



Guideline

Sales Tax Soft Drink Bottlers

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Tax Commissioner

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Sales Made by a Soft Drink Bottling Company

Sales of carbonated soft drinks and other generally recognized soft drinks (including fruit drinks which do not contain at least 70% pure fruit juice, powdered fruit juice mixes, and bottled water sold in containers of less than one gallon) are subject to sales tax. These taxable sales include vending machine sales, concession stand sales, and sales made by grocery or other retail stores.

A significant amount of soft drink sales are made through vending machines. Typically, these sales are made through one of three methods: through full service vending machines owned by soft drink bottlers, through vending machines rented out by soft drink bottlers or through privately owned vending machines.

1. **Full-service Vending Machines:** In these instances, the bottler owns the vending equipment and is responsible for maintenance of the machine and collection of sales receipts. The bottling company is responsible for sales tax on the gross sales receipts from a full-time service machine, regardless of where the machine is located.
2. **Rental Vending Machines:** In these instances, the vending machine is rented from a bottling company by the seller of the soft drinks. The renter is responsible for maintaining the machine and for collection of the sales receipt.

The bottling company should sell soft drinks to the renter without charging sales tax (after obtaining a resale certificate) since the renter is responsible for tax on the retail selling price of the soft drinks. Rental charges for the vending machine are not taxable provided the bottling company has paid sales or use tax on the purchase price of the vending machine.

To be certain that all parties understand the tax implications of a rental vending machine, the Office of State Tax Commissioner suggests that the bottling company provide a written agreement to the rental of each vending machine specifying that the renter is responsible for the machine and that the renter is responsible for sales tax on the gross receipts.

3. **Privately Owned Vending Machines:** In many cases, soft drink bottling companies sell soft drinks to people or companies who will resell the product through their own vending machines. Typically, these people or companies have an active North Dakota sales and use tax permit and are able to supply the bottling company with a resale certificate, thereby exempting the sale by the bottling company from sales tax. The retail seller of the soft drinks assumes responsibility for payment of North Dakota sales tax on the gross receipts.

Occasionally, bottlers will sell soft drinks to someone who intends to resell the product but who does not hold an active North Dakota sales and use tax permit. Examples of such businesses include legal offices, medical clinics, banks, etc. These companies are not primarily engaged in retail sales activity and often do not hold a North Dakota sales and use tax permit. Sales by a soft drink bottler to customers without sales and use tax permits or exemption certificates are subject to state and local sales tax. This is always true, whether or not the product will be "resold" by the purchaser. Businesses without tax permits may not make tax exempt purchases for resale.

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Vending Machine Receipts Include Sales Tax

Sales tax is included in the gross receipts from coin-operated vending machines and must be deducted before calculating gross receipts subject to sales tax (taxable sales). Taxable sales are calculated as follows:

Taxable Sales = Gross Receipts ÷ 105% (1.05).

The person responsible for maintaining a vending machine including collecting the sales receipts, is the one responsible for sales tax on the receipts from the machine. When vending machine receipts are shared between two parties, sales tax should be deducted from the gross receipts before calculating the percentage of receipts which go to each party.

Purchases by Soft Drink Bottlers

Soft drink bottlers make purchases of many items used to manufacture soft drink beverages. Some of these items become part of the finished product and may be purchased tax free under an exemption for materials used for processing. For example, raw materials such as syrup, sugar, and coloring become part of a finished product which is sold ultimately at retail and purchases of these items are not subject to sales or use tax. Containers, which are sold along with soft drinks, such as bottles, cans, cardboard cartons, bottle caps, and paper cups are also exempt from sales or use tax when purchased by the bottling company.

Containers used for the purpose of delivering tangible personal property to customers and which may be returned to the bottler are taxable when purchased by the bottler. The bottler consumes or uses the containers in company operations and the sale of such containers to the bottler is subject to tax. A deposit may be or required of the customer to secure the return of the container is not a retail sale, and is not subject to sales tax.

Items which are used to manufacture soft drinks but which do not become a part of the finished product are subject to tax. Examples of some of these taxable items are listed below:

Caustic soda or other washing powders used to clean and sterilize bottles

Chlorine and other chemicals used to purify water

Shells and cases

Concession Sales

Bottling company sales through concession stands at ballparks, athletic events, theaters, etc., are subject to sales tax. This includes sales of soft drinks, candy, hot dogs, and similar items.

If a bottling company has a portable concession stand which it rents to groups for their own use, the bottling company is not responsible for sales tax on the sales receipts. Instead, the group conducting the sales activity is responsible for the tax.

Rental receipts received by a soft drink bottling company from a group which rents a concession stand are not taxable since the concession stand is owned and primarily used by the bottler and tax must be paid on the purchase of the portable concession stand at the time of acquisition.

Sales of Vending Machines

A soft drink vending machine is generally considered to be taxable when purchased by a soft drink bottler since most of these machines remain the property of the bottling company and are simply placed on location either as full-service machines or as rental machines. However, there may be bottlers who make a practice of selling soft drink vending machines to their customers and if the bottler is buying vending machines strictly for the purpose of reselling them, the bottler should buy them without paying sales tax and apply sales tax to the selling price of the machine.