job, less the amount of postage on the postcards or envelopes. Typesetting performed by a printer when title to the metal does not pass to the customer is not subject to sales tax.

The sales of printed advertising brochures and pamphlets are not taxable if labeled as an advertising supplement to a newspaper and delivered to the newspaper for insertion and distribution.

Materials and supplies used by printers, mimeographers, duplicators, lithographers, or newspaper publishers in their operations, which do not become an ingredient or component part of the end product, are taxable when purchased. If the printer sells these items after using them, it is a casual sale and not 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

81-04.1-04-39. Rural electric cooperatives.

Rural electric cooperatives are subject to sales or use taxes on purchases made for final use or consumption. These organizations are also required to collect the sales tax on all retail sales made by them.

History: Effective June 1, 1984.

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

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-20, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.2, 57-40.2-05, 57-40.2-06, 57-40.2-13

81-04.1-04-40. Rentals and rental agencies.

The lease or rental of tangible personal property is subject to sales tax based on the periodic payments as they are made unless the retailer has paid sales or use tax on its purchase of the tangible personal property. Sales tax is applied based on where the lease or rental equipment will be located in the state.

Examples of lease or rental transaction include:

1. A customer picks up lease or rental equipment for the day from a rental business. State and local sales tax will apply to the lease or rental charge based upon the location of the rental business.
2. A customer has lease or rental equipment delivered to the customer's location for the day. State and local sales tax will apply to the lease or rental charge based upon the location of the customer.
3. A customer enters into a six-month lease of equipment with lease payments due monthly. The customer picks up the equipment at the lessor's business location in the state. Because the customer first takes possession of the equipment at the lessor's business location, the first lease payment is subject to sales and local sales tax based on the lessor's business location. Sales tax on subsequent lease payments will be due based on the location where the equipment is stored or used in this state. If stored or used outside this state, the subsequent lease payments applying to this period of time will not be taxable.

North Dakota sales tax law continues to provide an exemption from sales tax on lease or rental receipts for tangible personal property purchased for lease or rental when sales or use tax had been paid to North Dakota on the purchase price. To qualify for an exemption on periodic lease or rental payments, the retailer leasing or renting the tangible personal property shall disclose on an invoice, contract, lease agreement, or other supporting sales document provided to the customer that the retailer paid sales or use tax on the retailer's purchase price. Retailers that pay tax on the purchase price of lease or rental property are required to collect sales tax on a payment made to exercise a purchase option.

In a lease-purchase arrangement, sales tax must be charged on the rentals until the option is exercised. When the option is exercised, sales tax must be charged on any additional amount the purchaser must pay to complete the purchase.

An agent acting for an undisclosed principal and leasing tangible personal property to the public is the owner, and the rentals received are subject to sales tax. Tax applies to the full rental as long as the leased item is used within this state.

Persons engaged in the business of leasing or renting tangible personal property other than motor vehicles are retailers and subject to sales tax. Purchases by rental agencies of items to be leased or rented are purchases for resale and are not subject to sales tax. A certificate of resale must be presented to the seller for these purchases.

The term "sale" does not include sales or rentals of motor vehicles licensed by the director of the North Dakota department of transportation on which the motor vehicle excise tax has been paid to North Dakota.

When the sales tax rate changes during the term of an existing lease, the rate of tax to be charged on the remaining lease or rental payments will reflect the new rate of tax.

In a sale-leaseback arrangement, when a company purchases or owns tangible personal property on which applicable sales and use taxes were paid, and enters into a sale-leaseback arrangement with a financial business for the sale and leaseback of the same property, no sales tax shall apply to the

transfer of title to the business or subsequent lease to the company. The subsequent sale of the property by the financial business at the conclusion of the lease is subject to sales tax. "Leaseback" means a transaction involving the sale of property and the seller's simultaneous lease of the property from the purchaser.

History: Effective June 1, 1984; amended effective October 1, 1986; 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, 57-39.2-20

81-04.1-04-41. Telephone companies.

Repealed effective April 1, 1995.

81-04.1-04-41.1. Communication service.

1. The gross receipts from the sale of all communication services, including telecommunications services and ancillary services, provided in the state are subject to sales tax provided the communication service originates and terminates within the state's borders, regardless of where the billing for the service is made.
2. Taxable communication services include the following:
 - a. Telecommunications services;
 - b. Ancillary services; and
 - c. Access charges, including internet access charges billed to retail customers, unless otherwise prohibited by federal law.
3. Mobile telecommunications services. A mobile telecommunications company that provides communication services, as defined in North Dakota Century Code chapter 57-34.1, to retail consumers shall use the location of the customer's place of primary use for the purpose of determining whether tax is due on services charged to the customer. "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer and within the licensed service area of the home service provider.
4. Taxable communication services do not include:
 - a. Purchase of communication service from one communication provider to another, for resale to a retail consumer, provided a certificate of resale is provided to the seller by the purchaser;
 - b. Charges for interstate communication service;
 - c. Communication services to exempt entities;
 - d. Communication services to Indian retail consumers enrolled and living on an Indian reservation within this state; and
 - e. 911 emergency telephone charges.
5. In the case of a bundled transaction that includes telecommunications service, ancillary service, or internet access:

- a. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including nontax purposes.
 - b. The provisions of this rule shall apply unless otherwise prohibited by federal law.
6. Definitions. For the purposes of this section, the following definitions apply:
- a. "Ancillary service" means services that are associated with or incidental to the provisions of "telecommunications services", including "detailed telecommunications billing", "directory assistance", "vertical service", and "voice mail services".
 - b. "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone that accepts direct deposits of money to operate.
 - c. "Conference bridging service" means an "ancillary service" that links two or more participants in an audioconference or videoconference call and may include the provision of a telephone number. Conference bridging service does not include the "telecommunications services" used to reach the conference bridge.
 - d. "Detailed telecommunications billing service" means an "ancillary service" of separately stated information pertaining to individual calls on a customer's billing statement.
 - e. "Directory assistance" means an "ancillary service" of providing telephone number information or address information, or both.
 - f. "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.
 - g. "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia and United States territories or possessions.
 - h. "Interstate" means a telecommunications service that originates in one United States state, territory, or possession, and terminates in a different United States state, territory, or possession.
 - i. "Intrastate" means a telecommunications service that originates in one United States state or a United States territory or possession and terminates in the same United States state or United States territory or possession.
 - j. "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination points, or both, of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.
 - k. "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages or sounds, or both.
 - l. "Pay telephone service" means a telecommunications service provided through any pay telephone.

- m. "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid in advance, and that is sold in predetermined units of dollars of which the number declines with use in a known amount.
- n. "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.
- o. "Residential telecommunications service" means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution.
- p. "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The phrase "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing, without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value-added. "Telecommunications service" does not include:
 - (1) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when such purchaser's primary purpose for the underlying transaction is the processed data or information;
 - (2) Installation or maintenance of wiring or equipment on a customer's premises;
 - (3) Tangible personal property;
 - (4) Advertising, including directory advertising;
 - (5) Billing and collection services provided to third parties;
 - (6) Internet access service;
 - (7) Radio and television audio and video programming services, regardless of the medium, including the furnishing or transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include cable service, as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
 - (8) "Ancillary services" or digital products delivered electronically, including software, music, video, reading materials, or ring tones.
- q. "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to

act on the form, content, code, or protocol of the information or data, primarily for the purpose other than transmission, conveyance, or routing.

- r. "Vertical service" means an "ancillary service" that is offered in connection with one or more "telecommunications services", which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including "conference bridging services".
- s. "Voice mail service" means an "ancillary service" that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.
- t. "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.
- u. "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the federal communications commission.

History: Effective April 1, 1995; amended effective June 1, 2002; 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, 57-39.2-11, 57-39.2-19, 57-39.2-20

81-04.1-04-41.2. Communication equipment.

Tangible personal property used to provide a communication service by a communication service provider, but that is not sold, leased, or rented to a retail customer is taxable. Taxable charges include downpayments, commission charges, or other service or handling charges applied in conjunction with the sales, rental, or lease of tangible personal property.

Communication systems sold, leased, or rented to a retail customer may include both material and equipment that are installed, attached, or affixed to real property and material and equipment that remains tangible personal property. The material and equipment installed, attached, or affixed to real property is subject to sales or use tax based on the cost of the material and equipment to the installer.

A communication system that includes material and equipment installed, attached, or affixed to real property and material and equipment remaining tangible personal property must be separately stated on the billing. That portion of the billing representing the installation of material and equipment into real property is subject to sales or use tax based on the cost of the material and equipment and that portion remaining tangible personal property is subject to sales tax based on the selling price to the final consumer.

The purchase of telephone directories for distribution to subscribers is not for resale and sales tax applies at the time of purchase.

History: Effective April 1, 1995.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-19, 57-39.2-20

81-04.1-04-42. Signs - Sales, rental, and leasing.

If, as a condition of sale, the sign is physically attached by the seller to real property, the sale is not subject to tax. However, the seller must pay sales tax when purchasing materials to construct the sign. The lease or rental payments for use of any type of sign are subject to sales tax unless the sign is attached to real property.

Sales of small signs, desk signs, plaques, posters, magnetic signs, and similar products are subject to tax without a deduction for cost of material or labor.

When a painter paints a sign on the painter's own personal property and sells the finished product, it is subject to sales tax without any deduction for cost of material or labor.

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

81-04.1-04-43. School - Students - Fraternities and sororities.

Colleges, universities, or student fraternities or sororities serving meals to students other than members, for which separate charges are made, or operating canteens selling tangible personal property must collect and remit sales tax.

College and university food service operations which provide catering services are responsible for collecting and remitting sales tax on the gross receipts from catering activities.

Student fraternities and sororities are not political subdivisions or institutions of the state and are not exempt from sales tax on purchases of tangible personal property for their own use.

History: Effective June 1, 1984; amended effective March 1, 1988; July 1, 1989.

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, 57-39.2-04, 57-39.2-20

81-04.1-04-44. School - Students - Supplies.

The term "school supplies" means only those items purchased by a school for use by it in the classrooms, gymnasiums, athletic fields, and offices to conduct its programs and courses of study and in operating and maintaining the school plant. It does not include materials purchased to construct a school building or other buildings. School or athletic supplies sold directly to students by a retailer are not exempt from 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, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04

81-04.1-04-45. Transportation - Dining.

Sales of tangible personal property on railway trains, club cars, lounge cars, dining cars, or airlines operated in or through this state are taxable if ordered or delivered within the boundaries of this state.

Food, meals, or alcoholic beverages included in the ticket charge by an airline are not subject to sales tax. The airline may not purchase such food, meals, or alcoholic beverages for resale, and all such purchases which take place in this state 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, 57-39.2-03.2, 57-39.2-04