

# taxation

South Dakota Department of Revenue & Regulation

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Send your email address along with  
your tax license number to:  
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## **2007 Legislative Update**

Tax exemptions and refund programs, changes in how property is assessed for tax purposes, and tax breaks for veterans and military personnel were among the tax-related issues discussed by the South Dakota Legislature during the 40-day legislative session that officially ended on March 26.

The Department of Revenue & Regulation tracked 186 bills during the 2007 Session dealing with sales, use and contractors’ excise taxes; property taxes; motor vehicles issues; insurance coverage; banking and securities issues; and issues affecting the South Dakota Lottery, the South Dakota Gaming Commission, and the Appraiser Certification Program. Following is a brief look at several bills that had received final action by the time this article was printed.

### *Property Tax Issues*

Two schools of thought over how agricultural land in South Dakota should be assessed for property tax purposes clashed in the committee rooms and Chambers of the South Dakota Legislature this year. While both HB1308 and SB173 advocated the removal of the 150% rule (which throws out any sale from the assessment process where the sale price is more than 150% of the property’s assessed value), they differed on what method should be used to value agricultural property.

Under HB1308, a property’s full and true value would have been used for assessment purposes, based upon comparable sales in that county. SB173 promoted using productivity valuations for all agricultural land. Under this method, agricultural land would be valued based upon a formula using cash rents.

Although both concepts received much debate and discussion, neither finished the trip to the Governor’s desk for signing. HB1308 met its demise in the House on Feb. 20 while SB173 lasted until March 2 when it met the same fate in the same Chamber.

### *Streamlined Sales Tax Bills*

Governor Rounds put his signature to three bills that bring South Dakota further into compliance with the Streamlined Sales Tax Project, an effort to create a uniform system for administering state and local sales taxes nationwide. HB1042 clarified the definition of “bundled transaction” for Streamlined Sales Tax purposes to mean any transaction involving two or more distinct and identifiable products sold for one non-itemized price in which more than 10% of the products (other than food or medical supplies) or 50% (including food or medical supplies) are subject to tax. A related bill, HB1047, revised the taxation of bundled transactions for telecommunications and related services. This bill amended the current statute to include Internet access, ancillary services like voicemail and directory assistance, and audio/video programming services in the types of transactions subject to tax.

Under the third Streamlined bill to be passed, sellers will have more time to obtain exemption certificates to prove a transaction is not subject to tax. HB1055 changed the deadline from 60 to 120 days from the commencement of an audit for sellers to present exemption certificates.

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### **Paul Kinsman Appointed Secretary of Revenue & Regulation**

Governor Rounds appointed Paul Kinsman as the new Secretary of Revenue & Regulation in December, 2006. Paul is a 1977 graduate of Watertown High School. He attended the University of South Dakota, where he earned a Bachelor of Science and a Juris Doctorate.

Prior to his current position with the Department of Revenue & Regulation, Paul was employed with the Department of Labor in 1988 as an Administrative Law Judge in the Office of Administrative Hearings. From 1996 to 2000, he served as Director of Central Services and legal counsel for the Bureau of Administration. From 2000 to 2003, Paul served as Director of Property and Special Taxes within the Department of Revenue. In 2003, Governor Rounds appointed Paul as Commissioner of the Bureau of Administration.

Paul replaced Gary Viken as the Secretary of Revenue & Regulation.

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### ***Sales and Use Tax Exemptions, Refunds and Reciprocity***

Supporters say coin dealers will no longer lose sales out-of-state or to the Internet with the successful passage of HB1151. The bill exempted coins, currency and bullion including bars, ingots and medallions, from sales tax as of July 1. This exemption does not include the sale of jewelry.

The requirements for South Dakota's construction refund programs were clarified with the approval of SB38. Two of those programs offer tax refunds for expanded agricultural and business facilities but offered no specifications as to what constituted "expansion." When SB38 officially becomes law, "expansion" will be defined as a physical increase in the size of a building, not the expansion of product lines or work force, or the upgrading or modernizing of an existing plant unless it involves actually increasing the size of the plant.

Farmers who purchase equipment out-of-state can receive a reciprocal credit for any sales, use or gross receipts taxes that were paid on the equipment now that Governor Rounds has signed HB1044 into law. While most of the surrounding states do not charge sales tax on farm equipment, the reciprocity will be available for equipment purchased in states that do have such taxes when the equipment is brought back into South Dakota.

### ***Motor Vehicle Issues***

The deadline has been extended for the Division of Motor Vehicles to complete implementation of the plate with owner system with the passage of HB1081. The 2006 Legislature had approved pushing back the implementation date to Jan. 1, 2008; the 2007 bill sets the deadline as July 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 practice.

Another bill receiving the official nod allows motor vehicle dealers to **display** vehicles within the limits of the city where the dealer is licensed without obtaining a supplemental license. Under SB93, dealers who want to **display** a vehicle at a location other than their principal place of business – for example, as part of a display at a shopping mall – will be able to do so without a supplemental license.

Consumers will be able to make better decisions about whether or not to purchase boats and vehicles with new information they will receive thanks to the passage of HB1103. The bill requires that for any vehicle for sale on a dealer's lot which has a branded title (salvage, flood-damaged, etc.), the dealer must disclose that information to the buyer on a posted form.

The South Dakota House and Senate gathered its ranks to override a veto by Governor Rounds on HB1174, a bill which expanded the exemption from excise tax for motor vehicles 11 or more model years old. Under current law, such vehicles are exempt from tax if they sell for \$1,500 or less before trade-in. Effective July 1, that amount will increase to \$2,200.

### ***Changes for Veterans and Military Personnel***

Three bills which offer tax or fee breaks for veterans or current members of the military were signed by Governor Rounds. SB96 exempts the first \$100,000 of valuation of a disabled veteran's home if the individual is 100% disabled due to a service-related injury. Under HB1204, honorably discharged veterans who purchase special veterans license plates are now exempt from the \$10 special plate renewal fee. And military personnel assigned to temporary duty who miss the deadline to apply for the owner-occupied status on their homes will get a second chance to receive property tax relief. HB1187 allowed for an abatement or refund of property taxes for such individuals who would have qualified for the owner-occupied status, but missed the application deadline due to their temporary military assignment.

For more information on the 2007 Legislative Session, visit the Legislative Research Council's website at <http://legis.state.sd.us/sessions/2007/index.aspx>.

# REVENUE SOLUTIONS

## Business Education Program

Come join our Business Education Program at one of the workshops or seminars in your area. For the most current list of seminars or to register, visit our website at [www.state.sd.us/drr2/businessstax/seminar/seminar.htm](http://www.state.sd.us/drr2/businessstax/seminar/seminar.htm)

### Border Issues Seminars

Border Issues Seminars cover the difference in the tax application and reporting process between South Dakota and bordering states.

#### WY/SD

**April 12, 2007**

Western Dakota Tech  
CTC-A Room  
800 Mickelson Drive  
Rapid City, SD

**Sales Tax:**

9:00am – 12:00pm

**Contractors' Tax:**

1:30pm – 4:30pm

#### IA/SD

**April 19, 2007**

Morningside Community Center  
Conference Room  
2400 S. Bahnson Avenue  
Sioux Falls, SD

**Sales Tax:**

9:00am – 12:00pm

**Contractors' Tax:**

1:00pm – 4:00pm

#### ND/SD

**May 10, 2007**

Lake Area Technical Institute  
Technical Education Building  
Room 514  
1225 Arrow Avenue  
Watertown, SD

**Sales Tax:**

8:30am – 12:00pm

**Contractors' Tax:**

1:00pm – 3:00pm

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

**May 23, 2007 - Sales Tax:** 9:00am – 4:00pm

**May 24, 2007 - Contractors' Tax:** 9:00am – 4:00pm

Western Iowa Technology  
Building B (Advanced Sciences Building)  
4647 Stone Avenue  
Sioux City, IA

### Small Business Workshops

Information regarding the Department of Revenue & Regulation, Department of Labor, and the Small Business Administration will be covered. Seminars run from 8:30am - 4:00pm.

**April 25, 2007**

Lake Area Technical Institute, Technical Education Building  
230 11th Street NE  
Watertown, SD

**May 2, 2007**

SD Department of Labor, Upstairs East Conference Room  
420 South Roosevelt Street  
Aberdeen, SD

**May 9, 2007**

Brookings Library  
515 3rd Street  
Brookings, SD

**June 6, 2007**

Dacotah Bank  
320 Main Street (in the basement)  
Mobridge, SD

**June 13, 2007**

First Dakota National Bank  
500 E. Norway Avenue  
Mitchell, SD

**July 18, 2007**

Regional Technical Education Center, Community Room  
1200 W. 21st Street  
Yankton, SD

### Basic Tax Seminars

Basic 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.

**April 26, 2007**

Western Dakota Tech  
800 Mickelson Drive  
Rapid City, SD

**Sales Tax:**

9:00am – 12:00pm

**Contractors' Excise Tax:**

1:00pm – 4:00pm

**May 30, 2007**

Southeast Technical Institute  
2320 N. Career Avenue  
Sioux Falls, SD

**Sales Tax:**

9:00am – 12:00pm

**Contractors' Excise Tax:**

1:30pm – 4:30pm

**June 26, 2007**

Technical Education Center  
1200 West 21st Street  
Yankton, SD

**Sales Tax:**

9:00am – 12:00pm

**Contractors' Excise Tax:**

1:00pm – 4:00pm

**June 28, 2007**

Mitchell Technology Center  
Room 111  
1800 East Spruce Street  
Mitchell, SD

**Sales Tax:**

9:00am – 12:00pm

**Contractors' Excise Tax:**

1:00pm – 4:00pm

**July 20, 2007**

Southeast Technical Institute  
2320 N. Career Avenue  
Sioux Falls, SD

**Sales Tax:**

9:00am – 12:00pm

**Contractors' Excise Tax:**

1:30pm – 4:30pm

### 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 21 - Paper returns and payments due for monthly filers.
- May 23 - SD QUEST returns due.
- May 30 - SD QUEST electronic payments due.
- May 31 - Paper returns and payments due for bi-monthly filers.

#### June

- June 20 - Paper returns and payments due for monthly filers.
- June 23 - SD QUEST returns due.
- June 28 - SD QUEST electronic payments due.

# NEWS YOU CAN USE

## Equine Services: Knowing What's Taxable

If you train or board horses in South Dakota, the Department of Revenue & Regulation reminds you that the services you provide are subject to sales tax.

Animal specialty services such as boarding horses, showing horses, shoeing horses, providing riding lessons, and training horses (for racing or otherwise) are subject to both the 4% state sales tax and applicable municipal sales tax. Selling, breeding, or adopting horses is not subject to sales tax.

Tax liabilities also exist for the supplies, materials and equipment used in providing the service; such items are subject to the state and applicable municipal tax at the time they are purchased. This also includes horse feed for boarding services. The sale of horse feed is only exempt from sales tax if the feed is used by farmers or ranchers who are regularly engaged in the business of raising horses.

If the supplier does not charge sales tax, then use tax is due. South Dakota's use tax rate is 4%, plus applicable municipal use tax, and is payable to the department in the filing period in which the supplies are received.

The South Dakota Department of Revenue & Regulation is always ready to answer your tax questions on this or other topics. Call the toll-free helpline at 1-800-829-9188 Monday through Thursday from 8:00am to 6:00pm and Friday from 8:00am to 5:00pm central time, or visit the website at [www.state.sd.us/drr](http://www.state.sd.us/drr).

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## Audit Findings

Routine audits are performed on businesses throughout the year. Some of the major findings of tax due in audits include:

- Use tax on equipment and services
- Use tax on farm equipment
- Use tax on Internet access fees
- Use tax on supplies
- Use tax on food items purchased untaxed by motels for continental breakfasts
- Use tax on computer software and support contracts
- Poor accountability of contractor's gross receipts resulting in under reported taxable receipts
- Sales or use tax on fuel surcharges
- Excise tax on owner furnished materials

If your business is expanding or replacing part of its operation, and you are hiring contractors or service providers from other states, it would be in your best interest to notify your vendors that South Dakota sales or excise tax may apply to the work that they are performing. Insuring that your vendors are in compliance with South Dakota tax laws reduces your potential for a use tax assessment in an audit. If you have any questions concerning the audit process or the taxability of these items, call 1-800-TAX-9188.

## Golf Courses/Country Clubs

Sales tax applies to receipts resulting from sales of handicap cards from SDGA. Golf courses and country clubs should provide SDGA with an exemption certificate so they may purchase the handicap cards for resale.

Sales tax also applies 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.

In addition to sales tax, an additional one (1%) percent tourism tax applies to golf ball rental, fees charged for using driving ranges and rental of golf clubs.

## SDQuest Reminders

- Due Date - 23rd of the month, even if it falls on a Saturday, Sunday or holiday.
- Payment is due on the second to last working day of the month. The amount listed in the Amount Remitted line is the amount that will be taken from your account.
- If filing after the 23rd, you must file a paper return.
- ACH Debit: when return is completed, payment for this method is also completed.
- ACH Credit: When a return is completed, payment must be generated by the taxpayer.
- To add additional cities, click on the "manual entry" button.
- Complete a new application if there is a change to your bank information.
- If you don't have a return due, SDQuest won't let you log-on to the system.
- If you provide an email address, you will receive an email reminder to file your return. Contact us if we do not have your email address.
- If there is an error on your return, you must file an amended return on paper - not electronically.

## Municipal Tax Issues

Returns filed this past year indicate a need for clarification in municipal tax reporting. The following is an explanation on the tax rates reported in the municipal tax section of the sales tax return.

In South Dakota, each city may elect to impose a tax on goods and services. Generally, if a good or service is subject to State 4% sales or use tax, the city general tax rate also applies. There are a few exceptions. The general tax rate code is identified on the city rate worksheet with an asterisk (\*). An example would be Spearfish code 334-2. Most cities have a 2% general rate. The general rate is applied to all taxable sales that take place within a municipality that includes lodging, restaurants, bars, department stores, convenience stores, as

well as most retail trades such as professional services, utilities, office supplies, building materials, clothes, food, etc. In this example, the sales would be reported to 334-2 (Spearfish code at the rate of 2%) on any one of lines 8 through 21 of your sales tax return.

The Municipal Gross Receipts Tax also known as MGRT is an **additional** 1% rate. Most South Dakota cities have elected to apply the additional tax to selected types of industries. The tax is on entertainment and special events, lodging, restaurants and bars, and services most consumers would normally associate with the former “bed and booze” or “fun” tax. The revenue received from these services are reported (using the Spearfish example) by using the MGRT

code 334-1. This is in **addition** to the general rate for the city where the services were provided. Prior to this, the businesses that reported 3% did so on one line only whereas now it is split out on two different lines, 2% general **and** 1% Municipal Gross Receipts Tax.

The Tourism or Seasonal Tax was imposed on visitor related industry for South Dakota Tourism Promotion in 1995. Examples of trade in which Tourism Tax (code 700-1) is due are lodging, recreational services, spectator and special events, visitor attractions, etc. Revenue from these areas is subject to the additional tax.

Keep in mind, use taxable items are not subject to the Municipal Gross Receipts Tax or Tourism Tax.

### Example:

A business has receipts from a restaurant (\$1000.00), bar (\$1000.00), gift shop (\$849.68), and hotel (\$1849.99). The receipts from the bar sales include sales tax. Because you do not include the sales tax collected when reporting gross sales amounts on the sales tax return, you must back the tax out by dividing those receipts by 1.07% (the rate of tax). The bar sales to report are 934.58 ( $1000.00 / 1.07 = \$934.58$ ).

You owe use tax on supplies that cost you \$500.00.

Sale Type	Amount	Tax Type
Restaurant sales	\$1000.00	State Tax Municipal Tax Municipal Gross Receipts Tax
Bar	\$ 934.58	State Tax Municipal Tax Municipal Gross Receipts Tax
Gift Shop	\$ 849.68	State Tax Municipal Tax
Hotel	\$1849.99	State Tax Municipal Tax Municipal Gross Receipts Tax Tourism Tax

Your sales will be reported on your return as follows:

SALES TAX CALCULATIONS	GROSS	TAXABLE	RATE	TAX DUE
1. Gross Sales	\$4634.25			
2. Use Taxable	500.00			
3. Non-Taxable Sales	0.00			
4. Reservation Sales (Detail in City Section)	0.00			
5. Net State Sales Taxable (Line 1 plus Line 2, minus Line 3, minus Line 4)		\$5134.25	x 4%	\$205.37
6. City & Reservation Tax Calculation Detail:				
7. City/Reservation Name	Code	Taxable	Rate	Tax Due
8. Spearfish*	334-2	\$5134.25	.02	\$102.69
9. Spearfish MGRT	334-1	\$3784.57	.01	\$ 37.85
10. Tourism Tax	700-1	\$1849.99	.01	\$ 18.50

## Are you a Speculative Builder?

A speculative builder is one of the following:

- A licensed contractor is a speculative builder even if they build and sell only one home.
- A realtor that owns the land and builds homes for sale but does not do any of the actual construction or have a crew that does the construction.
- An individual, contractor, or developer that purchases a building to remodel and sell.

A speculative builder is an individual who holds title to the land and builds with the intent to sell. Speculative builders need to know the following.

- You are considered a speculative builder even if you **do not** do any of the work yourself.
- Speculative buildings include new construction or remodeling.
- All speculative builders must have a contractors' excise tax license.
- Speculative builders must pay sales/use tax on all construction materials used in the project.
- **Exemption:** Homeowners who build a home for themselves, with **no** intention of selling the home, but end up selling the home within 4 years, are not considered speculative builders. If this is more than a **one-time** occurrence, then the homeowner is a speculative builder and must obtain a contractors' excise tax license.
- Licensed speculative builders should issue prime contractors exemption certificates to their subcontractors (**except for land improvements**).
- Selling spec buildings: A spec builder will owe 2% contractors' excise tax in the period when the realty improvement is sold. The contractors' excise tax is reported in the same reporting period as the closing. Contractors' excise tax does not apply if the realty improvement is sold more than four years after the date of completion. Tax is due on the selling price, less the cost or fair market value of the land and land improvements, whichever is greater. Contractors' excise tax must be paid to the contractor completing the land improvements to qualify for the deduction. Land costs that may be deducted include amount paid to the seller for the land, real estate taxes and settlement costs.

Leasing spec buildings: the owner is responsible for the 2% contractors excise tax on the fair market value of the building. The tax is due in the same reporting period the improvement is first leased.

## IRS News

- Read about proposed laws affecting the Tax Gap in the 2008 revenue proposals. There are some proposals to increase 1099 reporting requirements. This is your chance to study them in advance and contact your Congressional representatives about any concerns. <http://www.irs.gov/irs/article/0,,id=167584,00.html>

- **THE DIRTY DOZEN** The IRS identified 12 of the most blatant scams affecting American taxpayers and warned people not to fall for schemes peddled by scam promoters. <http://www.irs.gov/newsroom/article/0,,id=167983,00.html>

- Publication 1518. The 2007 Tax Calendar for Small Businesses and Self-Employed is now available. It has information in plain language, reminders and important dates to help small businesses comply with their tax obligations. To order, 800-829-3676, or view it online at <http://www.irs.gov/businesses/small/article/0,,id=101169,00.html>

- The IRS is issuing a series of monthly fact sheets about issues relevant to small businesses. These are areas in which small businesses often make mistakes, that contribute to the "tax gap" - <http://www.irs.gov/newsroom/article/0,,id=158619,00.html>

- Business Income and the Tax Gap
- Cost of Goods Sold and the Tax Gap
- Third-Party Reporting Reminders
- Home Office Deduction Reminders
- Car and Truck Expense Deduction Reminders
- Depreciation Reminders
- Deducting Business Supply Expenses
- Deducting Travel, Entertainment and Gift Expenses
- Deducting Rent and Lease Expenses

## New Laws to Implement Tobacco Tax Increase

The Legislature passed SB 43 to enhance enforcement of tobacco laws. The bill makes two changes to tobacco regulation in South Dakota. First, the bill requires all businesses which sell cigarettes or other tobacco products at retail, to register with the Department. No fee will be charged to register as a tobacco retailer. **Look for more detailed registration information in the July 2007 Taxation newsletter.**

The bill also requires the tobacco retailers to purchase their tobacco products

(chewing tobacco, cigars, and everything else with tobacco, except cigarettes) only from licensed wholesalers and distributors. Current law already requires retailers to purchase their cigarettes only from a licensed wholesaler or distributor. The wholesalers and distributors collect and pay the cigarette and tobacco products tax. The retailer is required to keep documentation showing they purchased all of their tobacco products from a licensed wholesaler or distributor. A list of licensed wholesalers and distributors is on the Department's web page.

## CONTRACTORS IN THE KNOW

### Utility Company “Contribution to Construction” Contracts

Effective December 1, 2006, charges by a utility company to a customer to help cover the cost of expanding a line are not considered gross receipts subject to contractors’ excise tax when those receipts are considered a contribution to construction by the utility company. Contributions for construction must be shown as such in the records of the utility company in order to not be considered taxable gross receipts.

#### Example:

Farmer Bill wants to put in water service to water his cattle three miles from an existing line. He will only purchase a small amount of water each year. The rural water system deems this line economically unfeasible because of the huge cost of putting in the line. It is also unfair to the rest of the customers to share in the costs by raising water prices. The rural water system hires a contractor to install the line and invoices Farmer Bill for a contribution to construction.

The utility company must mark the invoice as “Contribution to Construction.” The utility company must report the contribution to construction on line 1 of the contractors’ excise tax return and deduct the same amount on line 3 (Deductions). The contractor must report the receipts paid to him by a util-

ity company. The utility company cannot give the contractor a Prime Contractor Exemption Certificate.

In the future, if the line becomes economically feasible by increased use or another customer wanting a service in close proximity is also asked to contribute to construction, the property owner’s contribution could be partially refunded with interest. The payments are not offset by future water purchases.

What type of projects are **not** considered a contribution to construction?

1. Replacing lines or updating lines is subject to the contractors’ excise tax.
2. Repair work that is done that the utility company bills another person for — those fees are subject to contractors’ excise tax.
3. Moving lines is subject to the contractors’ excise tax.
4. Leakage detection is subject to 4% state plus applicable municipal sales tax
5. Monitoring services are subject to 4% state plus applicable municipal sales tax

For additional information, contact the department at 800-829-9188.

### Prime Contractors’ Exemption Certificates

The department recommends obtaining a prime contractor’s exemption certificate prior to starting work. If a subcontractor hires another subcontractor for a project, the **prime** contractor must issue the certificate for each project. A blanket certificate cannot be issued to a subcontractor on a yearly basis.

You cannot deduct subcontractor receipts from your gross receipts unless you have a prime contractor’s exemption certificate on file. If you do not receive a properly completed certificate, you are liable for the contractor’s excise tax.

A certificate may not be issued by an owner of a project. A homeowner is not a prime contractor. **Exception:** An owner is a prime contractor if building or remodeling with the intention of selling the property (Spec Builder).

### Correction to the October 2006 Issue of Taxation News - DuraStone/DuraCeramic Tile

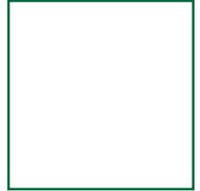
The department erroneously stated in the October 2006 news article, *Installing Flooring?*, that DuraStone and DuraCeramic Tile Installation was subject to contractors’ excise tax. The Department has reviewed DuraStone and DuraCeramic Tile and the installation process and has determined the installation of this type of tile is subject to sales tax.

**Check out the NEW Business Tax website!**  
[www.state.sd.us/drr2/businessstax/bustax.htm](http://www.state.sd.us/drr2/businessstax/bustax.htm)



**R**evenue &  
egulation

445 EAST CAPITOL AVENUE  
PIERRE, SD 57501-3185



taxation

[www.state.sd.us/drr](http://www.state.sd.us/drr)

[bustax@state.sd.us](mailto:bustax@state.sd.us) or call 1-800-TAX-9188

Return Service Requested