

Taxation News

Department of Revenue & Regulation

Gary R. Viken, Secretary

2004 Legislative Update

The Department of Revenue & Regulation tracked 191 pieces of legislation during the 35-day session, which officially ended on March 15. Following last year's departmental reorganization, the Department's legislative scope was broadened this year to include not only bills dealing with sales, use and contractors' excise taxes, property taxes, and motor vehicle issues but also insurance coverage, Deadwood gaming, the SD Lottery, banking and securities issues, and the SD Real Estate Commission.

Seven bills were introduced regarding the sales tax on food, and while only one (HB1308 – Governor Rounds' proposal) was signed into law, the issue was hotly debated by lawmakers, in the media, and across dinner tables statewide. The seven proposals advocated action ranging from directly exempting food from the sales tax to gradually reducing the tax on food and eventually exempting food from tax once collections from the Streamlined Sales Tax Project reached certain levels.

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Taxation News

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Businesses Reminded of New Tax Rates By Kelly Thompson

Businesses still charging the former general sales and use tax rates in communities that have reduced their rates are charging too much tax.

Effective January 1, 2004, the state's municipal tax system underwent several changes, one of which for several communities was a change in their general sales and use tax rate. Currently, 205 cities in South Dakota charge a municipal sales and use tax; of that number, 23 reduced their tax rates from 2% to rates ranging from 1.70% to 1.95%.

Scott Peterson, Director of the Department of Revenue & Regulation's Business Tax Division, says businesses still charging the higher rate should make the change immediately.

"Businesses cannot charge a rate higher than that legally allowed," Peterson said. "We've received complaints from consumers in some of these communities that they are being overcharged. These businesses are opening themselves up to civil liability if they continue to charge the higher rates."

Communities which reduced their rates from 2% effective January 1, 2004 were Belle Fourche, Britton, Brookings, Canova, Crooks, Delmont, Eureka, Flandreau, Hot Springs, Hoven, Interior, Kennebec, Mission, Montrose, Pierre, Rapid City, Salem, Sioux Falls, Timber Lake, Tripp, Wagner, Watertown, and Yankton.

According to Peterson, every business received a letter explaining the general sales and use tax changes. The Department also held numerous public meetings across the state beginning last fall to explain the municipal sales tax changes to business owners and the public. The information is also available in the Department's January 2004 Municipal Tax Information Bulletin. Free copies of the bulletin are available by calling the Department at 1-800-TAX-9188; it can also be downloaded online at www.state.sd.us/drr2/municipaltax/bulletinjan04.pdf.

Finding The Correct Rates

Finding the correct tax rate and codes has never been easier. Users may log onto the Department's web site and obtain municipal tax rates with as little information as a city name and address. The site also offers easy to follow instructions. Find out how to use this quick and efficient tool at www.state.sd.us/drr2/GIS/index.htm.

Photo: Robert Witte



Revenue Agent Troy Larson contacts Pierre business owners to discuss the recent municipal tax changes.

Dates to Remember

April

- April 7 - SD/NE Border Issues Seminar, Sioux Falls, SD.
- April 13 - SD/ND Border Issues Seminar, Aberdeen, SD.
- April 20 - Paper returns and payments due for monthly filers.
- April 21 - Small Business Tax Workshop, Watertown, SD.
- April 22 - Basic Tax Seminar, Sioux Falls, SD.
- April 23 - SD QUEST returns due.
- April 27 - Basic Tax Seminar, Rapid City, SD.
- April 29 - SD/IA Border Issues Seminar, Sioux Falls, SD.
- April 29 - SD QUEST electronic payments due.

May

- May 11 - Basic Tax Seminar, Mitchell, SD.
- May 12 - Basic Tax Seminar, Yankton, SD.
- May 12 - Small Business Tax Workshop, Sioux Falls, SD.
- May 18-19 - SD/NE Border Issues Seminar, Chadron, NE.
- May 20 - Paper returns and payments due for monthly filers.
- May 23 - SD QUEST returns due.
- May 26 - Small Business Tax Workshop, Rapid City, SD.
- May 26-27 - Tri-State Border Issues Seminar, Sioux City, IA.
- May 27 - SD QUEST electronic payments due.
- May 31 - Memorial Day, Department Offices Closed.

June

- June 1 - Paper return and payments due for bi-monthly filers.
- June 9 - Small Business Tax Workshop, Pierre, SD.
- June 10 - Small Business Tax Workshop, Eagle Butte, SD.
- June 21 - Paper returns and payments due for monthly filers.
- June 23 - SD QUEST returns due.
- June 24 - Small Business Tax Workshop, Brookings, SD.
- June 29 - SD QUEST electronic payments due.

Business Education Program

Come join our Business Education Program at one of these free workshops or seminars in your area. Register online at www.state.sd.us/drr.

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.

Sales and Contractors' Excise Tax Seminar

April 22, 2004 Sioux Falls, SD	Sales Tax: 9am - Noon Contractors': 1pm - 4pm
April 27, 2004 Rapid City, SD	Sales Tax: 9am - Noon Contractors': 1pm - 4pm
May 11, 2004 Mitchell, SD	Sales Tax: 10am - 1pm Contractors': 2pm - 5pm
May 12, 2004 Yankton, SD	Sales Tax: 10am - 1pm Contractors': 2pm - 5pm

Border Issues Seminars

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

SD/NE Border Issues

April 7, 2004 Sioux Falls, SD	Sales Tax: 8:30am - Noon Contractors': 1pm - 4pm
May 18, 2004 May 19, 2004 Chadron, NE	Sales Tax: 8am - 3pm Contractors': 8am - 4pm

SD/ND Border Issues

April 13, 2004 Aberdeen, SD	Sales Tax: 9am - Noon Contractors': 1pm - 3pm
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SD/IA Border Issues

April 29, 2004 Sioux Falls, SD	Sales Tax: 9am - Noon Contractors': 1pm - 4pm
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Tri-State Border Issues

May 26, 2004 May 27, 2004 Sioux City, IA	Sales Tax: 9am - 4pm Contractors': 9am - 4pm
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Small Business Tax Workshops

Information regarding the IRS, Dept. of Revenue & Regulation, Dept. of Labor, Social Security and OSHA will be covered.

April 21, 2004 Watertown, SD	May 12, 2004 Sioux Falls, SD
May 26, 2004 Rapid City, SD	June 9, 2004 Pierre, SD
June 10, 2004 Eagle Butte, SD	June 24, 2004 Brookings, SD

Bad Debts

By Robert Witte

When I see a headline with the words "Bad Debts," the first thing that comes to mind is Enron and balance sheets. Although bad debt sounds like a simple accounting term, it can be a revolving headache for some businesses and retailers.

A bad debt occurs when a business sells a product to a customer and does not receive full payment for it. The business may have received a down payment for the product at the time of the sale with the promise of full payment at a later date.

Since the business sold the item, sales tax was paid to the state on the sale price of the item. But, since the business never received full payment from the customer for the product, the remaining balance is now considered a bad debt. Because the company that sold the item paid the tax on the full price of the item, they are able to deduct the remaining balance of the bad debt on their South Dakota Sales Tax Return.

According to South Dakota Law (SDCL 10-45-30), bad

debts shall be deducted within twelve months following the month in which the bad debt has been charged off for federal income tax purposes.

If a deduction is taken for a bad debt and the seller subsequently collects the debt in whole or in part, the tax on the amount so collected shall be paid and reported on the next return due after the collection.

Businesses that use the **accrual method** of accounting may claim bad debts.

Bad debts cannot be claimed for those businesses that use the **cash method** of accounting since revenue is not recognized and reported until payment is received.

Claiming bad debts

1. Credit is taken for the amount of the tax previously paid.
2. A list of the debtor(s) and the amount of the debt is retained in your files. This list must contain the debtor's name and address; date of debt; amount of transaction before tax; state tax amount; city name, tax amount and rate.

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2004 Legislative Update

(CONTINUED FROM COVER)

Under HB1308, which goes into effect July 1, 2004, quarterly refunds of sales taxes paid on food will be made to people who earn up to 150% of the federal poverty level.

South Dakota's "trucking tax" came under review during the 2004 Session, generating the introduction of two bills to repeal the tax – SB139 and HB1180. While SB139 failed even to make it out of committee, HB1180 was signed into law by Governor Rounds, repealing the trucking tax effective July 1, 2004. Transportation of property became taxable in 1995 along with several other services and products as a means to provide property tax relief in South Dakota. A more complete explanation of the repeal of this tax can be found in a separate article titled "Trucking Tax Repealed July 1, 2004" in this newsletter.

The Department of Revenue & Regulation will now be able to contract with private collection agencies to collect on difficult delinquent accounts following the passage of HB1042. Under HB1042, accounts that have proven to be uncollectible by normal in-house procedures can be referred to private collection agencies for further collection efforts.

Two bills signed into law during the 2004 Session improve the state's vehicle and boat registration process. HB1045 allows boat owners to renew their boat licenses as early as October 1, 90 days before the licenses expire (December 31).

SB32 allows the department to implement a staggered registration system for

commercial motor vehicles by rule. The bill allows individuals to register their commercial motor vehicles on a staggered basis throughout the year instead of all at the end of the year. The Department will work with the trucking industry to write rules for the implementation of the staggered registration system.

Trucking Tax Repealed July 1, 2004

By Kelly Thompson

As of July 1, 2004, intrastate trucking of property for interstate and intrastate truckers, small package delivery carriers, petroleum distributors, and moving and storage companies will be exempt from sales tax.

Still subject to sales tax will be limousine and taxi services, garbage hauling, bus charters, chartered air flights, and amusement and sightseeing transportation services such as helicopter rides.

Moving and storage companies will still owe sales tax on boxes sold or used in-state and on services performed in-state such as packing and unpacking, and many truckers will still need use tax licenses.

Use tax is applied (but not limited) to office equipment, furniture and supplies; mileage software programs and fees; truck permit services; computerized billing services; shop equipment and tools; truck repair

parts; CB radios; on-board computers (including satellite and GPS services); training manuals; and drug testing and background checks.

Note to retailers: Effective July 1, 2004, delivery and handling charges will be subject to the same tax rate as the product delivered. Delivery and handling charges for exempt products are not subject to sales tax. If both taxable and nontaxable products are in the same shipment, tax is due on the portion of delivery charge for the taxable products. This is determined by using a percentage of the sales price or weight of the taxable property compared to the total sales price or total weight of all property in the shipment.

Questions on how the trucking tax repeal will impact your business can be answered by calling the Department's toll-free helpline at 1-800-TAX-9188.

3. If an amount charged off is later recovered, tax must be reported on those receipts.

Report bad debts on the South Dakota Sales Tax Return in the Deduction Section [Line D, Other (Explain)]. To take credit for any city taxes paid, adjust the taxable sales for the appropriate city on the city tax portion of the return. You may have negative taxable sales on line 5 of the sales tax return if the debts being charged off are greater than your current sales.

Returned checks for “no account” or “non-sufficient funds (NSF)” are not bad debts.

Returned checks should be listed separately on Line D of the sales tax return. This deduction should be taken during the period the check is returned to you.

Contractors should report bad debts by subtracting the bad debt amount from their gross receipts prior to entering the gross receipts information on Line 1 of the contractors’ excise tax return.

For more information on bad debts, email the Department at bustax@state.sd.us or log onto the web at www.state.sd.us/drr.

T² From Dr. Revenue

Some of you may remember me from my “Ask Dr. Revenue” column where I provided in-depth answers to taxpayer questions. While looking for a change and finding a niche that I thought needed to be filled, I have developed T².

T² is short for Technology and Taxes. The focus of this column will give readers a quick look at enhancements to the department’s web site. Without further ado, let’s take a look at online forms and publications.

How To Find: Online Forms and Publications

Users will find all of the Department’s forms and publications with one easy click from the Department’s home page. Check out the navigation bar on the left side of the home page. By clicking on “Forms,” you have the option to access all Revenue & Regulation forms. If you click on “Publications,” you will gain access to a complete list of Business Tax information.

Check out our site at www.state.sd.us/drr. If you have a technology question, send it to webman@state.sd.us.

In Other Revenue News

Highway Contractor Fuel Tax License

By Robert Witte

While the frost level struggles to keep its hold on South Dakota soil, many contractors are gearing up to begin or resume another year of road construction projects.

Who is a Highway Contractor?

A highway contractor is defined as a person, partnership, or corporation that engages in highway construction work. These contractors work exclusively with local or state governmental agencies to build public roadways.

The Law (SDCL 10-47B)

According to South Dakota law, highway construction work means all work performed within any capacity to propel vehicles, machinery, or equipment within the right-of-way in the construction, reconstruction, repair, or maintenance (maintenance includes, but is not limited to, road grading and snow removal) of public highways. Public highways or roads are defined as any way or place (including waterways and snowmobile trails) open to the use of the public for vehicular, snowmobile, or watercraft travel.

Licenses

Any person engaged in highway construction work in South Dakota MUST obtain a highway contractor fuel tax license and a contractors’ excise tax license. Contractors must first fill out a motor fuel tax license application and a contractors’ excise tax license application. These licenses allow contractors to legally collect and remit the appropriate taxes.

No state, county, township, or municipality may award a public highway or street contract to a contractor who has not been issued a highway contractor fuel tax license and a contractors’ excise tax license.

The Department has created a number of manuals discussing the motor fuel and contractors’ excise tax licenses. Log onto the department’s web site at www.state.sd.us/drr2/motorvehicle/highway_contractor.htm to download the applicable manuals and forms. If you have any further questions or comments, contact the Motor Fuel Office at 605-773-5335.

Fuel Used in Road Construction

Use the following guide to determine what type of diesel fuel must be used in vehicles and equipment used in road right of way for road construction.

- Licensed vehicles – Always use undyed diesel fuel.
- Unlicensed self-propelled equipment – You may use undyed diesel or dyed diesel fuel. If you use undyed diesel fuel, no additional fuel or sales/use tax is due on the fuel. If dyed diesel fuel is used, fuel tax is due on the gallons consumed within the road right-of-way. Report the fuel tax due and take a credit for the sales tax paid on your Highway Contractors’ reporting form. Any city tax paid on the dyed diesel fuel must be taken as a credit on your contractors’ excise tax return.
- Stationary Equipment – You should use dyed diesel fuel. Sales tax is paid on this fuel at the time of purchase. If you use undyed diesel fuel, you will not owe additional sales or use tax on the undyed fuel.

Motor Fuel Marketer

Anyone engaged in the wholesale or retail sale of motor fuel or special fuel MUST be licensed as a Motor Fuel Marketer with the Motor Fuel Tax Division. A separate license is required for each business location within the state. To obtain a Motor Fuel Marketer license, contact the Motor Fuel Division at (605) 773-5335.

News You Can Use

Tourism Tax and Visitor Intensive Businesses

By Robert Witte

South Dakota's fifth season, Tourism, is right around the corner. Many businesses are starting their spring cleaning in preparation for this festive time of year.

The Department would like to remind visitor intensive businesses that tourism tax applies to products that are sold during the months of June, July, August, and September. A visitor intensive business is any of the following businesses if 50% or more of their total annual receipts are derived from the sale of tangible personal property during the months of June, July, August, and September.

Antique Shop	Leather Goods Shop
Bookstores	Marina
Candy Store	Novelty Shop
Flea market	Pottery Shop
Gift Shop	Rock Shop
Indigenous Arts/Crafts Shop	Souvenir Shop
Jewelry	T-shirt Shop
Lapidary Shop	

For more information on the Tourism Tax, view the Department's Tourism Tax Facts #300 online at www.state.sd.us/drr2/publicat.htm.

Special Taxes Increases Its Alcohol Content

By Robert Witte & Michael Kenyon

Anyone who has had to deal with South Dakota's laws on alcohol knows how confusing they can be. Simple questions like "what liquor licenses do I need to obtain in order to open a new bar and restaurant?" or "once I open my new business, how do I find out what the minimum age is for employees to sell alcohol?" can have very complex answers.

The Special Tax Division has taken steps to clear the air of toxic fumes when it comes to alcohol laws in South Dakota. To better inform the public and members of the alcohol industry about South Dakota law, the Department has updated its web site with more detailed alcohol information. The goal is to provide accurate, plain-language explanations of the most important alcohol laws and regulations.

This is a work in progress so we are asking users to provide us with feedback on the new alcohol information. Please take a few minutes to review the information on our web site at www.state.sd.us/drr2/prospectax/spcltax.htm. Let us know if you like what you see and if there are areas that you think we could improve on.

Did You Know...

Tourism Fast Facts - Tourism is a major industry in South Dakota. Check out some of these facts about South Dakota's second largest industry.*

- Visitor spending: \$698 million in 2003, \$663 million in 2002.
- Distribution of spending: 57% in Western South Dakota, 43% in Eastern South Dakota.
- Economic impact: \$1.75 billion statewide.
- Employment traceable to visitor industry: 31,828 jobs.
- Gas and sales tax revenue: \$42.7 million.
- Return on investment: \$9.41 in gas/sales tax revenue for every marketing dollar the Department of Tourism invested.
- Visits to travelsd.com: More than 1.7 million, accounting for more than 6.8 million page views!

*From: South Dakota Department of Tourism and State Development

Tax Rates and Codes - As of January 1, 2004, businesses that owe the city tax and the 1% municipal gross receipts tax must report these taxes under two separate rates - the city sales and use tax rate (which may have changed) and the 1% Municipal Gross Receipts tax (GRT). The Municipal Gross Receipts tax may apply to lodging, eating establishments, liquor, and admissions to places of amusement, athletic, and cultural events. You can determine if your city has a Municipal Gross Receipts tax by reviewing the Municipal Tax Bulletin online at www.state.sd.us/drr2/municipaltax/bulletinjan04.pdf or by calling toll-free at 1-800-TAX-9188.

Example Tax Return

REPORTING BEFORE JANUARY 2004

CITY/RES	CODE	NET TAXABLE	RATE	TAX
Rapid City	298-3	\$ 1,000.00	3.00%	\$30.00
Pierre	284-7	\$ 1,000.00	3.00%	\$30.00
Sioux Falls	330-3	\$ 1,000.00	3.00%	\$30.00

REPORTING AS OF JANUARY 2004

CITY/RES	CODE	NET TAXABLE	RATE	TAX
Rapid City-GR	298-1	\$ 1,000.00	1%	\$ 10.00
Rapid City-ST	298-2	\$ 1,000.00	1.84%	\$ 18.40
Pierre-GR	284-1	\$ 1,000.00	1%	\$ 10.00
Pierre-ST	284-2	\$ 1,000.00	1.80%	\$ 18.00
Sioux Falls-GR	330-1	\$ 1,000.00	1%	\$ 10.00
Sioux Falls-ST	330-2	\$ 1,000.00	1.92%	\$ 19.20



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bustax@state.sd.us or call 1-800-TAX-9188

Address Service Requested

Insights...from the Secretary's Desk



With the 2004 Legislative Session nearly completed, I can report that few changes were made to the state's tax laws. While this year's legislative session seemed to focus on issues such as conversion of the Homestake Mine to an underground physics lab, abortion, open government, landowner rights, etc., the tax issue that stood out this year was that surrounding the sales tax on groceries. Without doubt a controversial subject, we are certain to hear more on that issue in upcoming months. For a recap of legislative action this year on taxation, please see the article contained in this newsletter.

In the past, I've tried to keep you updated on measures taken by our Governor and Legislature to position South Dakota to collect sales tax on products and services being sold by remote sellers via the Internet and catalog. This is an important issue for our state from the standpoint of revenue production and an important issue for most of the state's businesses because many out-of-state sellers currently have a tax advantage over businesses located here. While no legislative action was required this year to further simplify the administration of the sales and use tax, there now are two bills before the Congress aimed at giving states the authority to impose a duty to collect sales tax on remote sellers. While the language of the current bills may need some tweaking, it is important to note that South Dakota and some forty other states have finally gotten the attention of Congress on this important issue . . . and the likelihood of fixing the disparity between in-state and out-of-state merchants appears closer at hand than ever.

Last month, we noticed a significant increase in the number of taxpayers who are filing and paying their taxes electronically through SD QUEST. If you have not yet made the change from mailing in paper returns to filing electronically, I encourage you once again to give SD QUEST a try, as I think you'll find it much easier and quicker than traditional filing. Log onto the web at www.state.sd.us/drr2/SDQUEST/sdquest.htm or call our toll-free taxpayer assistance line, 1-800-TAX-9188, for details.

With spring rapidly approaching and the economy continuing to show signs of real improvement, optimism is all around us. I hope things are looking up for your business thus far in 2004!

Sincerely,

A handwritten signature in black ink, which appears to read "Gary Viken". The signature is fluid and cursive.

Gary Viken