



# Guideline

## Alcohol Tax Domestic Distillery

*Cory Fong*  
*Tax Commissioner*

*May 2010*

North Dakota licensed domestic distilleries are subject to the provisions of Title 5 of the North Dakota Century Code (“N.D.C.C.”). Specifically, N.D.C.C. § 5-01-19 provides the licensing, operations, and North Dakota farm products utilization requirements for domestic distilleries licensed to operate in the state. The North Dakota Office of State Tax Commissioner (“Tax Commissioner”) is responsible for the administration of this and other state laws regulating domestic distilleries.

The following Guidelines provide direction for the business activities of domestic distilleries, including those which operate another business activity on the domestic distillery premises such as a restaurant or winery.

### **Domestic Distillery License, Renewal of License, and Sales and Use Tax Permit**

- A domestic distillery must apply for an annual manufacturing license from the Tax Commissioner in order to produce domestic distilled spirits and sell distilled spirits produced by the distillery. New and renewed licenses are effective from January 1st to December 31st of each calendar year.
  - The “Manufacturing License Application” is available on the Tax Commissioner’s web site at [www.nd.gov/tax/](http://www.nd.gov/tax/) under Alcohol/Forms.
  - The application must be accompanied by the annual license fee of \$100.00.
  - The completed application and license fee are due by January 1st each year.
  - Proof of registration with the U.S. Food & Drug Administration must be submitted with the application.
  - A copy of the Federal Registration and Basic Permit must be submitted with the application.
  - The licensed premises must be delineated by a diagram or blueprint that must be included with the license application or license renewal application.
    - If the premises also contain a domestic winery, that area must be delineated on the diagram.
- A domestic distillery must apply for and possess a valid North Dakota Sales and Use Tax Permit in order to sell distilled spirits produced by the distillery for sale at retail.
  - The Sales and Use Tax Permit application is available on the Tax Commissioner’s website at [www.nd.gov/tax/](http://www.nd.gov/tax/) under Sales and Use/Forms.
  - The permit remains in effect until revoked by the Tax Commissioner or withdrawn by the domestic distillery.

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- Retail licenses to sell or otherwise dispense alcoholic beverages are available from the North Dakota Attorney General, county, and city governmental agencies.

## Definitions Applicable to Domestic Distillery Operations

- N.D.C.C. § 5-01-01(7) defines “licensed premises” as “the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed.”
  - Each location of a domestic distillery under common ownership or with a common name is considered a separate “licensed premises.” The owner of more than one domestic distillery location must:
    - Apply for a separate annual license for each location;
    - Separately account for all activity at each location; and
    - Not commingle or move product between locations.
- N.D.C.C. § 5-01-01(5) defines “distilled spirits” as “any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.”
- For these Guidelines, “domestic distilled spirits” means distilled spirits produced and made available for sampling or sale by a domestic distillery licensed to operate in North Dakota and subject to the North Dakota farm products utilization requirement.

## Domestic Distillery Activities

- A domestic distillery license allows the domestic distillery to produce and sell domestic distilled spirits.
  - Only domestic distilled spirits produced by the distillery may be sampled and sold at retail by that distillery on distillery premises and at special events.
- N.D.C.C. § 5-01-19(2) provides that all sales of domestic distilled spirits to any other retail licensed premises in North Dakota must be made through a licensed North Dakota liquor wholesaler.
  - An exception exists for sales at a restaurant owned by the licensee located on property contiguous to the domestic distillery premises. A domestic distillery may obtain a domestic distillery license and a retailer license allowing the on-premises sale of alcoholic beverages at such a restaurant. Alcoholic beverages that may be offered for sale at the restaurant include:
    - Domestic distilled spirits;
    - Other alcoholic beverages manufactured by another licensed manufacturer contiguous to the distillery and under the same ownership as the distillery and restaurant; and
    - Alcoholic beverages purchased from a North Dakota wholesaler.
  - Another exception is that a domestic distillery may also sell distilled spirits to a domestic winery if the distilled spirits were produced from products provided to the domestic distillery by the domestic winery.

## A domestic distillery may:

- Sell its domestic distilled spirits at on sale or off sale, in retail lots, and not for resale.

- Sell or direct ship its domestic distilled spirits to persons inside or outside North Dakota in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of 25,000 gallons (measured in wine gallons) in a calendar year.
- Sell or direct ship bulk domestic distilled spirits to any person or entity inside or outside of North Dakota.
  - Domestic distilleries that sell or direct ship bulk domestic distilled spirits to another source must still comply with the North Dakota Domestic Distillery laws, particularly those requiring that a majority of North Dakota farm products be used in the domestic distilled spirits produced by that domestic distillery.
- Purchase distilled spirits in bulk from any person or entity inside or outside of North Dakota.
  - Domestic distilleries that purchase distilled spirits in bulk from another source must still comply with the state's Domestic Distillery laws, particularly those requiring that a majority of North Dakota farm products be used in the domestic distilled spirits produced by that domestic distillery.
- Dispense samples of domestic distilled spirits offered for sale by the domestic distillery.
  - The annual distilled spirits gallonage (measured in wine gallons) used for free samples may be deducted from the domestic distilled spirits on which tax is imposed under N.D.C.C. § 5-03-07 if complete records are maintained verifying the gallonage being claimed.
  - Samples of domestic distilled spirits sold by that distillery are subject to the tax imposed under N.D.C.C. § 5-03-07.
  - Domestic distilled spirits used for sampling (free and sold) must be accounted for separately.
  - Domestic distilled spirits samples (free and sold) may not be removed by consumers from the domestic distillery premises or special event location.

## **North Dakota Farm Products Utilization Requirement**

- N.D.C.C. § 5-01-19(1) provides that a majority of North Dakota farm products be used as ingredients for distilled spirits produced by a domestic distillery. This means at least 51% of the ingredients, excluding water, must be grown and produced in North Dakota.
  - The majority ingredient utilization requirement applies to the total volume of domestic distilled spirits produced by the domestic distillery.
    - Total volume means all domestic distilled spirits for sale or sampling purposes as a product of the distillery.
- A domestic distillery must keep detailed records of North Dakota farm products used to manufacture domestic distilled spirits to prove compliance with the majority ingredient utilization requirement. A record of where and when the ingredients were obtained, the seller, and the volume or weight of the ingredients must be maintained.
  - U.S. Food and Drug Administration Regulations may require ingredients obtained by the domestic distillery be assigned a tracking number which can be matched to records on file showing how much distilled spirits was produced with the ingredients, the date produced, and be traceable to actual distilled spirits bottles by the use of serial numbers or other tracking systems.

- If ingredients grown and produced outside North Dakota are added to distilled spirits made from North Dakota ingredients, records must show the volume attributable to both North Dakota and non-North Dakota ingredients. If such records are not kept, and production volumes cannot be determined, distilled spirits produced by the domestic distillery containing both North Dakota and non-North Dakota ingredients will not be counted toward the majority ingredient utilization requirement.
- Domestic distilled spirits sold or direct shipped in bulk to any person or entity inside or outside of North Dakota are subject to the majority ingredient utilization requirement.
- At year end, the domestic distillery must accurately determine, record, and report the volume of distilled spirits produced by that domestic distillery.

## Special Events Permits

- The Tax Commissioner may issue a special events permit to a domestic distillery.
  - Special events permits allow the domestic distillery to give free samples of its domestic distilled spirits and sell its domestic distilled spirits by the glass or in closed containers at designated trade shows, conventions, festivals, or similar events approved by the Tax Commissioner.
  - Special events permits may be issued for not more than twenty days per calendar year.
  - Special events permits are subject to local ordinance and restrictions.
  - The “Special Events Permit Application” is available on the Tax Commissioner’s web site at <http://www.nd.gov/tax/> under Alcohol/Forms.

## Tax Imposition, Reporting, and Remittance Requirements

- Domestic distilled spirits sold by the distillery are subject to the wholesalers tax provided in N.D.C.C. § 5-03-07.
  - Donated distilled spirits are considered sold and are taxable.
- Detailed records for all domestic distilled spirits sold by the domestic distillery must be maintained. These records must include domestic distilled spirits for samples or sale and distilled spirits sold at a winery or restaurant owned by the licensee of a domestic distillery.
- The following reports must be submitted in an electronic format approved by the Tax Commissioner. These reports are available on the Tax Commissioner’s web site at <http://www.nd.gov/tax/> under “Alcohol/Electronic Filing.”
  - Schedule A, Liquor Suppliers Monthly Report
    - Must be filed for any month in which sales of domestic distilled spirits were made to wholesalers.
    - Due on the last day of the month following the month of sale.
    - Electronic reports must be filed by the due date to be considered timely.
  - Schedule J, Domestic Distillery Annual Liquor Tax Report
    - Must be filed and wholesaler tax due paid on all domestic distilled spirits sold by the licensee at retail.
    - The report is due on January 15th of the year following the year sales were made.
    - Electronic reports, payment, and the payment voucher must be filed by the due date to be considered timely.

- When a report due date falls on a Saturday, Sunday, or legal holiday, the due date is extended to the next working day.
- Domestic distilleries are subject to the requirements of N.D.C.C. § 5-03-06 which imposes penalty and interest for improper or late returns, and penalty for late payment of tax.
  - A penalty of \$100.00 a day is imposed for each day a report is delinquent.
  - A penalty of five percent of the total tax due or \$5.00, whichever is greater, is imposed for failure to pay the tax on or before the date payment is due.
  - Interest of one percent of the total tax due per month or fraction of a month of delay accrues and is due, except for the first month after the return or tax became due.
- State and, if applicable, local sales tax applied by a domestic distillery to sales at retail of domestic distilled spirits must be reported and remitted to the Tax Commissioner.
  - A domestic distillery must report sales and use tax activity using the report format available on the Tax Commissioner's web site located at <http://www.nd.gov/tax/> under "Sales and Use/Forms/Form - ST Sales and Use Tax Return."
  - Alternatively, a domestic distillery may electronically file their returns following the instructions located at <http://www.nd.gov/tax/> under "Sales and Use/Electronic Filing."

## **Audit, Suspension, and Revocation of Domestic Distillery License**

- N.D.C.C. § 5-03-06 provides that the Tax Commissioner may audit the records and premises of a domestic distillery to determine if the licensee has fully complied with all of the statutes and rules pertaining to domestic distilleries.
- A domestic distillery may have its license suspended or revoked for a violation of any of the provisions of the state alcoholic beverages laws in Title 5, N.D.C.C.
  - The Tax Commissioner may not suspend or revoke a domestic distillery's license or deny a renewal prior to conducting a hearing.
  - The hearing must be in accordance with the Administrative Agencies Practices Act, N.D.C.C. chapter 28-32.
  - The provisions of the Taxpayer Bill of Rights apply to determinations made by the Tax Commissioner.