

taxation

South Dakota Department of Revenue & Regulation

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CONTRACTORS' EXCISE TAX
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Want to receive **taxation** via email?
Send your email address along with
your tax license number to:
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Who needs Commercial License Plates?

Operators of vehicles transporting private business property in South Dakota are subject to the requirements of commercial vehicle licensing. A proper South Dakota commercial vehicle license can be purchased in a variety of ways depending on usage. Operators may purchase annual commercial license plates, a temporary commercial license sold in 30 day increments, or a single trip permit. Operators, individuals or businesses providing a service for compensation are required to be commercially licensed while working in South Dakota. Temporary licenses must be displayed in the lower right hand corner of the vehicle windshield.

If you are moving business property that exceeds 500 pounds, you are required to display some form of commercial license. This weight includes the weight of the load or any trailer and load being pulled and any adaptations or modification to the vehicle such as ladder racks, storage containers or other means of containment used to transport the property. Vehicles transporting less than five hundred pounds of business property or equipment would not be required to purchase any form of South Dakota commercial license.

Temporary commercial licenses are available and valid for any 30 day period and may be purchased for up to 12 months. The fees are determined according to gross vehicle weight of the vehicle and load and any trailer and load being pulled. The temporary commercial license may be purchased from a County Treasurer's Office, Port of Entry, South Dakota Highway Patrol trooper or Motor Carrier Inspector.

All commercial vehicles operating in South Dakota are subject to inspection for compliance.

Transient Vendors Take Advantage of South Dakotans

We have been seeing an influx of unlicensed out-of-state people coming into South Dakota to do home repair jobs – mainly roofing - since the hail storm that recently hit the Black Hills area and others doing clean up work in the Hermosa area. These people appear to follow storm-struck areas around the country. Some of them are not reputable and pose a potential fraud risk to the citizens of our area.

We have had out-of-state persons apply a thin layer of gray sealer to the roofs of homes and guarantee that the roof will stop leaking. They have charged the homeowners \$1,200 and the roofs still leak. By the time the homeowners were aware of the faulty repair, the out-of-state persons were gone and the homeowner had no recourse but to hire a local, reputable contractor to repair the leaky roof.

Under South Dakota law, any business which intends to sell any kind of tangible personal property or service in the state must have a current South Dakota tax license. Anyone found guilty of engaging in business without a valid South Dakota tax license after having been notified in writing may be charged with a Class 6 felony.

Our department is advising citizens who encounter unlicensed or suspicious transient vendors to report them to local law enforcement. If you have any questions on transient vendors or if the Department can be of assistance regarding this issue, please contact our office at 1-800-829-9188. All calls are confidential. Thank you for your assistance with this issue.

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.

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 governmental 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; the contractor finished the project on February 15. 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.

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.

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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

Border Issues Seminars

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

Tri-State (IA/NE/SD)

October 10, 2007 Sales Tax: 9:00am – 4:00pm

October 11, 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.

October 10, 2007

Western Dakota Technical Institute

CTC-A Room

800 Mickelson Drive

Rapid City, 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.

November 13, 2007

Southeast Technical Institute

2320 N Career Avenue

Sioux Falls, SD

Sales Tax:

9:00am – 12:00pm

Contractors' Excise Tax:

1:30pm – 4:30pm

Get your tax questions answered

Did you know the Department of Revenue and Regulation prepares tax presentations specific to your group, organization, association or even for your business? On a regular basis the Department offers a number of tax education seminars. In addition, the department is anxious to provide tax education specific to your needs.

The department will tailor a presentation specific to your group. Let us know your concerns or topics you want addressed and we will do the rest. This is a great opportunity to get questions answered, develop working relationships not only with Department of Revenue and Regulation staff, but also with your fellow taxpayers.

Contact the Business Education Coordinator at business.education@state.sd.us or 605-773-3311. It will be our pleasure to provide a presentation at your next meeting.

Tax Filing Deadlines

October

October 1 - Paper returns and payments due for bi-monthly filers. (July - August)

October 20 - Paper returns and payments due for monthly filers.

October 23 - SD QUEST returns due.

October 30 - SD QUEST electronic payments due.

November

November 20 - Paper returns and payments due for monthly filers.

November 23 - SD QUEST returns due.

November 29 - SD QUEST electronic payments due.

November 30 - Paper returns and payments due for bi-monthly filers.

December

December 20 - Paper returns and payments due for monthly filers.

December 23 - SD QUEST returns due. (Sunday)

December 28 - SD QUEST electronic payments due.

RETRACTION

Contributions to Construction

The South Dakota Department of Revenue and Regulation is retracting the allowance for "contributions to construction" as described in the April 2007 *Taxation* newsletter. Information provided stated contributions to construction were not taxable receipts to a utility company. The Department has further researched this issue and has determined that the contributions to construction **are** subject to contractors' excise tax.

Any utility that charges their customer for construction services should have a contractors' excise tax license and should report contractors' excise tax on their receipts. Construction services may include charges for extending lines or installation of meters.

If your utility has receipts from customers for any construction and are not currently reporting contractors' excise tax on those receipts please contact the Department at 1-800-829-9188 to determine if you have a tax liability.

Are you filing electronically?

October 2007 marks the 8th anniversary of the Department of Revenue and Regulation's electronic filing system SDQUEST. SDQUEST allows taxpayers to file electronically using the Internet or Interactive Voice Response method with ACH debit or credit payment method. The system is secure with all information safeguarded through encryption technology.

SDQUEST was implemented in October 1999. At that time only a handful of taxpayers used the electronic option to file and pay their taxes. Eight years later the number of electronic filers has grown to almost 22% of the monthly filers with 52% of the collections remitted via SDQUEST.

If you are not currently a QUEST filer consider the advantages this system offers you on a regular basis:

- There is no charge to use the system.
- Your tax return due date is extended from the 20th of the month to the 23rd.
- ACH payments are not deducted from your bank account until the second to the last business day of the month.
- SDQUEST offers you the option to import existing city/special jurisdiction tax information from your data files through the Dynamic Web Import option. No more re-keying for those who have numerous city/special jurisdiction tax obligations.

- The system automatically calculates the taxes due based on gross and taxable sales. This feature eliminates calculation errors that can be time consuming and require additional filings and result in interest assessments.
- Users also have the option to begin a return, save and return to complete the return prior to the submission deadline.

All that is required to become a user is a simple one page informational application that can be completed and submitted electronically. This form can be found on the department's website www.state.sd.us/drr or contact the department at 1-800-TAX-9188 for information. Sign up today and discover, as many of your fellow taxpayers have, how easy the system is.

ATM Fees

In South Dakota, the service industry continues to grow. ATM machines are located in grocery stores, convenience marts, and various other locations. When you visit the ATM at the nearest convenience store for a quick \$50.00 to pay the babysitter, there is normally a fee associated with the ATM transaction.

The fee charged to the user by the ATM machine owner/operator is subject to state and applicable city sales tax. The fee is reported as gross sales (without tax included). You may deduct the sales tax that is included in the fee by dividing the fee by the applicable tax rate. For example, a fee of \$2.50 is divided by 1.06 = \$2.30, which is the taxable revenue.

There are times when the owner/operator will pay a commission to the business that allows the ATM machine to be placed in their business location. This commission is exempt from sales tax as a space rental.

The ATM machine owner/operator typically hires a company to process the ATM transactions. The fee that is retained by the processing company is subject to sales or use tax. Some processors are located out of state and do not report sales tax on the fee they charge for the processing service. If the processor is unlicensed, the ATM owner/operator is responsible for reporting use tax on the fee.

SD processors may also have sales or use tax liability on services provided to

them by service providers who verify cardholder information such as name, address, and expiration dates.

In an ATM transaction the money is taken from a credit card or bank card, the networks charge the bank that issued the card an interchange fee, which the bank in turn charges the card holder. The interchange fee is paid to the ATM owner/operator who may split the fee between the processor, credit card company, and the bank. The interchange fee is subject to sales tax.

Financial services provided by banks are not subject to sales tax. Banks not licensed with the SD Banking Division are subject to state sales and use tax laws.

NEWS YOU CAN USE

Recycled or Reused Owner-Furnished Material

If the owner of a construction project furnishes you with equipment or material to install that the owner previously used in another realty improvement this is owner-furnished material, and it is subject to the following tax:

1. Contractors' excise tax applies to the cost or fair market value of owner-furnished material, including material previously used by the owner in another project.
2. Use tax is due on the cost or fair market value of owner-furnished material, including material previously used by the

owner in another project, unless one of the following conditions is met:

- A. The material was previously used in SD. Because the material was used in South Dakota sales or use tax should have been paid at that time.
- B. The material was previously used by the owner at an out-of-state location and
 - the material is greater than seven years old; or
 - documentation shows that sales or use tax greater than the amount due SD was previously paid.

Sales by Governmental Entities

Sales by counties, cities and the state are subject to 4% state sales tax regardless of how the items are sold - on demand, by sealed bid or at a yearly surplus auction. This includes the sales of office furniture and equipment, gravel, culverts, bridge planks, grader blades, tools, heavy equipment, etc.

In addition, if the purchaser takes possession inside the boundaries of a city that imposes a municipal tax, the municipal tax rate will be applicable. If the purchaser takes possession outside of city limits and pays 4% state sales tax, then, at a later date, takes the equipment into a city that imposes a municipal tax, the purchaser becomes responsible to remit the additional municipal use tax to the state at the time it is taken into a city.

If the purchaser takes possession outside of the state of South Dakota, no South Dakota tax is due. However, there may be a tax imposed by the state where the purchaser takes possession. If the purchaser brings the item back into South Dakota, use tax is due.

If an item is sold to a construction company in South Dakota, the 4% state sales and applicable municipal tax is always applicable. A contractor is not allowed to purchase material to be installed or equipment for resale.

If equipment is sold to an equipment company that will resell the equipment, the county may accept an exemption (resale) certificate. The county would not charge any tax on this transaction. The equipment company will collect/remittance the tax when sold to the end consumer. The county must keep a copy of the exemption certificate in their records to document why sales tax was not charged at the time of sale.

Prime Contractor Exemption Certificates: Who issues them?

Prime contractor exemption certificates should be given by the prime (general) contractor to all subcontractors performing realty improvements. Prime contractor exemption certificates are to be issued for each project that subcontractors work on. The exception is if the project is for a Qualified Utility. All contractors owe excise tax on their receipts for Qualified Utility projects.

If a prime uses the same subcontractor on multiple jobs, it is acceptable for them to issue a prime contractor exemption certificate and provide a list-

ing of each project that subcontractor works on, rather than a separate prime contractor exemption certificate for each project. The prime contractor is liable for excise tax on the total contract even if no prime contractor exemption certificate is given to the subcontractor and the subcontractor pays the tax.

Prime contractor exemption certificates are only issued by the Prime contractor. Subcontractors who use subcontractors need to obtain prime contractor exemption certificates from the prime to issue to their subs.

Attention Agricultural Equipment Repair Shops

Repairs and repair parts for agricultural equipment are exempt from sales tax. If you are repairing agricultural equipment you do not owe sales tax on your receipts. These services are exempt by law. If you are not sure the equipment is used for agricultural purposes, you may have the customer complete an

exemption certificate indicating the repair is for agricultural use. Having a completed exemption certificate on file at the time of sale provides the repair business relief from liability for tax. Customers that provide incorrect information on the certificate will be responsible for any use tax that may be due.

SALES & USE TAX

Hunting Lodges

It's that time of year again for the fields to be flooded with hunters and game. There are a lot of new hunting operations in the state and some may not be aware of the tax issues. If you are providing any type of guiding, lodging, or recreational service, there is a 1% tourism tax that would apply in addition to the state tax and applicable municipal tax.

Most operators provide package deals that include beverages, meals, shells, guide, and lodging. State and tourism tax applies to the package price plus applicable municipal tax if any of the service is provided in a municipality. The only services that can be purchased for resale if sold in a package are: guide services, meals purchased at restaurants, lodging accommodations, items sold outside the package.

Landowners that charge for hunting rights also need to be licensed and would owe 4% state tax.

County Governments

Counties receive many different types of funds for services they provide. One area that may be overlooked is their highway department. If the county highway department receives any type of payment for one of the following construction services, they need to obtain a South Dakota Contractors' Excise Tax license and remit the 2% contractors' excise tax on those receipts.

Examples of taxable construction services are:

- Repairs to damaged signs and other structures due to accidents or vandalism
- Private contributions to repair roads and driveways
- Road repairs for townships or road districts.

The contractors' excise tax license is in addition to their sales tax license.

For more information see County Government Tax Facts on our website at www.state.sd.us/drr2/business/tax/publications/publications.htm

Sports and Recreation Clubs

Are you a member of a sports or recreation club such as a gun club or an archery club? If so your club may have a South Dakota sales tax obligation.

Any membership sport or recreation club in the state of South Dakota is required to have a South Dakota sales tax license. Products and services sold by a club are subject to the 4% state and applicable city sales tax.

Items a club may sell that are subject to South Dakota sales tax include membership fees, charges to use the range, ammunition, targets, chips, pop, and candy.

Charges to use the shooting or archery range are subject to the 1% tourism tax in addition to the 4% state and applicable city sales tax. The tourism tax does not apply to shooting ranges owned by non-profit organizations.

Charges for shooting league or for tournaments are exempt from South Dakota sales tax and the tourism tax.

Did your customer hire the delivery company?

Retailers owe sales tax based on where products are delivered if the retailer knows the delivery address. This includes delivery by a delivery company hired by the customer. If the retailer does not know the delivery address, sales tax applies based on the customer's address.

If the customer takes possession of the product at the retailer's business or if the retailer does not know the delivery or customer's address, then sales tax applies at the retailer's location.

Are you receiving payment from a state government?

The governments from other states or the District of Columbia are exempt from sales tax if the law in that state provides a similar exemption for South Dakota governments. Governments providing a similar exemption are Colorado, Indiana, Iowa (motels and hotels are not exempt), Minnesota (lodging and meals are not exempt), North Dakota, Ohio, and West Virginia. The governments from states without a sales tax are exempt from South Dakota sales tax. These states are Alaska, Delaware, Montana, New Hampshire, and Oregon.

Payment must be made directly from the government. The exemption does not apply to payments made by employees, even if the employee will be reimbursed by the government.

CONTRACTORS' EXCISE TAX

Modular, Ready-Built, UBC Homes

If a contractor or dealer constructs a building on their property and sells to a customer with or without installation, there are some tax laws to consider. Effective July 1, 2004, changes were made on how excise, sales, and use tax apply. There are three scenarios that should be followed.

1. Contractor/dealer sells house with installation on permanent foundation

- use tax is due on the cost of material where the dealer takes possession or where items are taken out of inventory. Contractors' excise tax is due on total gross receipts.

2. Contractor/dealer sells house without installation-sales tax is due on the cost of materials based on the customer's point of possession.

3. Contractor is **hired** to install a prebuilt

house on permanent foundation - contractors' excise tax is due on the contract price plus value of the house since it is owner furnished material. If no sales or use tax was previously paid on home, the contractor will owe use tax on cost of materials.

For additional information review Tax Facts on Manufactured and Modular Homes online at www.state.sd.us/drr.

Contractors' Excise Tax Errors (CONTINUED FROM PAGE 2)

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 con-

tractor 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.

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 the contractors' excise tax return.



Revenue &
egulation

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taxation

www.state.sd.us/drr

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

Return Service Requested