

2005 Legislative Update

By Kelly Thompson

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Want to receive **taxation** via email? Send
your email address along with your tax
license number to: webman@state.sd.us

The removal of some state tax exemptions, a review of how property is assessed for tax purposes, and changes in how motor vehicle and mobile/manufactured home dealers do business were among tax-related issues discussed by the South Dakota Legislature during the 40-day legislative session that officially ended on March 22.

The Department of Revenue & Regulation followed 188 bills during the 2005 Session dealing with sales, use and contractors' excise taxes; property taxes; motor vehicle issues; insurance coverage; banking and securities issues; alcohol and cigarette taxes; Deadwood gaming and horse racing; and issues affecting the South Dakota Lottery and the South Dakota Real Estate Commission. Following is a brief listing of several of these bills that had received final action by the time this article was written.

Signed into law:

HB1002. Effective July 1, 2005, anyone applying for owner-occupied status on their property must state whether the dwelling for which they are applying is their principal place of residence.

HB1033. Required by the Streamlined Sales Tax Agreement (SSTA), provides an amnesty for tax, penalty and interest to those who register to collect sales tax within one year from the date South Dakota comes into compliance with the SSTA. Some restrictions apply.

HB1034. Removed the requirement that mobile/manufactured home dealers be inspected or investigated annually, allowing inspections and investigations of those dealers about whom the department has received complaints or whose paperwork has been called into question.

HB1040. Repeals the sales and use tax exemptions on nutritional supplements dispensed by physicians, chiropractors, optometrists, dentists, podiatrists, and audiologists, and ostomy care supplies.

HB1044. Fulfills SSTA requirement by setting up a process purchasers must use to obtain refunds of overpaid sales taxes. Prohibits a purchaser from suing the retailer for over-collected taxes unless they provide the retailer with written notice and give them 60 days to respond.

(CONTINUED ON PAGE 2)

Insights...from the Secretary's Desk



With the 2005 Legislative Session now complete, I can tell you that South Dakota has no new taxes or increases in tax rates resulting from this year's legislative process. The legislature did, however, exempt from sales tax the services of referees and umpires for amateur sports events. In addition, several technical measures were passed that will ensure that our state is among those states that have simplified their sales taxes to the extent that we continue to be positioned to collect sales tax on Internet and catalog sales as early as any other state.

One of the key challenges our state has faced in meeting the streamlined sales tax requirements has been to ensure that all who are licensed to sell goods and services in South Dakota apply the sales tax rate that is applicable to the location where the goods or service is delivered. Recently, our department spent considerable time clarifying how services provided by attorneys and accountants should be sourced for sales tax purposes. A new Tax Facts #115 for attorneys and #107 for accountants has been issued to provide written guidance on this matter and can be obtained by calling the department or accessing our website.

With warm weather very near, those who provide fishing guide services for a fee are reminded that they must have a sales tax license. For more details, see Tax Facts #195, also available by calling 1-800-TAX-9188 or accessing our website.

I hope that business is good and that you will have the chance to enjoy the many pleasures our state offers in the spring and summer months.

2005 Legislative Update (CONTINUED FROM COVER)

HB1060. Authorizes the department to issue cease and desist orders against vehicle dealers who engage in fraudulent business practices or any other action that could result in the denial, suspension or revocation of their license.

HB1111. Allows a dealer to offer for sale, sell or exchange a vehicle without a title if the dealer complies with specific criteria dealing with records of purchase, payment to lien holders, and proper application for title.

HB1119. Exempts an out-of-state titled vehicle that is purchased by a dealer and sold to another dealer from having to be titled upon purchase or entry into the state.

HB1142. Provides a refund of sales and use tax paid by contractors on raw material they fabricate in South Dakota for use in projects outside the state if the material is being used in a project that is exempt from those taxes in the state where the project is completed.

HB1153. Exempts products and substances used with pesticide application from sales tax.

HB1234. Added wholesale tax on tobacco, amusement device taxes, and the gross receipts tax on visitor-related businesses to the types of taxes that can be included in compacts between the state and Indian tribes.

SB1. Requires directors of equalization to consider the extent to which land is tillable or non-tillable in making their determination of the land's capacity to produce.

SB2. Deals with how to value agricultural land when there are insufficient sales in a county.

SB155. Exempts governments (including planning districts) from collecting sales and use tax from management services provided to revolving loan funds operated by non-profit entities.

SB207. Exempts from sales tax mobile/manufactured homes built to HUD standards. Increases the initial registration fee on such homes from 3% to 4%, with the fee assessed on the purchase price of the home, including installation.

REVENUE SOLUTIONS

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, visit our website at www.state.sd.us/drr. All seminars and workshops are free of charge.

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 Seminars

May 17, 2005 Sales Tax: 9am - Noon
Kenny Anderson Center Contractors' Excise Tax: 1 - 4pm
Sioux Falls, SD

May 23, 2005 Sales Tax: 10am - 1pm
Mitchell Public Library Contractors' Excise Tax: 2 - 5pm
Mitchell, SD

May 25, 2005 Sales Tax: 9am - 1pm
Yankton Library Contractors' Excise Tax: 2 - 5pm
Yankton, SD

Small Business Workshops

Information regarding the Dept. of Revenue & Regulation, Dept. of Labor, Small Business Administration and the IRS will be covered. The IRS will only be presenting at the Sioux Falls and Rapid City workshops. For more information, check us out online at www.state.sd.us/drr.

April 20, 2005 Lake Area Tech Institute
Watertown, SD

May 25, 2005 Southeast Tech Institute
Sioux Falls, SD

May 25, 2005 Western Dakota Tech Institute
Rapid City, SD

June 8, 2005 South Dakota State Library
Pierre, SD

June 15, 2005 Super 8 Motel
Eagle Butte, SD

June 29, 2005 Brookings Library
Brookings, SD

Border Issues Seminars

Border Issues Seminars cover the difference in the tax application and reporting process between South Dakota and bordering states. Sales Tax is from 9am-Noon and Contractors' Tax is from 1pm-4pm, unless noted otherwise. For more information, check us out online at www.state.sd.us/drr.

April 13-14, 2005 Tri-State (SD/IA/NE)
Sioux Falls, SD

May 4, 2005 SD/ND Border Issues
Watertown, SD

May 18-19, 2005 SD/NE Border Issues
Norfolk, NE

June 8-9, 2005 Tri-State (SD/IA/NE)
Sioux City, IA

T² Where Technology Meets Taxes

By Dr. Revenue

With over 1,000 electronic tax applications filed and issued since the inception of our new online tax application in October, new taxpayers are seeing the benefits of the department's new technology initiatives.

The success of the online application has prompted us to bring another form online: **SD QUEST Authorization Agreement For Electronic Tax Filing and Payment.**

Applicants must decide whether to pay their taxes using ACH Credit (taxpayer files the return and releases funds from their account) or ACH Debit (taxpayer files the return and the department contacts the bank for the taxes due).

Once the department receives a completed application, a SD QUEST packet will either be emailed or sent via regular mail. Packets include a SD QUEST Users Guide, electronic worksheet, department contact information and a tax ID and pin number. The ID and pin number will be used to access the tax return on www.sdquest.com.

All Revenue & Regulation field offices are equipped with private application terminals for taxpayers to sign up for SD QUEST. For a complete list of field offices and contact info, log on to the web at www.state.sd.us/drr2/contact.htm.

To submit an agreement, log onto the web at www.state.sd.us/drr. Applicants can also call the department toll-free at 1-800-TAX-9188.

SD QUEST Vitals

- efficient and convenient filing
- file online or by phone
- pay electronically
- safe and secure
- reduce filing errors
- eliminate paperwork

NEWS YOU CAN USE

Attention Advertisers!

What is included in the advertising media when providing an advertising service exempt from sales tax?

An advertising service is the business of preparing advertisements for publication in newspapers, magazines, placemats, billboards, handbills or for broadcast and welcoming services. Advertising agencies that **create** and **place** advertisements in advertising media are providing an advertising service that is exempt from sales tax.

Advertisements sold that are not placed in the media are subject to sales tax. Contractors that place the advertising sign on a billboard, building, or permanent fence are subject to contractors' excise tax. Contractors that place the signs on a bench, vehicle, windows, T signs, or with temporary stakes are subject to sales tax.

The department has a broad interpretation of what is included in advertising media. The creating and placing of advertising signs on the following items are considered placement in the advertising media and are exempt from sales tax. Use tax is due on all supplies used.

- Billboards
- Benches
- Buildings
- Fences
- T Signs – golf courses
- Temporary Stakes
- Vehicles
- Windows

Did You Know...

New Alcohol Training Approved - The department has approved a new alcohol training program for taxpayers to utilize and train new and existing employees on serving alcohol responsibly. The **ServSafe** program is sponsored by the National Restaurant Association. For information, log onto the web at www.nraef.org or contact Matt Stanglely at (312) 715-1010.

Satellite Services - As of October 2004, fees for direct-to-home satellite services are subject to state sales tax, but exempt from municipal sales tax. This includes both direct-to-home and direct-to-business satellite services. This is a change in policy. Previous to October 2004, the direct-to-business satellite services were subject to municipal tax.

Businesses Changing Ownership Status - In South Dakota, when a business changes ownership status in any way, a new license must be obtained. Examples of change of ownership requiring a new license are as follows:

- Sole ownership or partnership to corporation
- Corporation to sole ownership or partnership
- Partnership to sole ownership
- Sole ownership to partnership

You may apply for a new license electronically at www.state.sd.us/drr or call us toll-free at 1-800-829-9188.

Businesses Changing Locations - Whenever a business moves to a new county in South Dakota or moves outside the state, the department must issue a new license number. You may apply for a new license electronically at www.state.sd.us/drr or call us toll-free at 1-800-829-9188.

From The IRS

2005 Travel & Transportation Costs - The 2005 Standard Mileage Rate has been set at 40.5 cents per mile. The 2005 rate for most areas (other than the higher rate areas listed at the site below) will be \$31 for per diem and \$60 for lodging. See all domestic per diem rates at www.gsa.gov.

SALES AND USE TAX

Paying Taxes on Agreement Indian Reservations

By Rob Witte

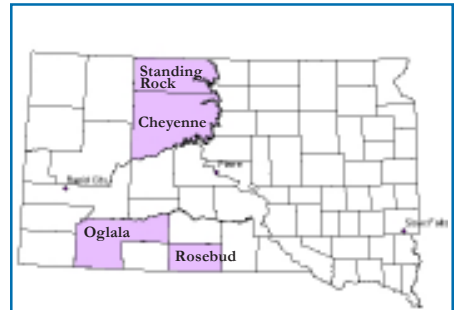
The State of South Dakota is unique in that it has tax collection agreements with four of the state's nine tribal governments. The agreements were developed to eliminate confusion regarding tax collection and to make sure all retailers and customers are treated alike. The agreements require the tribe and the state to split the tax collected. The tribal tax ordinances enacted by the Cheyenne River, Standing Rock, Oglala (Pine Ridge) and Rosebud Sioux Tribes mirror the state's tax structure.

As simple as the agreements may be between the governments, the filing and remitting of collected taxes has seemed difficult for some licensees. Revenue Agent Bobi Adams, who works with the tribes, said the area in which licensees make the most mistakes is in not correctly reporting sales made on agreement reservations under the "Line C, Reservation Sales" deduction of the sales tax return and reporting the sales under the appropriate tribal code under the "City/Reservation Tax Calculations."

When taxpayers fail to report the deduction under the tax calculation section, someone from the department must contact the taxpayer to correct the error. "The department wants taxpayers to be aware of this issue because it is taking up large amounts of administrative time to correct the problems," said Adams.

The department has developed a number of publications to help taxpayers file and remit the correct amount of tax. "We have a Tribal Governments Tax Facts that addresses tax returns, sales to tribal governments, tribal governments without agreements and more. We want taxpayers to contact us so that we can develop an understanding of how this process should work," Adams said.

You can find the Tribal Governments Tax Facts online at www.state.sd.us/drr or call and request one toll-free at 1-800-TAX-9188. Companies that work with the tribes may contact Revenue Agent Bobi Adams at (605) 773-3311.



The Tribal Governments with tax collection agreements include:

- **Cheyenne River Sioux Tribe** - Includes the Cheyenne River Reservation in Dewey and Ziebach Counties.
- **Standing Rock Sioux Tribe** - Includes the Standing Rock Reservation in Corson County and a 500 foot strip of land in the northernmost portions of Dewey and Ziebach Counties.
- **Oglala Sioux Tribe** - Includes the Pine Ridge Reservation in Shannon County and that portion of Jackson County south of the White River.
- **Rosebud Sioux Tribe** - Includes the Rosebud Reservation in Todd County, and Indian country defined by 18 U.S.C. 1151 (b) and (c) in Mellette, Tripp, and portions of Gregory and Lyman Counties.

Filing on the Reservation

The tribal sales and use tax is reported on the state sales tax return.

Example:

\$1,000 taxable sale occurred in Mission, SD (1.75%) which is located on the Rosebud Sioux Tribe Reservation (4.00%).

- Fill out Lines 1-3 on your sales tax return as you normally would.
- Under the **Deductions** section, Line C Reservation Sales, include all sales made on any reservations that have a tribal agreement with the State of South Dakota.

- Continue to fill out the left side of the sales tax form.

Under City/Reservation (right side of return)

- G** Report taxable sales subject to city tax under the appropriate city.
- H** Report gross receipts for each Reservation using the appropriate Reservation Code.

CITY/RESERVATION TAX CALCULATIONS					
	CITY/RES	CODE	NET TAXABLE	RATE	TAX
	G Mission	239-2	\$1,000.00	1.75%	\$17.50
	H RBST-SA	412-4	\$1,000.00	4.00%	\$40.00

C. Reservation Sales	1,000.00
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CONTRACTORS IN THE KNOW

Filing Correct and Accurate Returns

For contractors concerned about filing inaccurate returns, the department wants you to know that we are here to help. We have created a number of construction contract scenarios that are common in the business. The contract scenarios are followed by step-by-step instructions on how to fill out the paper version of the contractors excise tax return.

We encourage contractors to consider filing their tax returns electronically free of charge via SD QUEST. Filing taxes electronically will significantly reduce filing errors, eliminate excess paperwork and is safe and secure. Visit one of our field offices or the Pierre office and fill out a SD QUEST application today. You can also apply online at www.state.sd.us/drr.

1. On June 20, 2004, ABC signs a contract with the City of Edgemont for \$50,000 to install materials into a water line. This project is for a qualified utility. The contractor will owe use tax on the material furnished by the municipality. However, they do not include the material on line 2 as owner furnished material subject to the excise tax. Materials provided by the city are valued at \$12,000, with possession taken on August 5. The city did not pay sales tax on these materials. Payment of \$50,000 was received August 20, 2004.

2. On June 25, 2004, ABC Corporation submits a bid for \$300,000 to remodel a school building in Hot Springs, SD. ABC purchases some materials locally and pays the applicable state and municipal sales tax to the supplier. A hard-to-locate material is purchased from an unlicensed out-of-state supplier at a cost of \$25,000 plus \$300 freight. No sales tax is paid on this purchase. The materials arrive at the jobsite on August 1. Payment of \$200,000 is received on August 4, 2004.

3. On July 30, 2004, ABC enters into an agreement with a furniture store in Custer to build a warehouse for \$175,000. The furniture store purchases the materials and provides them to ABC to install. The purchase price, including sales tax, is \$100,000. Payment of \$175,000 is received on August 25, 2004.

4. On August 4, 2004, ABC enters into an agreement with a Rural Water System (qualifying utility) to add on to an office building. The contract amount is \$150,000. Materials are purchased from a licensed supplier and state and municipal sales tax are paid. Payment of \$75,000 is received on August 27, 2004.

5. On August 4, ABC receives a payment of \$200,000 for school remodeling. On August 25, \$175,000 is received for the construction of the furniture warehouse. On August 20, the City of Edgemont pays ABC \$50,000. On August 27, ABC receives \$75,000 as a start-up payment on their contract from the Rural Water System.

State Tax Liability

a. As the remittances of \$200,000 for remodeling the school, \$175,000 for the furniture store and \$50,000 for the water line and \$75,000 from the Rural Water System were received in the August 2004 monthly reporting period, add \$200,000, \$175,000, \$50,000 and \$75,000; enter \$500,000 on line 1 under Total Gross Receipts.

b. As owner-furnished materials provided by the furniture store are reported in the month, enter \$100,000 on line 2.

c. Add lines 1 and 2 and enter the total on line 3.

d. As ABC had no receipts as a subcontractor in August, they would not have any prime contractor exemption certificates, so enter 0 on line 4.

e. No receipts from projects on a Reservation were received. Enter 0 on line 5.

f. Enter \$600,000 on line 6 and 7.

g. Enter the 2% tax of \$12,000 on lines 8 and 11.


h. Since the fair market value of the materials furnished by Edgemont was \$12,000 and possession of the materials was taken on August 5, and the purchase price of materials used in the Hot Springs school on which no tax was paid to the supplier was

\$25,000 plus \$300 freight; add \$12,000 + \$25,000 + \$300 and enter the total - \$37,300 on line 12 and the 4% use tax - \$1492 on line 13. Add lines 13 + 14 + 15 and enter on line 16.

i. Add lines 11 + 16 and enter \$13,492 on line 17.

j. Since the materials purchased without sales tax for the Hot Springs school were installed inside the city limits, municipal sales tax is due. Enter \$25,300 under Hot Springs, multiply by 1.83% which is \$462.99. Construction materials provided by Edgemont were used inside the city limits, enter \$12,000 under Edgemont, multiply by 2% which is \$240. Add Hot Springs and Edgemont municipal tax and enter \$702.99 on line 18.

k. The total tax due is computed by adding lines 17 + 18 and entering the total on line 19. Enter any interest or penalty due if the return is late, on line 20. Add lines 19 + 20, subtract any notice of credit or add any billing notice amounts and enter the total on line 21. Enter the amount of the remittance, \$14,194.99, on line 22.



**CONTRACTORS' EXCISE
TAX RETURN**

Reporting Period: Aug 04
 Return: 200408
 Return Due: September 20, 2004
 File Code: 7

CHECK FOR CHANGE OF ADDRESS BELOW

Out of Business? Attach license card
 Last day of business: _____

License # _____

STATE TAX CALCULATIONS		CITY/RESERVATION TAX CALCULATIONS				
		CITY/RES	CODE	NETTAXABLE	RATE	TAX
1. Gross Receipts *	500,000.00	A Hot Springs	169-4	25,300.00	2.00%	506.00
2. Owner Furnished Materials *	100,000.00	B Edgemont	104-2	12,000.00	2.00%	240.00
3. Total (Line 1 plus 2)	600,000.00	C				
4. Subcontractor Receipts *	0	D				
5. Reservation *		E				
6. State Excise Taxable (Line 3-4-5)	600,000.00	F				
7. Gross Receipts Subject to 2% Excise*	600,000.00	G				
8. 2% Tax (Line 7 x .02)	12,000.00	H				
9.		I				
10.		J				
11. Total Excise Tax (Line 8 + 10)	12,000.00	K				
12. Subject to 4% State Sales/Use Tax *	37,300.00	18. Total City/Res Tax (Add A to K)				746.00
13. State Sales/Use Tax Due (Line 12 x .04)	1,492.00	REMITTANCE CALCULATIONS				
14. Fuel Subject to 4% Tax *		19. Total Tax Due (Line 17 + 18)				14,238.00
15. Fuel Use Tax (Line 14 x .04)		20. Interest/Penalty				
16. Total Use Tax (Line 13 + 15)	1,492.00	21. Total Due (Line 19 + 20)				14,238.00
17. Total State Tax (Line 11 + 16)	13,492.00	22. Amount Remitted *				14,238.00

I declare under the penalties of perjury this return has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

Date: _____ Preparer: _____ Date: **June 15, 2004** Licensee: **Jon Q. Taxpayer**

RV11EXRTN 05/03

Gross Receipts and Contractors' Excise Tax

By Betty Morford and Rob Witte

According to the South Dakota Governor's Office of Economic Development, the construction industry is only second to retail trade for major industries in South Dakota. This means that as South Dakota grows economically and our population continues to increase, so will the construction industry. The importance of the construction industry is further evident in that South Dakota collected over \$60 million dollars in Contractors' Excise Tax in fiscal year 2004, a 5.7% increase from fiscal year 2003.

Prime contractors are required by state law to charge 2% contractors' excise tax on their gross receipts. Municipal tax does not apply to receipts subject to the 2% contractors' excise tax. Gross receipts include the total amount a prime contractor receives for a contract without deducting anything. Subcontractors are not subject to the 2% tax if the subcontractor is furnished a valid prime contractors exemption certificate by the prime contractor for each specific job performed.

Auditors have found that contractors routinely deduct the following items from their gross receipts.

Indirect Payments - Amounts paid to suppliers or subcontractors, on behalf of the prime contractor are considered gross receipts of the prime, even if payment is made directly by the person the realty improvement is done for.

This happens frequently with banks who manage construction accounts and are required to pay suppliers and

subcontractors on behalf of the prime contractor.

Barter - If equipment is exchanged for labor, the value of the equipment determines the amount of contractors' excise tax that is due by the contractor.

Sweat Equity - Persons receiving consideration in exchange for labor under a "sweat equity" contract. For example, homeowners providing work such as painting or shingling. The homeowner is considered a subcontractor and should be provided with an exemption certificate from the prime contractor.

Liquidated Damages, Penalties - Interest, penalties or liquidated

damages paid by the contractor may not be deducted from gross receipts.

This situation occurs when a contract must be completed by a certain date. Often contractors will be required to pay the project owner a certain amount of money for each day that the contract runs over the due date. The contractor cannot deduct the fees that are paid to the project owner.

The department recommends contacting a revenue agent toll-free at 1-800-TAX-9188 before deducting any receipts or expenses from your gross receipts. It will save you time and money in the future.

Specialty Builders In The Black Hills

By Rob Witte

As gold miners did more than 100 years ago, land developers big and small have descended on the Black Hills in hopes of creating their own financial success. Individuals from South Dakota and beyond are turning their land interests into beautiful homes and cabins in and around the Black Hills Region.

The Department of Revenue & Regulation considers individuals who hold title to a parcel of land and build with the intent to sell as Specialty Builders (Spec Builders). You are considered a Spec Builder even if you do not perform any of the work; whether it is for new construction or remodeling. This type of development allows an individual to potentially earn more dollars by adding value to their property. Spec Builders must have a contractors' excise tax license as well as pay sales/use tax on all construction materials.

The department has developed a brochure, Specialty Builders and the \$100,000 Rule, which outlines this information in more detail. Visit us online at www.state.sd.us/drr or request a brochure by calling us toll-free at 1-800-TAX-9188.



445 EAST CAPITOL AVENUE
PIERRE, SD 57501-3185

taxation

www.state.sd.us/drr

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



Return Service Requested