

# South Dakota Taxation News

Department of Revenue & Regulation

Gary R. Viken, Secretary

## Communication Services

For mobile telecommunication services used by customers whose place of primary use is in South Dakota, the 4% state sales tax plus the general municipal sales tax applies to services regardless of where the service actually originates or terminates. For land-line services, the 4% state sales tax plus the general municipal sales tax applies to telecommunication services that either begin or end in South Dakota that are billed or charged to a service address in South Dakota. The sales tax also applies to international calls.

In addition a 4% gross receipts tax applies to the gross receipts on the retail sale of wireless personal communications services, wireless local loop services, enhanced special mobile radio services, fixed wireless services, and cellular services that provide two-way communication if the customer's place of primary use is located in South Dakota.

## Changing of the Guard By Kelly Thompson

Improving the flow of information to taxpayers is a top priority for the Department of Revenue & Regulation's newly-installed Director of Property and Special Taxes.

Michael Kenyon was named to the post effective July 24, 2003. He replaces Paul Kinsman who left the position to serve as the Commissioner of the Bureau of Administration for the State of South Dakota. Prior to accepting the division director position, Kenyon worked as an attorney in the department's Legal Division for four years dealing with sales tax litigation and special tax enforcement.

The Property and Special Tax Division administers 21 different taxes and employs 11 staff members, including the director. Kenyon says while he will make some minor changes in the way the division operates, the focus will still be on serving the taxpayers.

"The changes that I'm planning are more like fine-tuning, not a major overhaul of how we conduct business. Things like putting more of our information on the department's website so that we can reduce the number of phone requests we have to answer," he said. "I was lucky to come into a division with a wealth of expertise and a long history of good management."

Kenyon's role as an attorney in the Legal Division gives him some special insight into many of the issues he'll be handling in his new position. He handled enforcement of alcohol beverage laws, including suspension and revocation of liquor licenses for violating license requirements and underage sales laws. In addition, he defended the department's sales and use tax audits in court, winning every Revenue case he argued before the South Dakota Supreme Court. Kenyon was also responsible for Revenue's administrative rules packages and was involved in several Streamlined Sales Tax Project committees.

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**Taxation News**  
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## Sourcing Services for South Dakota

In the July issue of Taxation News, we began exploring the issues facing retailers with the new sourcing laws enacted by the 2003 Legislature. The response for more information on sourcing has convinced the department to continue providing examples of how sourcing affects taxing products and services.

*The sourcing law requires the retailer to tax sales of tangible personal property and services at the location where the customer receives the tangible personal property or service.*

The sourcing law requires the retailer to tax sales of tangible personal property and services at the location where the customer receives the tangible personal property or service.

With use tax, the consumer will owe the tax where he/she uses, stores, or consumes the product or service. Retailers must remember that the sales tax may apply at a different location than the consumer's use tax. If in fact the use tax applies at a different location from the sales tax, credit will be given for sales tax properly paid on the service. Please review the following examples of where sales or use tax will apply to different service oriented businesses.

# Dates to Remember

## October

- October 1** - SD/MN Border Issues, Sioux Falls, SD.
- October 8-9** - 2-Day Business Tax Workshop, Aberdeen, SD.
- October 9-10** - SD/NE Border Issues, Rapid City, SD.
- October 13** - **Columbus Day, Department Offices Closed.**
- October 16-17** - 2-Day Business Tax Workshop, Rapid City, SD.
- October 20** - Paper returns and payments due for monthly and seasonal monthly filers.
- October 23** - SD/ND Border Issues, Fargo, ND.
- October 23** - SD QUEST returns due for monthly and seasonal monthly filers.
- October 26** - **Daylight Saving Time Ends.**
- October 30** - SD QUEST electronic payments due.
- October 31** - **Halloween**

## November

- November 5** - Basic Tax Seminar, Sioux Falls, SD.
- November 11** - **Veterans' Day**
- November 20** - Paper returns and payments due for monthly and seasonal monthly.
- November 23** - SD QUEST returns due for monthly, seasonal monthly, bi-monthly and seasonal bi-monthly filers.
- November 26** - SD QUEST electronic payments due.
- November 27** - **Thanksgiving, Department Offices Closed.**

## December

- December 1** - Paper returns and payments due for bi-monthly and seasonal bi-monthly filers.
- December 3-4** Tri-State Border Issues, Sioux City, IA.
- December 20** - Paper returns and payments due for monthly filers.
- December 23** - SD QUEST returns due for monthly filers.
- December 25** - **Christmas, Department Offices Closed.**
- December 30** - SD QUEST electronic payments due.

## Business Education Program

Come join our Business Education Program at one of the workshops or seminars in your area. The department offers a number of educational opportunities that cover different tax issues facing new and existing business owners. For the most current list of seminars or to register, log on to our website at [www.state.sd.us/drr](http://www.state.sd.us/drr). All seminars and workshops are free of charge.

### 2-Day Business Tax Workshop

This workshop is excellent for new business owners or as a refresher course. Information regarding the IRS, Dept. of Revenue & Regulation, Dept. of Labor, Social Security and OSHA will be covered. Classes will be held from 9am-12pm and 1pm-4:00pm.

**October 8-9, 2003**  
SD Department Of Labor  
Aberdeen, SD

**October 16-17, 2003**  
City School Admin Building  
Rapid City, SD

### Basic Tax Seminars

Our Basic Business Tax Seminars cover sales, use and contractors' excise tax issues. These seminars are free and designed for new business owners or as a refresher course. The sales tax seminar will be held from 9am-12pm while the contractors' excise seminar will be from 1pm-4pm.

#### Sales and Contractors' Excise Tax Seminar

**November 5, 2003**  
Sioux Falls, SD

### Border Issues Seminars

Border Issue Seminars cover the differences in the tax application and reporting processes between South Dakota and our neighboring states of Iowa, Minnesota, Nebraska and North Dakota.

#### SD/MN Border Issues

**October 1, 2003**  
Sioux Falls, SD

**Sales Tax: 9am-Noon**  
**Contractors: 1pm-3:30pm**

#### SD/NE Border Issues

**October 9, 2003**  
**October 10, 2003**  
Rapid City, SD

**Sales Tax: 1pm-4:30pm**  
**Contractor: 8:30am-12pm**

#### SD/ND Border Issues

**October 23, 2003**  
Fargo, ND

**Sales Tax: 9am-Noon**  
**Contractors: 1pm-3pm**

#### Tri-State Border Issues (SD/IA/NE)

**December 3, 2003**  
**December 4, 2003**  
Sioux City, IA

**Sales Tax: 9am-12pm/1-5pm**  
**Contractors: 9am-12pm/1-5pm**

# News You Can Use

## Working With Revenue & Regulation

By Melissa Schofield

### Help Us Update Our Records!

If you are receiving correspondence from our department, but the address isn't the E911 address, please let us know. You can note the change of your address on the next return you file, or send us an email at [bustax@state.sd.us](mailto:bustax@state.sd.us). Please reference your license number, your previous address, and what your current address should read.

### Filing out Tax Returns: Who is the Licensee/Preparer?

The 'licensee' is your name or the name of your business as it appears at the top of your tax return. The 'preparer' is the name of the individual who completed the tax return for you.

You may be both the licensee and the preparer if you are completing your own tax return. If you have an accounting firm or third party complete your tax returns for you, the name of the third party is the preparer. You are still the licensee.

## Municipal Tax Update

On January 1, 2004, there will be significant changes to municipal sales taxes across South Dakota. Several municipalities will start taxing food and nearly 140 of them will be changing their sales tax rate. Many municipalities will have sales tax rates that will be decimals and not whole numbers. Some municipalities will also repeal their sales tax exemption for construction material put on a truck owned by a construction company for projects located outside municipal limits.

These are part of state law changes to bring the state and municipalities into compliance with the Streamlined Sales Tax Agreement. The Department of Revenue & Regulation will send every licensee a letter in October with the new tax rates for every city.

## Did You Know...

**Customer Arranges Delivery of Product** - When a customer purchases a product from a store and hires their own delivery company to deliver the product to a specified delivery address, sales tax will apply at the delivery address. For example, Fred's Furniture sells a sofa to Jim. Jim tells Fred's he will arrange for the transportation to deliver the product to Milbank. Jim contracts with Instate Freight to deliver the sofa to Milbank. Jim tells Fred's at the time of purchase where the item is to be delivered. The 4% state sales tax plus Milbank municipal tax will apply to this transaction.

**Buying Products for Resale?** - The delivery or freight charge to have products (not subject to sales tax) shipped to your business is subject to the 4% state sales tax when the delivery is from a location in South Dakota to another location in South Dakota. For example, a manufacturer of ceiling fans purchases motors from a business in Wall. The Wall business ships the motors from Wall to Aberdeen and charges \$50 delivery. The \$50 delivery charge is subject to only the 4% state sales tax and not to any municipal tax. The charge for the motor is exempt because it becomes part of the product being manufactured for sale.

**Dyed Diesel Fuel** - The sale of dyed diesel fuel is subject to sales tax. Retailers must collect and remit sales tax when dyed fuel is sold at a pump or delivered in bulk to the consumer. Because dyed diesel fuel is exempt from fuel taxes, no tax is paid on the dyed fuel until it is sold to the end consumer. The retailer must add the sales tax to the pump price at the till. The dyed fuel is used for off road purposes or for stationary equipment used within the highway right-of-way during construction. Dyed diesel fuel used for planting, cultivating and harvesting food or fiber, or feeding and tending livestock on agricultural land is exempt from sales tax. An exemption certificate indicating agricultural use must be provided to the supplier to document the exempt purchase.

**Billboards** - An advertisement on a billboard is considered part of the media. Businesses that create and place advertisements on existing billboards are providing advertising services that are exempt from sales tax. Use tax is due on their cost of the supplies used in providing this service. Businesses that just create the advertisement, but do not place it on the billboard are selling tangible personal property subject to sales tax. Businesses that place the advertisement on the billboard, but do not create the advertisement are providing services subject to the contractors' excise tax.

If an advertising agency creates an advertisement, builds a billboard and title to the billboard goes to the client, the advertising agency may owe contractors' excise tax on their gross receipts and use tax on the cost of materials. You may contact the department at 1-800-TAX-9188 to determine if you need a contractors' excise tax license.

**How To Use a Credit** - You will receive a credit notice from our department if you have a credit with our department. You may receive the same credit notice month after month if you do not use your credit.

If you are still operating your business, you can use the credit on your next tax return by simply reducing the payment of tax by the amount of the credit.

# In Other Revenue News

## Freight and Delivery Taxation

Taxing freight can be confusing for most taxpayers. With so many products traveling up and down our highways, understanding the taxing procedure for freight is a very important factor in today's business environment.

Businesses selling tangible personal property and also providing for the delivery of the items sold may owe sales tax on the freight and delivery charges. The following is a guideline for determining when sales tax should be charged.

1. When the product sold is subject to South Dakota sales tax the entire invoice, including freight, is subject to 4% state sales tax and applicable municipal sales tax.

Example: Jones Furniture from Iowa sells and delivers a chair to Ted Smith in Mitchell. Jones Furniture charges \$500 for the chair and \$50 for the delivery. Four percent state sales tax plus 2% Mitchell municipal tax applies to \$550.

2. When the product is sold for resale (not subject to sales tax) AND:

**A.** is delivered from one location in South Dakota to another location in South Dakota, the freight charge is subject to 4% state sales tax. No municipal sales tax applies.

Example: A manufacturing plant sells products to retailers and delivers these products from their plant in Rapid City to the retailer in Murdo. The retailer has provided the manufacturer with an exemption certificate. Sales tax does not apply to the price of the product; however, 4% state sales tax applies to the freight charge. This is taxable intrastate transportation.

**B.** is delivered from a location outside South Dakota to a location in South Dakota, no sales tax is due on the invoice including the freight charge.

Example: Jones Furniture from Iowa sells a truckload of furniture to Fred's Furniture in Redfield, SD. Fred has furnished Jones with an exemption certificate. The furniture is delivered from Iowa to Redfield. No sales tax applies to the product, as this is a sale for resale. No sales tax applies to the freight charge, as this is exempt interstate transportation.

3. When the product is sold to an exempt entity or the product is delivered to a location outside South Dakota, then no sales tax is due on the invoice including the freight charges.

Example: Fred's Furniture in Redfield sells and delivers a sofa to a customer in Fargo, ND. South Dakota sales tax does not apply to the sale of the sofa or to the freight charged.

CONTINUED ON PAGE 5

## Ask Dr. Revenue

Dear Dr. Revenue:

I am a licensed contractor and plan on hiring an out-of-state subcontractor. The business has noted on their bid that they are not registered with South Dakota and that I will be responsible for all tax liabilities. What does this really mean?

Sincerely,  
Bid Busters

Dear Bid Busters:

It really means nothing. Subcontractors have all of the same requirements and many of the same tax obligations as prime contractors. All contractors, whether prime contractors or subcontractors, are required to have a contractors' excise tax license with our department. The subcontractor must register with us. The subcontractor must also pay sales or use tax on all materials, tools, equipment or supplies they use to perform their subcontract work.

The subcontractor will not owe any contractors' excise tax if the licensed prime contractor gives the subcontractor a prime contractors' exemption certificate. The prime contractors' exemption certificates can NOT be given for a project that is a qualified utility. If you have a question whether or not a project is considered a qualified utility, please contact our department.

If an out-of-state supplier delivers product into South Dakota with their own vehicles, the supplier must have their own sales tax license. South Dakota does not have any thresholds or minimums for licensing requirements. If a business has nexus in South Dakota, the business must have the appropriate tax license. A prime contractor cannot ask a subcontractor to bid on a project and to be responsible for all applicable taxes. All prime contractors must also have their own contractors' excise tax license and are responsible for all sales or use tax liabilities in addition to their contractors' excise tax liability.

Sincerely,  
Dr. Revenue

If you have a question regarding South Dakota tax law, please contact us at:

SD Dept of Revenue & Regulation  
Business Tax Division  
445 E. Capitol Avenue  
Pierre, SD 57501-3185  
1-800-TAX-9188  
E-mail: bustax@state.sd.us

# Continued Cover Stories

## **Sourcing Services for South Dakota** (CONTINUED FROM COVER)

**Repair Services** - Repair services are subject to sales tax where the repaired item is delivered to the customer.

Examples: A contractor from Hill City takes a backhoe to Wyoming to be repaired. The backhoe is repaired and the contractor brings it back to South Dakota. Because the contractor takes possession of the repaired item in Wyoming, Wyoming sales tax applies to the repair service. If Wyoming does not tax repair services, or applies a lower rate than South Dakota, the contractor will owe use tax on the repair service (parts and labor) because the repair is used in South Dakota.

Computer boards are mailed to a Montana business where they are repaired then mailed back to the South Dakota customer. South Dakota sales tax applies to the repair services because the customer takes possession of the repaired item in South Dakota. If the Montana business is not licensed to collect South Dakota sales tax, the customer will owe the 4% state, plus municipal use tax on the repair, including delivery charges.

**Accountants and Tax Preparers** - Accounting services and tax preparation services are subject to sales tax where the report or tax returns are received by the customer.

Examples: An accountant is hired to audit records of three subsidiaries, one in South Dakota. All of the reports are sent to the parent company in Sioux Falls. Four percent South Dakota sales tax, plus Sioux Falls municipal tax applies to the accountants' services. No additional use tax is due South Dakota.

If the accountant is not licensed to collect sales tax the customer will owe use tax on the fees for the South Dakota location.

## **Freight and Delivery Taxation** (CONTINUED FROM PAGE4)

4. A business may hire a transportation company to deliver their product. The transportation company is responsible for charging the 4% state sales tax (no municipal tax) on their charge for all intrastate deliveries. The transportation company's service may be purchased for resale only when the retailer regularly delivers a majority of their sales with their own vehicles.

Examples: Fred's Furniture has their own delivery vehicle and delivers more than 50% of their products. They contract with Denny's Delivery to deliver a sofa and two chairs to a customer in Rapid City. Fred's may issue an exemption certificate to Denny's Delivery. Denny's will not owe sales tax on their transportation service. Fred will charge state and city sales tax to their customer on the total charge, including freight.

An accountant prepares payroll reports and checks for a company with three locations, one in South Dakota. The payroll reports and checks for South Dakota are sent directly to the South Dakota location. South Dakota sales tax, plus municipal tax applies to the accountant's service for the South Dakota location.

If the accountant is not licensed to collect sales tax, the customer will owe use tax on the fees for the South Dakota location.

A tax preparer does the year end income tax returns for a farm in rural Hughes county. The completed returns are sent to the farm location. The 4% state sales tax applies, no municipal tax, because the farmer takes delivery of the returns at a rural location.

A tax preparer in Sioux City, IA does the year end income tax returns for a small business in Elk Point, SD. The returns are completed and picked up at the tax preparer's location in Sioux City, IA. The tax preparer does not owe South Dakota sales tax because receipts of the returns are at the Sioux City location. The business owes the 4% state use tax, plus Elk Point municipal use tax on this service, because they used the service for their business in Elk Point.

**Architects** - Services provided by architects are subject to sales tax based on where the plan or reports are delivered to the customer. The architect's service is exempt from South Dakota sales tax if the project is located outside South Dakota.

Example: A Minneapolis business hires ABC Architect from Sioux Falls to design plans for an office building in Sioux Falls. The plans are delivered to the business in Minneapolis. South Dakota sales tax does not apply because the plans are delivered to the customer outside South Dakota. The Minneapolis business owes South Dakota use tax on the architect's service because the plans are used in South Dakota. Credit for Minnesota sales tax paid on the purchase will be applied against use tax due to South Dakota.

Sam's Lawn Equipment from Pierre does not have a delivery vehicle. They contract with Denny's Delivery to deliver a garden tractor to a customer in Aberdeen. Denny's charges Sam's \$50 for their delivery service. Denny's will owe 4% state tax on their charge. Sam's Lawn Equipment invoices their customer for \$1,200 for the garden tractor plus \$50 for the delivery. Sam's Lawn Equipment owes 4% state sales tax plus 2% Aberdeen city tax on the total charge of \$1,250.

## **Drop Shipments**

A manufacturer sells a product to a distributor licensed in Ohio, but delivers the product directly to the distributor's customer in South Dakota. The manufacturer may accept an exemption certificate from the distributor showing the distributor's Ohio tax license.

The customer in South Dakota is responsible for remitting the applicable use tax on the product, because the distributor is not licensed in South Dakota.



445 East Capitol Avenue  
Pierre, SD 57501-3185  
[www.state.sd.us/drr](http://www.state.sd.us/drr)  
bustax@state.sd.us or call 1-800-TAX-9188

Forwarding Service Requested

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## Insights...from the Secretary's Desk



The summer of 2003 not only brought hot temperatures to South Dakota, it also raised some hot tax issues in many communities across the state. City officials in numerous locations began enacting the local ordinances that will bring their communities into compliance with the Streamlined Sales Tax Agreement by January 2004. This agreement requires that each municipality have one tax rate and tax the same items and services as every other city in South Dakota. While the change will not be as evident in some communities as in others, a handful of cities who did not tax groceries in the past will now be doing so.

Another tax topic receiving serious discussion by many local governments was whether or not they should "opt-out" of the state-imposed caps on property taxes. With smaller operating budgets forcing some communities to tighten their financial belts, a number of South Dakota cities have decided to take that option. In some areas, the "opt-out" decision was referred to a public vote, giving local residents the opportunity to make the choice.

With the hot, dry summer behind us, we now look forward to the cooler temperatures and colorful foliage that fall brings to our state. This time of year also means hunting season is underway again; just a reminder to people and businesses receiving payment for hunting services that sales tax applies to most payments received. If you need information on how sales tax applies to hunting guides and commercial hunting operations, please download **Sales Tax Fact Sheet #195** at [www.state.sd.us/drr](http://www.state.sd.us/drr) or request a copy by calling 1-800-TAX-9188. As always, our Revenue & Regulation staff, both in our Pierre office and our field offices throughout the state, are ready to assist you with your tax questions and concerns.