

2006 Legislative Update

By Kelly Thompson

INSIDE

2

EXECUTIVE

Insights from the Secretary

3

REVENUE SOLUTIONS

Business Education Program
Ask Doctor Revenue

4 - 5

CONTRACTORS IN THE KNOW

Top Ten Excise Tax Errors
Investment Property

6

SALES AND USE TAX

New Exemption Certificate

7

STREAMLINED EXEMPTION CERTIFICATE

Contact Us:

South Dakota
Department of Revenue & Regulation
445 East Capitol Avenue
Pierre, South Dakota 57501-3185
www.state.sd.us/drr
1-800-TAX-9188
Fax: 605-773-6729

Editor/Writer: Brooke McNaughton
brooke.mcnaughton@state.sd.us

Contributors: Bobi Adams, Jody Bartels,
Leann Garber, Randy Hartmann, Betty
Morford, Codi Nincehler, Jane Page, Sally
Staufer, Kelly Thompson

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your email address along with your tax
license number to: webman@state.sd.us

Tax exemptions for the agriculture industry and some property owners, motor fuel tax refunds, changes in motor vehicle license plates, and the creation of a new class of liquor license were among tax-related issues discussed by the South Dakota Legislature during the 35-day legislative session that officially ended on March 20.

The Department of Revenue & Regulation tracked 153 bills during the 2006 Session dealing with sales, use and contractors' excise taxes; property taxes; motor vehicle issues; insurance coverage; banking and securities issues; and issues affecting the South Dakota Lottery, the South Dakota Real Estate Commission, and the South Dakota Gaming Commission. Following is a brief look at several bills that had received or were nearing final action by the time this article was printed.

Taxes on Agricultural Equipment and Machinery

Gov. Rounds put his signature on two bills that affect how agricultural machinery and irrigation equipment are treated for tax purposes. Under HB1154, the sale, re-sale or lease of farm machinery, attachment units and irrigation equipment is removed from current sales tax laws and placed in a new chapter; the bill also imposes a 4% excise tax on the gross receipts from such transactions. The change makes these transactions exempt from municipal tax. **The law becomes effective April 1, 2006.**

A second bill, HB1081, makes maintenance items and services on agricultural equipment and machinery and irrigation equipment exempt from sales and use taxes. Oil, filters, antifreeze, detailing or cleaning services, and windshield washer fluid as well as other fluids qualify for the exemption. **The bill is effective immediately.**

Sales and Use Tax Exemptions

A bill receiving successful passage will benefit game bird producers in South Dakota. In response to the growing game bird industry in the state, HB1123 adds gross receipts from the sale of feed for pheasants, partridges and quail to the list of feeds that are exempt from sales and use tax. To receive the exemption, the feed must be used by farmers and ranchers who are actively engaged in the business of raising such birds.

Motor Vehicle Issues

The Division of Motor Vehicles will have another year to prepare for the implementation of a plate with owner system with the passage of HB1049. Legislation passed by the 2005 South Dakota Legislature provided for the implementation of the new system effective January 1, 2007; as the system updates are taking longer than anticipated, the 2006 legislation pushes back the implementation date to January 1, 2008. Once the system is in place, vehicle owners will receive license plates specific to them as owners that will follow them from vehicle to vehicle instead of the plate staying with the vehicle, as is currently the

Insights...from the Secretary's Desk



As I write these comments, the 2006 legislative session is still underway. While a number of bills dealing with taxation have worked their way through the legislative process, many have yet to reach the Governor's desk for signature. One thing is clear at this point, however . . . improvements to significant tax incentives created in recent years aimed at attracting large new or expanded industrial and agricultural projects are likely to become law this year. New jobs and business activity should spell better opportunity for many of your businesses, as well as improve sales and excise tax revenues to the state. See other parts of this newsletter for a summary of 2006 legislative activity that should be of interest to sales and excise tax licensees.

Mention was made in our newsletter last fall that a number of companies without a physical presence in South Dakota would begin collecting sales tax for a group of states, including ours, on October 1, 2005. To keep you abreast of developments in this regard, approximately four hundred companies had registered by year-end to collect tax for this group of states. This number continues to grow each month, indicating that the effort in recent years to streamline and simplify the collection of sales tax is beginning to bear fruit.

While it may be snowing today, days are becoming noticeably longer and warm weather activities will soon be upon us. Those who provide fishing guide services for a fee are reminded that a sales tax license is necessary. For more details, see Hunting and Fishing Services Tax Facts #195, available by calling 1-800-TAX-9188 or downloading from our website.

We at the Department of Revenue & Regulation wish you an enjoyable and prosperous spring.

Gary R. Viken

2006 Legislative Update (CONTINUED FROM COVER)

practice. This bill will also require dealers to be online with the department when the new system is implemented.

South Dakota veterans proud of their military service can display that pride on their vehicles now that Gov. Rounds has signed SB183. The legislation authorizes the issuance of special license plates designating the vehicle owner as a veteran. The plates will be made available to honorably discharged veterans who have served on active duty and may include information on the conflict, rank or status of the veteran.

Another bill receiving the official nod allows for refunds of the state's motor fuel tax under certain circumstances. Under the provisions of HB1050, users may apply for the refund on products brought into South Dakota that are blended with other substances to create something that is not used as a fuel (like windshield washer fluid); the refund is also available for motor fuel or special fuel used as a racing fuel in vehicles operated off of public highways as part of an organized racing event.

New Liquor License Established

A bill which got its start banning the issuance of liquor licenses near Bear Butte State Park ended the Legislative Session creating a new class of liquor license for artisan distillers, which are similar to brew pubs or farm wineries. Though not signed officially by press time, HB1233 sets a yearly license fee of \$500 for such licenses, stipulates the distiller must get at least 30% of their raw materials for production from South Dakota, and allows them to produce up to 50,000 gallons of product annually. License holders will be able to sell their product both on and off-sale at their facility as well as to wholesalers.

Property Tax Issues

Two property tax bills, one awaiting the Governor's signature and the other having received it already, will provide property tax exemptions for entities promoting economic development. HB1112, which was signed by the Governor in February, exempts from property tax the first \$100,000 of value of property owned by local industrial development corporations. Such corporations are established to promote economic development within their communities. If the entity owns only a portion of the property, only the portion under their ownership is exempt.

With HB1129 officially signed, facilities used for business incubators are exempt from property tax. Business incubators are facilities which support the development of start-up businesses; in an incubator setting, several small businesses may share support services, technical assistance or resources. Of the six incubators currently in operation in South Dakota, three will qualify for the exemption. Any portion of the facility that houses an incubated business for more than five years will be taxed in the same manner as other property of the same class.

And governing bodies for taxing jurisdictions now have the power to automatically refer property tax opt-outs to a vote of the taxpayers with the signing of SB97. Prior to passage of the bill, only school districts could automatically refer such measures; for other entities, a petition for referral signed by at least 5% of the registered voters in that jurisdiction had to be filed to refer opt-outs to a public vote.

For more information on the 2006 Legislative Session, visit the Legislative Research Council's website at <http://legis.state.sd.us/sessions/2006/index.aspx>.

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 as well as their employees and accountants. For the most current list of seminars or to register, visit our website at www.state.sd.us/dr. 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

June 21, 2006 **Sales Tax:**
Mitchell Technology 9:00am - Noon
Center **Contractors' Excise Tax:**
Mitchell, SD 1:00-4:00pm

June 28, 2006 **Sales Tax:**
Technical Education 9:00am - Noon
Center **Contractors' Excise Tax:**
Sioux Falls, SD 1:00-4:00pm

Small Business Workshops

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

April 19, 2006 8:30am - 5:00pm
Lake Area Technical Institute
Technical Education Building
230 11th St NE
Watertown, SD

May 9, 2006 8:30am - 5:00pm
Western Dakota Technical Institute
CTC-A Room
800 Mickelson Drive
Rapid City, SD

Border Issues Seminars

Border Issues Seminars cover the difference in the tax application and reporting process between South Dakota and bordering states. For more information, visit us online at www.state.sd.us/drr.

April 13, 2006
ND/SD Border Issues **Sales Tax:**
Federal Building 8:30am - 12:00pm
115 4th Avenue SE **Contractors' Excise Tax:**
Room 208 & 213 1:00pm - 3:00pm
Aberdeen, SD

April 19, 2006
Tri-State (IA/NE/SD) **Sales Tax:**
To Be Announced 9:00am - 4:00pm
Sioux Falls, SD Lunch on your own

April 20, 2006
Tri-State (IA/NE/SD) **Contractors' Excise Tax:**
To Be Announced 9:00am - 4:00pm
Sioux Falls, SD Lunch on your own

May 23, 2006
ND/SD Border Issues **Sales Tax:**
Butler Center for 8:30am - 12:00pm
Lifelong Learning **Contractors' Excise Tax:**
505 S 7th St 1:00pm - 3:00pm
Bismarck, ND 58504

Ask Doctor Revenue

By Dr. Revenue

A customer recently purchased a battery and some hydraulic hoses for his tractor. He stated these were repair parts and were exempt from sales tax. Is this correct?

Repairs and repair parts for agricultural equipment used primarily for agricultural purposes are exempt from sales tax as of January 1, 2006. If the battery and hoses are for a farm tractor, your customer is correct that the parts are exempt from sales tax. To qualify as a part, it must replace a part that was assigned a part number by the equipment manufacturer.

In addition, beginning April 1, 2006, agricultural equipment, attachment units, and irrigation equipment used for agricultural purposes is subject to 4% tax. Municipal tax will no longer apply. Agricultural purposes means the producing, raising, growing, or harvesting of food or fiber upon agricultural land, including dairy products, livestock, and crops.

For complete information on Ag exempt items and tax rates, please see the Agricultural Equipment and Services Tax Fact on our website at www.state.sd.us/drr/publicat.htm or call 1-800-TAX-9188.

Tax Filing Deadlines

April

April 20 - Paper returns and payments due for monthly filers.
April 23 - SD QUEST returns due.
April 27 - SD QUEST electronic payments due.

May

May 1 - Paper returns and payments due for bi-monthly filers.
May 20 - Paper returns and payments due for monthly filers.
May 23 - SD QUEST returns due.
May 29 - Memorial Day, Department Offices Closed
May 30 - SD QUEST electronic payments due.

June

June 20 - Paper returns and payments due for monthly filers.
June 23 - SD QUEST returns due.
June 29 - SD QUEST electronic payments due.

CONTRACTORS IN THE KNOW

Are you making these Top 10 Contractors' Excise Tax Errors?

1. Do you deduct the contractors' excise tax from gross receipts prior to listing the total gross receipts on line 1 of the contractors' excise tax return?

The contractors' excise tax is a gross receipts tax on the contractor. Gross receipts include 100% of the amount received in payment from the owner for completing the project. No deductions may be taken for any expenses or losses incurred. The contractors' excise tax is an expense of the project and must be included in the figure on line 1 of the return.

In order for the contractor to recoup tax from the customer, the contractor is allowed to use a factor of 2.041% when bidding and billing the customer. To assist contractors in bidding and billing the correct amount of tax from the customer and determining the amount to report on line 1 of the return, the department has placed a bid factor calculator on our web site located at:

<https://www.state.sd.us/eforms/secure/eforms/E1895V3-ContractorsExciseTaxBidFactorCalculator.pdf>

2. Does the project owner provide materials for you to install?

The cost or fair market value of materials provided by the owner for a contractor to install are subject to the 2% contractors' excise tax and must be reported on line 2 of the return. The contractor should obtain a copy of the invoice or a statement from the owner regarding the price of the materials and sales tax paid on the materials. If this information is not provided by the owner, the contractor must calculate the fair market value of the materials provided. The fair market value of the owner-furnished materials includes sales or use tax on the material.

3. Do you bring materials and equipment into South Dakota from out of state or buy tools and materials over the Internet?

If a contractor purchases or brings equipment or materials into South Dakota from out of state, the contractor may have a use tax liability. If the vendor does not collect the applicable sales tax, new or used equipment and materials delivered into South Dakota are subject to 4% state use tax, plus applicable municipal tax, on the purchase price. If the contractor paid tax in another state and the rate was less than South Dakota's, the contractor must remit the additional use tax in South Dakota.

If equipment is purchased or brought into the state for use during construction, it is subject to the South Dakota sales or use tax.

If new equipment is purchased for construction use, the South Dakota sales tax must be paid to a licensed vendor or the use tax paid to the Department of Revenue & Regulation on the cost or fair market value, whichever is greater.

If used equipment is brought into the state by a contractor who originally purchased the equipment for use in another state and the equipment is seven years old or less, use tax must be paid on the fair market value of equipment unless sales or use tax has been previously paid. The age of the equipment is based on the manufacture date if available; if not available, age is based on the purchase date. The amount of tax on the equipment will be reduced by the amount of sales or use tax previously paid by the contractor to another state, if South Dakota has reciprocity with that state. Equipment used in a municipality is subject to that municipality's use tax.

4. Do you have contracts for Exempt Entities?

Contractors' excise tax is a tax imposed on the gross receipts of all contractors engaged in realty improvements including projects for government entities. There are NO exemptions from contractors' excise tax.

Sales and/or use tax is also due on the materials used in projects for exempt entities. If the exempt entity provides materials, the contractor will owe the state use tax, plus applicable municipal tax, in addition to contractors' excise tax on the value of the materials.

5. Do you barter or trade items? Do you have liquidated damages? Do you reduce the contract amount for "sweat equity"?

A contractor cannot deduct "sweat equity," or labor performed by the homeowner, in exchange for a reduction in the amount due to the contractor, from their gross receipts reported. If a contractor barter or trades an item for labor, the value of the item determines the amount of tax due.

Example: The owner asks, "Will you reduce my contract amount by \$10,000 if I do all the trim work in my new home?" The contractor agrees. The contractor will still owe contractors' excise tax on the \$10,000. The owner becomes a subcontractor.

Example: The owner asks, "Will you reduce my contract amount by \$10,000 on my new home if I give you the title to my boat?" The contractor agrees. The contractor will still owe contractors' excise tax on the \$10,000 as gross receipts.

Example: The contractor is behind on his work. The contract amount to complete a highway project was \$750,000. The deadline to be done with the project was January 15, 2006; the contractor finished the project on February 15th. The contract stated that the owner would reduce the payment amount by \$1,000 for every day that the contractor went over the deadline. The contractor is not allowed to reduce gross receipts by the amount the owner withheld for penalty for late completion. The contractor will owe contractors' excise tax on the full amount of \$750,000.

(CONTINUED ON NEXT PAGE)

CONTRACTORS IN THE KNOW

6. Do you take material or equipment from a rural location into a city?

Materials and equipment are taxable where possession is taken. If possession is taken in a city that imposes a city tax, applicable city tax is due. City use tax is due during the reporting period that the materials are used, stored or consumed in the city limits.

Many contractors have offices or storage facilities located outside of city limits and many of their contracts are located inside city limits. Contractors who have materials or equipment delivered to their office or storage facilities located outside of the city limits owe the municipal tax when the equipment or materials are used inside city limits.

7. Do you issue or receive Prime Contractor Exemption Certificates?

The prime contractor should furnish prime contractors' exemption certificates to each subcontractor for each realty improvement project. The prime contractors' exemption certificate must show the prime contractor's valid excise tax license number and the project location. Prime contractors' exemption certificates cannot be issued to service providers subject to sales tax such as carpet installers, surveyors, or architects or to subcontractors on contracts for qualifying utilities.

Subcontractors must retain the prime contractors' exemption certificates in their records. The prime contractors' exemption certificate should not be mailed in with the excise tax return. Any subcontractor who fails to retain a prime contractors' exemption certificate for each project is considered to be a prime contractor and is subject to the 2% contractor's excise tax on their gross receipts from the project.

8. Do you know what "undue enrichment" is?

Auditors and agents often see accumulating balances in the tax account record when the amount of tax collected from accumulated customers does not balance with the actual tax due on the return. This is often a result

of rounding. If the correctly calculated return does not balance with the amount collected, 100% of the tax collected must be remitted. A business is not allowed to transfer tax collected into an operating account and use for general operating expense. If tax is collected from the customer it must be remitted to the Department. If an error was made in collecting tax from the customer, the additional tax collected must be refunded to the customer. The tax account record should zero out each month.

9. Do you make sure your subcontractors have a current contractors' excise tax license?

The Department of Revenue and Regulation works to make sure that all contractors working in South Dakota are properly licensed and remitting the appropriate sales and excise taxes. It is also very important for the prime contractor on a project to verify that all subcontractors working for them on a project have a contractors' excise tax license. Administrative Ruling 64:09:01:16 states, "General contractors are liable for use

tax due on all items of tangible personal property used, stored or consumed in the performance of their contract including those portions of the contract performed by subcontractors." For your own protection be sure to verify that all your subcontractors are licensed and have paid the applicable sales or use tax on the materials they furnish for a job. If you would like to know if a business has a valid tax license, please contact the Department at (800) 829-9188.

10. Do you have both a sales tax and contractors' excise tax license? Do you report the use tax on materials for an excise taxable transaction on the sales tax return?

If you have both a sales tax license and a contractors' excise tax license, you must complete two different tax return forms. Retail sales and services are reported on the sales tax return. When use tax is due on the contractors' cost of materials used in an excise taxable transaction, the state use tax and any applicable municipal tax should be recorded on line 6 of the contractors' excise tax return.

Do You Owe Tax on a Property That You "Flipped" for Profit?

By Bobi Adams

Recently our department received a call from an individual who sold an investment property. The property was a house that the caller had purchased, fixed up and then put back on the market, also known as "flipping" a house. The caller had purchased the home for \$120,000 and was able to sell it for \$160,000 after the improvements were completed. The caller wanted to know if he had any tax liabilities.

The Answer: **YES**

Individuals have the same tax liability as contractors who build or remodel property when the property is sold within four years of completion. Contractors' excise tax is due on the selling price of the home. Individuals who purchase investment properties are required to obtain a contractors' excise tax license. This license allows them to hire contractors to assist them on the renovation of these homes as subcontractors.

When selling a spec house, the individual or contractor may deduct the cost of the land and the cost of land improvements if excise tax was paid on the land improvements. When selling an investment property, the individual or contractor may deduct the purchase price of the home. Our caller was instructed to pay contractors' excise tax on \$40,000, which is the selling price (\$160,000) less the purchase price (\$120,000) of the home.

For more detailed information on determining land cost for spec builders or if you have questions on whether the sale of your investment property is taxable, please contact our offices at (800)829-9188.

SALES AND USE TAX

New Exemption Certificate - Update now!

The Department has adopted the Streamlined Exemption Certificate replacing the previous South Dakota Exemption Certificate. The Streamlined Exemption Certificate contains information required by the Streamlined Member states to document exempt sales. Businesses will need to obtain new exemption certificates from their customers. A purchaser must provide a properly completed exemption certificate before a seller may exempt a sale from tax.

It is the responsibility of the purchaser to assure that the goods and services purchased exempt from tax are of a type covered by the exemption certificate. Sellers may not accept a certificate of exemption for sales sourced within the state if the reason for exemption does not apply in that state. Purchasers that buy items that are not exempt should inform the seller what items are taxable. Purchasers must review their purchase invoices to determine if proper tax was collected at the time of sale and are responsible for remitting use tax on any items purchased exempt from tax that should not have been.

Any purchaser who knowingly and intentionally lists items for resale that he or she knows will not be resold, or provides an invalid exemption certificate with the intent to evade payment of the tax, must pay the use tax on these items and is guilty of a Class I misdemeanor and may be fined up to 50% of the tax owed.

South Dakota businesses with permit numbers containing UT (use tax) or ET (contractors' excise tax) cannot buy products or services for resale.

For further information on Exemption Certificates and exempt purchases, please view the Exemption Certificate Tax Facts at www.state.sd.us/drr or request a copy by calling 1-800-829-9188.

See the new Streamlined Exemption Certificate on page 7 of this publication.

Churches/Religious Organizations are Subject to Sales Tax

Q: Our business occasionally makes sales to area churches. Should I charge them tax, or are they exempt? What if I sell to a religious school?

A: Under state law, churches are **NOT** exempt organizations; they are subject to sales tax on all purchases made for use by the church, its clergy, and its members.

Schools that have applied for and received an exemption number from the Department of Revenue & Regulation are exempt from sales tax, whether religious, private or public. They must provide to the seller an exemption certificate with their exemption number that includes the letters RE or RS.

For more information see the Exempt Entities Tax Fact on our website or call 1-800-TAX(829)-9188.

You must notify the Department of Revenue & Regulation of any change of address - Our mail is NOT forwarded by the United States Postal Service.

Golf Courses/Country Clubs

The sale of handicap cards from the SDGA, sold by golf courses and country clubs, is subject to sales tax. Golf courses and country clubs should provide SDGA with an exemption certificate so they may purchase the handicap cards without tax.

City and state sales tax also apply to receipts resulting from, but not limited to, green fees, membership fees, cart rental, storage fees, lessons, concessions and the sale of tangible personal property such as golf clubs, balls, shoes, etc.

Green fees and membership fees are also subject to the 1% municipal gross receipts tax.

In addition to Sales tax, an additional one (1%) percent Tourism tax applies to the rental of golf clubs and to fees charged for golf driving ranges and any business on the golf driving range including golf ball rentals.

Internet access continues to be subject to sales tax in South Dakota.

"Other Tobacco Products" Tax Required on Purchases

By Sally Staufer

If you purchase tobacco from an unlicensed distributor or wholesaler, or directly from the manufacturer, you must pay the Other Tobacco Products tax. The tax is ten percent of the manufacturer's invoice price, and includes purchases of roll-your-own tobacco, cigars, chew, snuff or pipe tobacco.

A list of licensed South Dakota distributors/wholesalers can be found at www.state.sd.us/drr under Taxation, Special Taxes. The form to remit the Other Tobacco Products tax may also be obtained from the DRR website under "Forms."

STREAMLINED EXEMPTION CERTIFICATE

South Dakota Streamlined Sales Tax Agreement

Certificate of Exemption

Warning to purchaser:

This is a multi-state form. Not all states allow all exemptions listed on this form. Purchasers are responsible for knowing if they qualify to claim exemption from tax in the state that is due tax on this sale. The state that is due tax on this sale will be notified that you claimed exemption from sales tax. You will be held liable for any tax and interest, as well as civil and criminal penalties imposed by the member state, if you are not eligible to claim this exemption. **Sellers may not accept a certificate of exemption for sales sourced within the state if the reason for exemption does not apply in that state.**

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Enter the two-letter abbreviation for the state under whose laws you are claiming exemption.

Check one:

- Single purchase certificate.** Relates to invoice/purchase order # _____.
- Blanket certificates.** If checked, this certificate continues in force until cancelled by the purchaser.

Print or type	Name of purchaser _____			
	Business address _____	City _____	State _____	Zip code _____
	Purchaser's tax ID number _____		State of Issue _____	County of Issue _____
	If no tax ID number, enter the following:	FEIN _____	Driver's license number/State Issued ID number <i>state of issue</i> _____ <i>number</i> _____	Foreign diplomat number _____
	Name of seller from whom you are purchasing, leasing or renting _____			
	Seller's address _____	City _____	State _____	Zip code _____

Type of business	Type of business. Circle the number that describes your business.	
	01 Accommodation and food services	11 Transportation and warehousing
	02 Agriculture, forestry, fishing, hunting	12 Utilities
	03 Construction	13 Wholesale trade
	04 Finance and insurance	14 Business services
	05 Information, publishing and communications	15 Professional services
	06 Manufacturing	16 Education and health-care services
	07 Mining	17 Nonprofit organization
	08 Real estate	18 Government
	09 Rental and leasing	19 Not a business
	10 Retail trade	20 Other (explain) _____

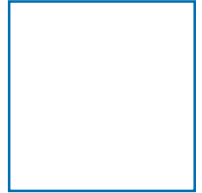
Reason for exemption	Reason for exemption. Circle the letter that identifies the reason for the exemption.	
	A Federal government (<i>department</i>) _____	H Agricultural production _____
	B State or local government (<i>name</i>) _____	I Industrial production/manufacturing # _____
	C Tribal government (<i>name</i>) _____	J Direct pay permit # _____
	D Foreign diplomat # _____	K Multiple points of use (services, digital goods, or computer software delivered electronically)
	E Charitable organization # _____	L Direct mail # _____
	F Religious or educational organization # _____	M Other (<i>explain</i>) _____
	G Resale # _____	

Sign here	<i>I declare that the information on this certificate is correct and complete to the best of my knowledge and belief.</i>			
	Signature of authorized purchaser _____	Print name here _____	Title _____	Date _____



Revenue &
egulation

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