

**SECTION 5**  
**LEASED AND RENTED VEHICLES**

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### **LEASED AND RENTED VEHICLES**

#### **TITLING LEASED/RENTED MOTOR VEHICLES**

A. Definitions:

1. "Leased vehicle," A motor vehicle titled in the name of a leasing company or the individual leasing the motor vehicle, which is leased for a period of more than 28 days.
2. "Rental vehicle," A motor vehicle titled in the name of a rental company licensed under 10-45 (sales tax license) which is rented for 28 days or less; or a trailer which is titled in the name of a rental company licensed under chapter 10-45 (sales tax license) and that has an un-laded weight of 9,000 pounds or more, that is rented for 6 months or less and that is not consecutively rented to the same person for more than one 6-month period.

B. **CLOSED LEASE (TERMS OF THE LEASE ARE KNOWN AT THE TIME THE CONTRACT IS EXECUTED).** Vehicles with a gross vehicle weight rating of less than 16,000 pounds and fertilizer vehicles, leased for more than 28 days. (Effective July 1, 2006, motorcycles are included in the lease law.)

1. The lessor must title and license the vehicle. In the case of a leasing company within a dealership, the leasing company name must be separate and distinct from that of the dealership.
2. The lessor and the lessee's name must appear on the title.
3. Under plate with owner, either the lessor or the lessee is the owner of the plates and upon sale or transfer of the vehicle can remove the plates, which can then be attached to a newly acquired vehicle upon title and registration of the newly acquired vehicle through the county treasurer.
  - a. The South Dakota driver's license or social security number of each lessee must be given. If the lessee is a company, the FEIN is required. If the company is a sole proprietorship, the lessee's South Dakota driver's license number or social

security number may be used. The FEIN of the lessor is required.

3. The lessor or the lessee must pay the 4% excise tax on the purchase price of the vehicle (purchase price as defined in 3a).
  - a. Purchase price on a leased vehicle that is a closed lease (terms of the lease are known at the time the contract is executed) is the total consideration whether received in money or otherwise. Total consideration is: all lease payments, including cash, rebates, the net trade-in, extended warranties, administrative fees, acquisition fees, or any other fees assessed on the purchase of the vehicle. Total consideration does not include: title fees, registration fees, vehicle excise tax, federal excise tax attributable to the sale of the vehicle to the owner or to the lease of the vehicle by the owner, insurance, and refundable deposits.
  - b. Calculation of the tax shall be done on the tax worksheet entitled South Dakota Closed Lease Tax Worksheet (DMV/CLTW). A copy of the worksheet must accompany the application for title and registration (MV608). The signature area must be completed on the worksheet or the purchase price must be certified on the application for title and registration (MV608).
  - c. A copy of the lease agreement is required.
4. If the term of the lease is extended or if the vehicle is leased for an additional period of time; excise tax is assessed on the additional lease payments and must be paid by the lessor.
  - a. If additional consideration is paid during the course of the lease or upon termination of the lease, the excise tax is assessed on such amount and is to be paid by the lessor.

Additional consideration does not include a late fee that a lessor may assess a lessee on a late lease payment.
  - b. The South Dakota tax worksheet entitled, South Dakota Extended or Additional Consideration Lease Tax Worksheet (DMV/LTW.1) is to be used to remit the additional tax.

- c. The title does not have to be submitted but can be if the lessor wants the additional tax to be shown on the title. If the title is submitted a \$5 title fee is required.
5. If the lessee buys the vehicle at the end of the lease, excise tax is assessed on the purchase price of the vehicle at the end of the lease.
  - a. The lessor/dealer must assign the title to the lessee and submit the assigned title to the lessee's county treasurer, along with an application certifying the purchase price of the vehicle and the required fees and taxes.
  - b. A lessee who entered into a lease prior to July 1, 2000, and who paid excise tax based on the purchase price of the vehicle, including the value of the leased vehicle at the end of the lease shall receive credit for tax previously paid if the lessee purchases the vehicle at the end of the lease.
  - c. If a lease is terminated prior to the termination date contained in the lease agreement, no refund is given for tax previously paid.
  - d. If prior to the expiration of a lease, the leased vehicle is destroyed by fire, accident or vandalism to the extent that it constitutes a total loss of the vehicle, credit for the lease tax paid for the period remaining on the previous lease is allowed if another vehicle is substituted under the original lease or a new lease is executed with the intent to replace the vehicle subject to the previous lease. The new lease or substituted vehicle under the original lease must be executed by the same lessor and lessee for lease of a vehicle of the same or similar make, model, year and options as the vehicle subject to the previous lease. The lease must be for the remaining lease period as the previous lease, for the same lease price and under the same lease terms as the previous lease.
6. Leased vehicles entering the state under a lease are subject to tax on the date the vehicle enters this state for the remaining months in the lease period.

- a. Credit is given for tax that has been paid up-front to another state. The applicant must submit proof of payment of the tax. The lessee and the lessor must remain the same. Calculation of the tax should be done on the South Dakota Closed Lease Tax Worksheet (DMV/CTW). A copy of the lease is required. [No credit is given if payment of the tax on a lease was being made to another state on a monthly basis.]
    - b. In the event tax was being paid by the lessee to another state on a monthly basis, the county treasurer shall require the leasing company making application for title and license to submit a completed application for title and registration, a South Dakota Lease Tax Worksheet For Out-Of-State Vehicle Lease (DMV/OSVLW), and a copy of the lease agreement.
  7. When entering a lease transaction on the computer system that falls under Section 6A above, in which more tax has been paid to another state than is due South Dakota, a tax code 45 should be used. The purchase price, as indicated on the worksheet is entered, the amount of tax paid to the other state is shown as a credit, and no amount is entered in the tax amount area.
- C. OPEN-END LEASE (TERMS OF THE LEASE ARE NOT CERTAIN AT THE TIME THE LEASE IS EXECUTED OR THE LEASE IS OPEN-ENDED). Vehicles with a gross vehicle weight rating of less than 16,000 pounds and fertilizer vehicles, leased for more than 28 days. (Effective July 1, 2006, motorcycles are included in the lease law.)
1. The lessor must title and license the vehicle. In the case of a leasing company within a dealership, the leasing company name must be separate and distinct from that of the dealership.
  2. The lessor and the lessee's name must appear on the title.
    - a. The South Dakota driver's license or social security number of each lessee must be given. If the lessee is a company, the FEIN is required. If the company is a sole proprietorship, the lessee's South Dakota driver's license number or social security number may be used. The FEIN, South Dakota driver's license number or social security of the lessor is required.

3. The lessor or the lessee must pay the 4% excise tax on the purchase price of the vehicle (purchase price as defined in 3a).
    - a. Purchase price on a leased vehicle in which the terms of the lease are either not certain at the time the lease contract is executed or the lease is open-ended, shall be the total consideration whether received in money or otherwise. Total consideration includes the purchase price of the vehicle, plus cash, rebates, net trade-in, extended warranties, administrative fees, acquisition fees, or any other fees assessed on the purchase of the vehicle. Total consideration does not include title fees, registration fees, excise tax, federal excise tax, insurance, and refundable deposits.
    - b. Credit is given for tax previously paid to another state. The applicant must submit proof of payment of the tax. The lessor and the lessee must remain the same.
    - c. No tax worksheet is required on an open-end lease. The purchase price of the vehicle is certified by the dealer on the application for title (MV608) or a purchase order must be submitted to substantiate the vehicles' purchase price.
  4. When entering a lease transaction that falls under Section C above on the computer system, a tax code 46 should be used.
- D. Vehicles with a gross vehicle weight rating of 16,000 pounds or more (excluding fertilizer vehicles...see Section B), leased for more than 28 days.
1. The lessor must title and license the vehicle. In the case of a leasing company within a dealership, the leasing company name must be separate and distinct from that of the dealership.
  2. The lessor and the lessee's name must appear on the title.
    - a. The South Dakota driver's license or social security number of each lessee must be given. If the lessee is a company, the FEIN is required. If the company is a sole proprietorship, the lessee's South Dakota driver's license number or social security number may be used. The FEIN, South Dakota driver's license number or social security number of the lessor is required.

3. The lessor or the lessee must pay the 4% excise tax on the purchase price of the vehicle. A bill of sale or purchase order is needed to establish purchase price, unless the dealer price certification on the application is completed.
  - a. Purchase price on a leased vehicle with a gross vehicle weight rating of 16,000 pounds or more is the total consideration whether received in money or otherwise. [Total consideration is the lessor's purchase price.]
  - b. In the case of a lessor/lessee situation in which a lease vehicle is traded in to a dealer on another lease (no buy-out takes place and the trade takes place with the same leasing company), the trade-in allowance is granted if the trade-in vehicle is in either the lessor or the lessee's name. If the lessee's name does not appear on the title, a copy of the lease agreement or other supporting documentation indicating that the lessee was responsible for payment of the excise tax is required. On titles issued after July 1, 1994, the law requires that the lessor and the lessee be indicated on the title.
4. If the lessee pays the tax and subsequently purchases the vehicle, the lessee must title the vehicle and shall receive credit for tax paid (on a South Dakota title that denotes the lessee and lessor, a copy of the lease agreement is not required).
5. Out-of-state leasing companies titling and licensing a leased vehicle in South Dakota that has been previously titled and licensed in another state shall be exempt from the 5% excise tax to the extent that an equal and similar amount of registration fee, sales tax, use tax, state excise tax (in dollars) has been paid in such other state. The lessee must remain the same.
  - a. The county treasurer shall require the leasing company making application for license of a vehicle to provide proof that a similar and equal amount of tax has been paid in another state.
  - b. If sufficient proof is not furnished at the time of application, the county treasurer shall collect the full amount of the 4% excise tax.

E. Vehicles rented for 28 days or less (includes automobiles, pickups, vans and motorcycles) licensed under the noncommercial license fee schedule (SDCL 32- 5-6) with a manufacturers shipping weight, including accessories, of 10,000 pounds or less; trailers with an unladen weight of 9,000 pounds or more that are rented for six months or less.

1. Exempt from the 4% excise tax.

a. A tax of 4 1/2% is imposed upon the gross receipts of any person renting motor vehicles for 28 days or less (see E. for qualifying vehicles). This tax is in addition to any sales tax levied pursuant to chapters 10-45 or 10-46 (4% sales tax, 1% tourism tax

(note: effective July 1, 2009, during the months of June, July, August and September until June 30, 2011, the tourism tax rate increases from 1% to 1-1/2%) plus applicable city tax on rentals of 28 days or less) , plus applicable city tax) on rentals of 28 days or less.

1) Exemption code 19 should be used on the application for title (MV608).

2) Title must be issued in the name of the rental company.

3) If the rental company is within a dealership, the rental company name must be separate and distinct from that of the dealership.

4) If the lessee is a rental company leasing vehicles for use in a daily rental operation, the rental company must be indicated on the title as the lessee.

b. The rental company remits the 4 1/2% gross receipts tax and the rental sales tax to the Sales Tax Office of the Department of Revenue and Regulation on the Sales Tax Return.

c. Title applications on rental vehicles must be accompanied by an affidavit from a representative of the rental company stating that the vehicle is being used for rental. The representative of the rental company will also be required to

state the rental company's sales tax number on the affidavit. (An MV-608 or MV-609 exemption form, which contains this information, may be used in-lieu-of the affidavit.)

- F. All revenues received from the 4% excise tax and the 4 1/2% gross receipts tax are credited to the State Highway Fund.
- G. To apply for South Dakota title and registration, an applicant must complete an Application for Motor Vehicle Title and Registration (MV-608). The application must be filed in the county of the new applicant's residence.
  - 1. The application must be signed by the record owner(s) or by an authorized agent for the record owner(s). If an authorized agent signs the application, a power of attorney document must be attached to verify the appointment.
- H. If the vehicle is new, a manufacturer's statement of origin (MSO) must be attached. If the vehicle is used, a certificate of title, properly transferred to the applicant, must be attached.
  - 1. The purchase price would be the same as previously set out in the section entitled "Definition of 4% Excise Tax".
- I. A properly completed Damage Disclosure Statement form, if applicable, must be attached. The lessor is responsible for completing the Damage Disclosure Statement.
- J. Payment of the correct amount of 4% excise tax (if applicable), a title fee, and any license fee as may be required must be collected. Failure to pay the full amount of excise tax is a Class 1 misdemeanor.