

**CHAPTER SEVENTEEN  
SALES AND USE TAX**

ARTICLE 1 – SALES, USE, AND GROSS RECEIPTS TAX (Page 200)

ARTICLE 2 – SALES, USE, AND GROSS RECEIPTS TAX FOR SWIMMING POOL CONSTRUCTION  
(Page 203)

**CHAPTER SEVENTEEN  
SALES AND USE TAX**

AN ORDINANCE TO ESTABLISH AND REGULATE A CITY SALES, USE, AND GROSS RECEIPTS TAX UNDER THE HOME RULE CHARTER OF THE CITY OF OAKES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OAKES, DICKEY COUNTY, NORTH DAKOTA:

**ARTICLE 1 - SALES, USE, AND GROSS RECEIPTS TAX****17-0101 Definitions.**

All terms defined in chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2 of the North Dakota Century Code (N.D.C.C.), including any future amendments, are adopted by reference. All references to the N.D.C.C. include amendments adopted by the North Dakota Legislative Assembly.

**17-0102 Collection and Administration.**

Where not in conflict with the provisions of this Ordinance, the provisions of N.D.C.C. chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2, and all administrative rules adopted by the Tax Commissioner, pertaining to the collection and administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund, penalty, interest or credit, govern the administration by the North Dakota Office of State Tax Commissioner (hereinafter "Tax Commissioner") of the taxes imposed by this Ordinance.

**17-0103 Sales Tax Imposed.**

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided by this Ordinance, or the sales and use tax laws of the State of North Dakota, a tax of one percent (1%) is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property, within the corporate limits of the of the city of Oakes, North Dakota.

**17-0104 Use Tax Imposed.**

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, or the sales and use tax laws of the State of North Dakota, an excise tax is imposed upon the storage, use, or consumption within the corporate limits of the city of Oakes, North Dakota of tangible personal property purchased at retail for storage, use, or consumption in this city, at the rate of one percent (1%) of the purchase price of the property. An excise tax is imposed on the storage, use, or consumption within the corporate limits of the city of Oakes, North Dakota of tangible personal property not originally purchased for storage, use, or consumption in this city at the rate of one percent (1%) of the fair market value of the property at the time it was brought into this city.

**17-0105 Gross Receipts of Alcoholic Beverages.**

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of one percent (1%) is imposed upon all gross receipts from the sale of alcoholic beverages within the city. A person who

receives alcoholic beverages for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of those alcoholic beverages at the rate of one percent (1%).

**17-0106 Gross Receipts of New Farm Machinery and New Farm Irrigation Equipment.**

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of one percent (1%) is imposed upon all gross receipts from the sale of new farm machinery and new farm irrigation equipment within the city. A person who receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of that machinery and/or equipment at the rate of one percent (1%).

**17-0107 Exemptions.**

All sales, storage, use, or consumption of tangible personal property which are exempt from imposition and computation of the sales or use tax of the state of North Dakota are specifically exempt from the provisions of this article.

In addition to the exemptions provided by state law, this Ordinance provides exemptions from imposition and computation of the city sales or use tax for sales of the following:

- a. All of those sales and uses and items exempted by section 57-40.2-04.1 of the North Dakota Century Code, or any amendments thereto.

**17-0108 Maximum Tax Imposed.**

Any patron or user paying a tax imposed by this Ordinance in excess of \$25.00 upon any single transaction of one or more items may obtain a refund of the excess tax payment by filing a request for refund upon the forms provided by the Tax Commissioner.

**17-0109 Contract with Tax Commissioner.**

The city of Oakes City Auditor is hereby authorized to contract with the Tax Commissioner for administration and collection of taxes imposed by this Ordinance. The City Auditor has all powers granted to the Tax Commissioner and in the absence of a valid contract with the Tax Commissioner or failure of the Tax Commissioner to perform the delegated duties, shall perform these duties in place of the Tax Commissioner.

**17-0110 Dedication of Tax Proceeds.**

All fees, taxes, penalties and other charges imposed and collected under the City Charter, less administrative costs, shall be dedicated and utilized as follows:

- a. Fifty percent (50%) of sales and use tax proceeds collected to a dedicated economic development of the City of Oakes, Dickey County, North Dakota for purposes of job creation, job retention, business development, industrial development and maintenance of business and trade activities and facilities.
- b. Fifty percent (50%) of sales and use tax proceeds collected to be dedicated for other uses the City Council may from time to time determine, which may include Ambulance, Park District, Historical Society and any other use in furtherance of economic development or other public uses including infrastructure and property tax relief.

The City Council, of the City of Oakes, North Dakota to make all decisions regarding the dedication of funds from sales tax and use tax revenues.

**17-0111 Compensation**

City sales, use, and gross receipts tax permit holders are allowed to retain a portion of tax collected under this ordinance to help recover administrative expenses. This compensation shall equal three percent (3%) of the city tax due; however, the deduction is limited to \$250.00 per quarter. A tax return must be filed and paid in full by the scheduled due date or the compensation will be disallowed and the tax obligation will be subject to penalty and interest.

**17-0112 Effective Date**

This Ordinance shall be in full force and effect only after approval by majority of the qualified electors of the City of Oakes voting at a special city election and subsequent approval by at least a majority vote of the City Council of the City of Oakes, North Dakota, and shall then be effective on, from and after the 1<sup>st</sup> day of October, 2008.

**17-0113 Termination Date**

The sales and use tax imposed by this article has by a majority of the qualified electors of the City of Oakes voted to extend the sales and use tax indefinitely, unless referred by the citizens of Oakes, North Dakota.

This ordinance shall be in full force and effect from and after its final passage, approval and publication.

Election: June 10, 2008

Results: Yes votes- 249 No votes- 162

First Reading: June 24, 2008

Second Reading: July 7, 2008

Effective Date: July 24, 2008

**ARTICLE 2 - SALES, USE, AND GROSS RECEIPTS TAX FOR SWIMMING POOL CONSTRUCTION****17-0201 Definitions.**

All terms defined in Chapter 57-39.2, N.D.C.C. and Chapter 57-40.2, N.D.C.C., including all future amendments, are adopted by reference.

**17-0202. Sales Tax Imposed.**

Except as otherwise provided in this article, a tax of one-half (1/2 %) is imposed upon the gross receipt of retailers from all retail sales within the corporate limits of the City of Oakes, North Dakota, of the following:

1. Tangible personal property, consisting of goods, wares or merchandise.
2. The furnishing of service of gas, communication services or steam other than steam used for processing agricultural products.
3. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in amusement, entertainment, or athletic activity; but not including the playing of any machine for amusement or entertainment in response to the use of a coin.
4. Magazines and other periodicals.
5. The leasing or renting of a hotel or motel room or tourist court accommodations.
6. The leasing or renting of tangible personal property, the transfer of title to which has not been subjected to a retail sales tax under this article.
7. Sales of alcoholic beverages and tobacco products as defined in Section 57-39.2-03.2 N.D.C.C.
8. Sales of new farm machinery and new irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of new farm machinery and new irrigation equipment used exclusively for agricultural purposes within the State of North Dakota to consumers or users.

**17-0203. Use Tax Imposed.**

Except as otherwise provided in this article, an excise tax of one-half percent (1/2 %) is imposed on the storage, use or consumption in the City of Oakes on:

1. The purchase price of tangible personal property purchased at retail for storage, use or consumption within the city.
2. The fair market value of tangible personal property that was not originally purchased for storage, use or consumption in the city, at the time which it is brought into this city.
3. Alcoholic beverages and tobacco products which are stored, used or consumed in this city, as provided in Section 57-39.2-03.2, N.D.C.C.
4. The purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in Section 57-40.2-0.3, N.D.C.C. This tax applies only to bids submitted on or after October 1, 2003.

**17-0204. Exemptions.**

All sales, storage, use or consumption of tangible personal property that are exempt from imposition and computation of the sales or use tax of the State of North Dakota are specifically exempt from the provisions of this article.

**17-0205. Maximum Tax Imposed.**

No single transaction involving one or more items is subject to a total maximum tax in excess of Twenty-five and No/100 dollars (\$25.00) for all city taxes imposed by the City of Oakes.

**17-0206. Collection and Administration.**

The Tax Commissioner and the City Auditor for the City of Oakes shall have the powers enumerated in the provisions of Chapter 57-39.2, N.D.C.C. and Chapter 57-40.2, N.D.C.C., relating to the collection and administration of the state sales and use tax, including all administrative rules adopted by the Tax Commissioner. The Tax Commissioner is authorized to establish rate tables integrating the tax imposed by this chapter with other state, county and city taxes.

**17-0207. Contract with State Tax Commissioner.**

The City Auditor for the City of Oakes is hereby authorized to contract with the Tax Commissioner for the administration and collection of taxes imposed by the chapter. The City Auditor has all powers granted the Commissioner and, in the absence of a valid contract with the Commissioner or failure of the Commissioner to perform the delegated duties, shall perform these duties in place of the Commissioner.

**17-0208. Corporate Officer Liability.**

Officers of any corporation or limited liability company required to remit taxes imposed by this article are personally liable for the failure of the corporation or the limited liability company to file required returns or remit required payments. The dissolution of a corporation or limited liability company shall not discharge an officer's liability for a prior failure of the corporation or limited liability company to make a return or remit the tax due. The tax, penalty and interest due may be assessed and collected pursuant to the provisions adopted by this article. If the corporate officers, governors or managers elect not to be personally liable for the failure to file the required returns, or to pay the tax due, the corporation or limited liability company must be required to make a cash deposit, or post with the North Dakota Tax Commissioner, a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond or undertaking provided for in this section must be in an amount equal to the estimated annual sales tax liability of the corporation or limited liability company.

**17.0209. Application of Tax Proceeds by City Council.**

All fees, taxes, penalties and other charges imposed and collected under this ordinance, including administrative costs, shall be dedicated and utilized as follows:

a. The additional one-half (1/2 %) percent sales and use tax proceeds collected are to be dedicated for construction of a new swimming pool within the City of Oakes, ND. The original one (1%) percent sales tax proceeds are dedicated as follows: 50% to Job Development Authority and 50% to be determined by the Oakes City Council.

b. The estimated fourth quarter sales tax proceeds for 2003 shall be allocated as follows: For the one (1%) percent sales tax, an amount of \$32, 761.00, with the balance of the tax proceeds collected allocated to the one-half (1/2 %) percent sales tax ordinance.

c. Thereafter, beginning the first quarter of 2004, the total tax proceeds collected shall be divided as follows: The one (1%) percent sales tax ordinance is to receive two-

thirds (2/3) of the total sales tax proceeds collected. The one-half (1/2 %) percent sales tax ordinance is to receive one-third (1/3) of the total sales tax proceeds collected.

**17-0210. Saving Clause.**

Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be affected hereby.

**17-0211. Sales Tax To Be Added To Purchase Price and Be A Debt-Sales Tax on Alcoholic Beverages May Be Included In Purchase Price.**

1. Retailers shall add the tax imposed under this article, or the average equivalent thereof, to the sale price or charge, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the retailer until paid, and shall be recoverable at law in the same manner as other debts. In adding such tax to the price or charge.

**17-0212. Deduction To Reimburse Retailer For Administrative Expenses From Collection Of Sales and Use Taxes.**

1. A retailer who pays the estimated sales tax or use tax due within the same limitations prescribed may deduct and retain a total of three percent (3.0%) of the city sales tax due, or use tax up to \$250.00 per quarter maximum on all city sales taxed imposed by the City of Oakes, ND.

2. The aggregate of deduction allowed by this section and section 17-0112 may not exceed three percent (3.0%) up to \$250.00 per quarter.

3. The deduction allowed retailers by this section is to reimburse retailers for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the auditor and commissioner upon request.

**17-0213. Penalties-Offenses-Sales Tax.**

1. a. If any person fails to file a return or corrected return or to pay any tax within the time required by this chapter or, if upon audit, is found to owe additional tax, the person is subject to interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due.

b. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to penalties as follows:

(1) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to file a return, on or before the prescribed or extended due date, a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, must be added if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.

(2) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to pay the amount shown as tax due on any return, filed on or before the prescribed or extended due date, a penalty of five percent of the tax due, or five dollars, whichever is greater, must be added to the tax.

(3) If upon audit of a taxpayer's return an additional tax is found to be due, penalty as prescribed in subdivision a or b must be added to the tax.

(4) The commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of the penalty and interest.

The penalty and interest must be paid to the commissioner and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.

2. Any person who shall sell tangible personal property, tickets or admissions to places of amusement, and athletic events, or steam, gas and communication service at retail in this state after that person's permit shall have been revoked, or without procuring a permit within sixty days after the effective date of this chapter, as provided in section 57-39.2-14, or who shall violate the provisions of section 57-39.2-09, and the officers of any corporation or the managers of any limited liability company who shall so act, shall be guilty of a class A misdemeanor.

3. The certificate of the commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima facie evidence thereof.

4. Any person failing to comply with any of the provisions of this chapter, or failing to remit within the time herein provided to the state the tax due on any sale or purchase of tangible personal property subject to said sales tax, shall be guilty of a class A misdemeanor.

#### **17-0214. Disposition of Excess Tax Collections.**

Whenever a retailer has collected a sales tax from a customer in excess of the amount prescribed or due under this article, and if the retailer does not refund the excessive tax collected to the customer, the amount so collected by the retailer shall be paid by the retailer to the auditor, or as the case may be, the commissioner, in the quarterly period in which the excessive collection occurred. If the excessive collection is subsequently refunded by the retailer to the customer, the retailer may deduct, as a credit against said retailer's sales tax liability on the next return that said retailer is required to file, the amount of sales tax due to the City of Oakes, North Dakota, by the retailer in the next regular return, such excess shall be allowed as a credit against future sales tax due from the retailer because of discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer. The provisions of North Dakota Century Code section 57-39.2-27 shall be included in this section as if there were fully set forth herein, or any amendments thereto.

#### **17-0215. Permits.**

No person shall engage in or transact business as a retailer within the City of Oakes, North Dakota unless a North Dakota state permit or permits shall have been issued to said person pursuant to North Dakota Century Code section 57-39.2-14. The City hereby adopts such state permit(s) as the City permit(s) and, as such, no separate City permit(s) shall be required. All matter relating to said permit(s), as enumerated or set forth in section 57-39.2-14, North Dakota Century Code section 57-39.2-14 are included in this section as if they were fully set forth herein, or any amendments thereto. This section shall apply to the use tax imposed herein.

**17-0216. Effective Date.**

This article shall be in full force and effect only after approval by majority of the qualified electors of the City of Oakes voting at a special city election and subsequent approval by at least a majority vote of the City Council of the City of Oakes, North Dakota, and shall then be effective on, from and after the 1<sup>st</sup> day of October, 2003.

**17-0216.(B) Termination.**

The sales and use tax imposed by this article shall terminate on the 30<sup>th</sup> day of September, 2023, unless prior to that date a majority of the qualified electors of the City of Oakes vote to extend the sales and use tax indefinitely or to a certain time.

**17-0217. Use Tax on Contractors.**

The use tax on contractors, for purposes of this article, shall be determined and administered according to the provisions of section 57-40.2-03.3 if the North Dakota Century Code, or any amendments thereto. The rate of any use tax shall be as provided in section 17-02-02.

**17-0218. Unlawful Advertising.**

It shall be unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this article will be assumed or absorbed by the retailer, or that it will not be added to the selling price of the property sold, or if added, that is or any part thereof will be refunded.

**17.0219. Records Required.**

Each retailer required or authorized to collect the tax imposed by this article, and each person using in the City of Oakes, North Dakota, tangible personal property purchased shall keep such records and other documentation and shall preserve such records and documentation and shall authorize inspection of the same and shall allow examination of the books, papers, records and equipment and investigation of the character of the business for verification purposed by the auditor, or where applicable, the commissioner or their duly authorized agents, in the manner and as is required pursuant to Section 57-40.2-09 of the North Dakota Century Code, or any amendments thereto.

**17.0220. Revocation of Permit and Authority To Do Business.**

The provisions of section 57-40.2-10, North Dakota Century Code, or any amendments thereto are hereby adopted and incorporated by reference in this section as if fully set forth herein, concerning any failure to comply with any of the provision of this article, or with any order or regulation of the auditor or, where applicable, the commissioner, by any retailer maintaining a place of business in this State or authorized to collect the tax imposed by this article.

**17.0221. Articles Taxed in Other Cities.**

If any article or tangible personal property has been subjected already to a tax by any other city or this state or another state in respect to its sale or use in an amount

less than the tax imposed by this article, the provisions of this article shall apply, but at a rate measured by the difference only between the rate fixed in this article and the rate by which the previous tax upon the sale of use was computed. If the tax imposed in such other city of this state or another state is in the same or more, then no tax shall be due on such article. The provisions of this section shall apply only if such other city of this state or another state allows a tax credit with respect to the retail sale and use taxes imposed by the City of Oakes, North Dakota, which is substantially similar in effect to the credit allowed by this section.

#### **17.0222. Unlawful Sale or Soliciting.**

No agent, canvasser or employee or any retailer, not authorized by permit from the auditor, or where applicable, the commissioner, shall collect the tax as prescribed by this article, nor sell, solicit orders for, nor deliver, any tangible personal property in the City of Oakes, North Dakota.

#### **17.0223. Contractor's Performance Bonds For Payment of Use Tax.**

The provisions of section 57-40.2-14 of the North Dakota Century Code, or any amendments thereto, are hereby adopted and incorporated in this section by reference as if fully set forth herein. The additional obligation of the surety company, whenever any contractor or subcontractor enters into any contract for the erection of buildings or the alteration, improvement or repair of real property in the City of Oakes, North Dakota, shall be an additional obligation upon said contractor or subcontractor shall promptly pay all use taxes which may accrue to the City of Oakes, North Dakota under the provisions of this article.

#### **17-0224. Penalties-Offenses-Regarding Use Tax.**

1. Any person failing to file a return or corrected return or to pay any tax imposed pursuant to this article, within the time required by this article, or more delinquent original returns or payments, for any such violations as specified herein, said person is subject to the penalties and interest as established and prescribed for each such enumerated violation as is set forth in North Dakota Century Code section 57-40.2-15(1) or any amendments thereto. The auditor or, if applicable, the commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of the penalty and interest. The penalty and interest must be paid to the auditor or, if applicable, the commissioner and disposed of in the same manner as other receipts under this article. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this article.

2. The certificate of the auditor, or where applicable, the commissioner, to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this article shall be prima facie evidence thereof.

3. Any person failing to comply with any of the provisions of this article or failing to remit within the time herein provided the tax due on any sale or purchase of tangible personal property subject to the tax imposed under the provisions of this article shall, in addition to the penalties imposed hereinabove or hereafter, be guilty of a Class B Misdemeanor and shall be punished by a fine and/or imprisonment upon conviction in the municipal court, said fine not to exceed five hundred dollars (\$500.00) or imprisonment no to exceed thirty (30) days, or both such fine and imprisonment.

4. Except as otherwise provided in subsection three (3) herein, the provisions of North Dakota Century Code 57-40.2-15 shall be included in and supersede this section as if they were fully set forth herein, or any amendments thereto.

**17-0225. Lien of Tax Collection-Action Authorized**

The provisions of North Dakota Century Code 57-40.2-16, or any amendments thereto, are specifically adopted and incorporated by reference in this section as if fully set forth herein. A reference or authority granted in said section to the commissioner or the attorney general shall also apply to the auditor and city attorney imposed by this article or for any penalties in respect thereto who refuses or neglects to pay the same amount, including any interest, penalty or addition to such tax together with the costs that may accrue in addition thereto, shall be a lien in favor of the City of Oakes, upon all property and rights to property, whether real or personal, belonging to said taxpayer or deceased taxpayer as provided in said 57-40.2-16 and may be enforced pursuant to the provisions of said section. The foregoing remedies shall be cumulative and no action taken shall be construed to be an election of the part of the City of Oakes, North Dakota, to pursue any remedy to the exclusion of any other remedy.

This ordinance shall be in full force and effect from and after its final passage, approval and publication.

Election: June 17, 2003

Results: Yes votes- 493 No votes- 221

Effective Date: October 1, 2003