

taxation

South Dakota Department of Revenue & Regulation

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MUNICIPAL GROSS RECEIPTS APPLICATION

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2008 Legislative Update

A major change in how agricultural land is valued for property tax purposes, expansions in liquor licensing, taxation of emerging technologies, and improvements in the titling and registration of vehicles were among the tax-related issues discussed by the South Dakota Legislature during the 35-day legislative session that officially ended on March 17.

The Department of Revenue & Regulation tracked 202 bills during the 2008 Session dealing with sales, use and contractors' excise taxes; property taxes; motor vehicle issues; insurance coverage; banking; securities; and issues affecting the South Dakota Lottery, the South Dakota Gaming Commission, the South Dakota Real Estate 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 Assessments

During the first weeks of session, legislators all seemed to agree that a change was needed in the method for valuing ag land. What they couldn't agree on was what that change should be. Several proposals were introduced and vigorously debated before House Bill 1005 successfully passed both the House and Senate and was signed by Governor Rounds.

The bill addressed three rules that distorted the property tax valuation system. Collectively, these rules shifted taxes on billions of dollars of value (mostly ag value) to other property owners. The passage of House Bill 1005 phased out the 150% of assessed value rule for owner-occupied and commercial property. It also addressed the ag land valuation problem by advocating a major change in the philosophy regarding how such land is valued. The bill promoted switching to a new system that values ag land based on what it can produce for a farmer or rancher, instead of how much someone is willing to pay for it.

Because House Bill 1005 represents such a significant change in philosophy, the legislation included the creation of an Oversight Advisory Task Force to help implement it, and puts off the implementation of the new system for one year to allow for any system glitches to be worked out.

Liquor License Changes

With narrow exceptions, wine sales in South Dakota have been limited to those licensees who have off-sale liquor licenses. As the wine industry continues to grow in the state and the consumption of wine becomes more

(CONTINUED FROM PAGE 1)

popular, linking wine sales to liquor sales has limited the availability and marketing of wine. House Bill 1126 sought to change that by allowing wine to be sold like beer where one license allows for the sale of wine both through package sales and by the glass. Governor Rounds supported the measure by signing it into law on Feb. 14, 2008.

Still awaiting the Governor's signature at the time of this newsletter's publication was Senate Bill 126, which provides liquor licenses above the current license cap for restaurants wanting to include alcohol on their menus. For over 100 years, liquor licenses in South Dakota have been capped by population, meaning the number of licenses that could be issued in an area was based on the number of people who lived there. Such caps created artificial limitations on the number of restaurants and bars able to serve alcohol; they also created artificial markets for the licenses with licenses selling for many times what the city or county originally charged when issuing the license. Senate Bill 126 is seen as a compromise on the issue by allowing restaurants to receive an uncapped license while at the same time maintaining the investments made by business owners who purchased a liquor license under the current system. It is anticipated Governor Rounds will sign the legislation into law.

Sales Tax and Audit issues

The telecommunications industry and businesses that sell downloadable products over the Internet now have a clearer understanding of their tax obligations in South Dakota with the signing of House Bill 1010 and House Bill 1017. Both pieces of legislation were necessary to keep the state in compliance with the Streamlined Sales Tax Agreement (SSTA).

House Bill 1010 repealed the definition of telecommunication services in existing statute and replaced it with the definition found in administrative rule to ensure uniformity. House Bill 1017 put the taxing requirements for products delivered electronically in its own statute, separate from the statute that taxes tangible personal property. The specific taxing statute was a compliance requirement of the SSTA. Products delivered electronically include downloadable items such as books, music and videos.

Businesses being audited by the Department of Rev-

enue & Regulation will now have more time to pay their audit assessment or request a hearing on the assessment. Senate Bill 14, signed into law by the Governor on Feb. 28, 2008, extends the time period for such payments or requests from 30 to 60 days. The extension puts South Dakota in line with many other states who have already implemented the longer timeframe.

Motor Vehicle and Motor Fuel Issues

The Division of Motor Vehicles took another step closer to a paperless vehicle title system when Governor Rounds signed Senate Bill 15 into law. The bill requires all vehicle titles with a lien noted to become electronic records, and gives vehicle owners the option to keep their title as an electronic document until they leave South Dakota. In another move to make the title and registration process easier for owners, House Bill 1014 was introduced to put snowmobiles and boats on the same staggered registration system as other vehicles. When the new law takes effect July 1, 2008, individuals owning multiple types of vehicles will be able to renew all their registrations at one time.

Dealer license fees will be increasing but the move comes as no surprise to the dealers. Both new and used car dealers supported the passage of House Bill 1240 which will raise needed funds for the dealer program proposed in House Bill 1241. That bill allowed for dealers to request an extension for a temporary permit in situations where a dealer is unable to deliver a vehicle title on time due to circumstances beyond their control. Both bills received the Governor's nod on Feb. 21 and Feb. 27, respectively.

A pair of bills gaining successful passage will financially impact the sale of fuel in South Dakota, though in different ways. House Bill 1018 provides for refunds of special fuel taxes in situations where a marketer must purchase taxed diesel fuel for non-taxable use when there is a documented fuel shortage in the state. Meanwhile, Senate Bill 148 creates a 2-cent per gallon tax incentive for diesel fuel that is blended with at least 5% biodiesel. The tax break is intended to provide some relief at the pump for consumers while at the same time promoting growth in South Dakota's biodiesel industry.

For more information on the 2008 Legislative Session, visit the Legislative Research Council's website at <http://legis.state.sd.us/sessions/2008/index.aspx>.

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.

ND/SD

May 7, 2008

Sales Tax: 9:00am – Noon

Contractors' Tax: 1:00pm – 4:00pm

Northern State University

1200 S. Jay Street

Student Center

Centennial Rooms B & D

May 29, 2008

Sales Tax: 9:00am – Noon

Contractors' Tax: 1:00pm – 4:00pm

Bank of North Dakota

1200 Memorial Hwy Room 201

WY/SD

June 3, 2008

Sales Tax: 9:00am – Noon

Contractors' Tax: 1:00pm – 4:00pm

Western Dakota Technical Institute

Room CTC-A

800 Mickelson Drive

June 4, 2008

Sales Tax: 9:00am – Noon

Contractors' Tax: 1:00pm – 4:00pm

Lecture Hall

Gillette College

300 W. Sinclair

Tri-State (IA/NE/SD)

April 30, 2008

Sales Tax: 9:00am – 4:00pm

May 1, 2008

Contractors' Tax: 9:00am – 4:00pm

WITCC (Western Iowa Tech Community College)

4647 Stone Avenue

To register for this seminar call 1-800-352-4649 ext 6404

Tri-State (IA/NE/SD)

June 11, 2008

Sales Tax: 9:00am – 4:00pm

June 12, 2008

Contractors' Tax: 9:00am – 4:00pm

Southeast Technical Institute

2320 N. Career Avenue

Health Center Room 257

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 23, 2008

Lake Area Technical Institute

1225 Arrow Avenue

Room 514

May 7, 2008

Holiday Inn Express

East Highway 44

May 21, 2008

Southeast Technical Institute

Sullivan Health Center - Room 257

2320 N. Career Avenue

June 11, 2008

Avera Queen of Peace Hospital

Community Room

525 North Foster

June 25, 2008

Regional Technical Education Center

Community Room

1200 W 21st Street

July 16, 2008

Kneip Building

Conference Room 1& 2

500 Governor's Drive

July 30, 2008

Brookings Library

515 3rd Street

September 10, 2008

SD Department of Labor

Upstairs East Conference Room

420 South Roosevelt Street

September 24, 2008

Beadle County Extension Office

1110 3rd Street SW

October 8, 2008

Western Dakota Technical Institute

CTC-A Room

800 Mickelson Drive

Aberdeen, SD

Bismarck, ND

Rapid City, SD

Gillette, WY

Sioux City, IA

Sioux Falls, SD

Watertown, SD

Winner, SD

Sioux Falls, SD

Mitchell, SD

Yankton, SD

Pierre, SD

Brookings, SD

Aberdeen, SD

Huron, SD

Rapid City, SD

Countdown underway to “Keep Your Plate – July ‘08”

With just three months to go until the implementation of the new license plate with owner system, “training” and “education” are two words that have taken on added significance for the South Dakota Division of Motor Vehicles.

Since January of this year, the Division has been training the county employees and its own staff who will be using SDcars (South Dakota Customized Automated Registration System) on the new computer system that becomes operative July 1, 2008, the same time the state’s new license plate with owner system becomes effective. In addition, they’ve been trying to spread the word to all South Dakota vehicle owners about how the changeover will affect them.

Debra Hillmer, Motor Vehicles Division Director, says while developing the new computer system and converting the Division’s more than four million records from the old system to the new has been a challenge, the bigger challenge will be to ensure that everyone affected by the change is aware of what’s happening and the role they will play in the process.

“The move to license plate with owner

impacts virtually every South Dakotan who owns a vehicle as well as any government employee or business that deals with the sale of vehicles. It’s important that all of those groups understand what will be expected of them during the sale or purchase of a vehicle after July 1 of this year,” Hillmer said.

Under the current license plate with vehicle system, the plates that are on a vehicle when it’s sold stay with the vehicle, and the license plate number remains the identifying number for that specific vehicle as long as the plate series is valid. With the new license plate with owner system, the plates on a vehicle belong to the titled owner(s) of the vehicle. If the vehicle is sold, the seller keeps the plates for use on the next vehicle they acquire. While the new process may be confusing at first, Hillmer says the changeover to the new license plate system and its accompanying computer system, SDcars, will actually make things more efficient and easier for everyone involved.

“What SDcars does is store and retrieve

all the vehicle information associated with each individual owner and ties all those records together so a customer can do multiple vehicle renewals and multiple transactions at the same time, which could save them multiple trips to the county office,” Hillmer said. “And by allowing licensed vehicle dealers to enter sales information on-line to the state’s computer system, it will save data entry time and improve efficiency for the counties.”

Hillmer says the new system will also help to reduce complaints and problems involving out-of-state parking violations and tickets; ensure that license plate owners receive credit for any remaining months on the license plate when they sell a vehicle and attach their plate to their new vehicle (a benefit currently enjoyed by the individual who purchases their old vehicle); and will also make it possible for customers to eventually renew their vehicle registrations and complete transactions on-line.

For more information on “Keep Your Plate – July ‘08” and the SDcars system, visit the Division of Motor Vehicles’ website at SDcars.org.

Spec Builders and House Flippers

Spec builders and house flippers need to have a contractors’ excise tax license.

A spec builder owes 2% contractors’ excise tax on the selling price of a realty improvement project less the cost or fair market value of the land or improvements, whichever is greater. Deductible land costs include the amount paid for land, real estate taxes and settlement costs paid when purchasing the land.

House flippers owe contractors’ excise tax on the difference of the selling price of the flipped house less their purchase price of the house.

- If the spec builder or house flipper hires other contractors to help complete

the realty improvement they should issue prime contractor exemption certificates to the contractors providing realty improvement work. The spec builder or house flipper then pays tax on their receipts without deducting amounts paid to subcontractors.

- However, if a prime contractors’ exemption certificate is NOT issued to a subcontractor and the subcontractor’s invoice shows contractors’ excise tax was charged, then the spec builder or house flipper may deduct the amounts paid those subs from their receipts. Amounts paid to subs providing sales taxable work, such as carpeting, may not be deducted from the spec builder or house flipper’s receipts. (Note: Proof of the excise tax paid to the sub-contractor

must be maintained in your files for a minimum of 3 years)

For example: an investment company purchases a home for \$85,000. The investment company fixes the house up and sells it for \$110,000. The investment company hired an individual to put in the ceramic tile for \$5,000 and another individual to paint for \$2,000. Those companies charged the investment company excise tax on their receipts. The investment company owes excise tax on the selling price \$110,000 minus the purchase price of \$85,000 minus the amounts paid to subs of \$7,000. The investment company has excise taxable receipts of \$18,000.

The tax is due in the same reporting period as the closing.

SALES & USE TAX

Property Management Services and Owner Managed Property

Property Managers

Gross receipts representing the property managers fees are subject to sales tax. The property manager is not allowed to deduct from this fee any cost or expense other than provided below:

- a) Employee expenses: Receipts received from the property owner representing a reimbursement of employee expenses directly associated with the management of a specific property are not subject to sales tax. For this purpose, employee expenses include wages, salaries, payroll tax, payroll deductions, worker's compensation costs, insurance premiums, welfare benefits and other employee benefits.
- b) Goods and services expenses: If the property manager is authorized to make purchases for the property owner, the property manager may purchase goods and services for resale. When the property manager bills the property owner for those goods and services sales tax would apply. However, if sales or use tax was paid on the purchases of those goods and services and the property manager is reimbursed with no markup, the gross receipts received from the property owner are not subject to sales tax.

Owner Managed Lease/Rental Property

The lease and rental of real property is exempt from sales tax. Services performed by the owner are taxed if the service is optional to the renter and the fee for the service is itemized. For example, Mr. Adams rents an office from Rent It Companies for \$1000 a month. Included in the rental fee are electricity, heat, water and janitorial services. For an additional \$25 per month, Rent It Companies will provide security guard services. The \$1000 rental fee is not taxable, but the \$25 optional service is subject to tax.

Another example: The owner rents space to various business people, providing utilities, phone and office help. The phone bill is divided between users or based on percentage used and the office help is split between all tenants. All charges are itemized on the monthly bill. Rent and mandatory charges (utilities) are not subject to sales tax. If the phone and office help are optional, those fees are subject to sales tax.

Tenants Splitting Fees

Multiple tenants operate out of one office building with one person paying all the rent, utilities, insurance, office help, and phone charges for ease of bookkeeping. These fees are divided between all tenants using the building. Tax applies as follows:

- a) If a flat fee for everything, it is not taxable;
- b) If itemized on an invoice, the rent is not taxable and all other charges are subject to tax.

Sales on Indian Country

Are you selling products or providing services in which the point of possession is on Indian Country in South Dakota?

Effective June 1, 2005, retailers and service providers selling to Tribal members on Indian Country controlled by the Lower Brule, Crow Creek, Flandreau, Yankton and Sisseton-Wahpeton Tribes became responsible for remitting sales tax on these transactions. Sales made directly to the Tribal Government are still exempt from sales tax.

If your business is providing services or selling tangible personal property in these areas, we recommend that you review the Department's Tribal Tax Fact publication. The Tribal Tax Facts provides general guidelines on how tax applies to the sale of products, services and construction work on South Dakota's reservations. The publication covers topics such as sales to tribal governments, tribes with tax collection agreements, tax rates within the special taxing jurisdictions and how to report the sales, use and contractors' excise taxes.

Please contact the Department at 1-800-829-9188 if you have questions regarding the collection of tax in these areas. Copies of the tax fact are available for downloading from our website at www.state.sd.us/drr.

Tax Filing Deadlines

April

April 21

Paper returns & payments due for monthly filers.

April 23

SD QUEST returns due.

April 29

SD QUEST electronic payments due.

May

May 20

Paper returns & payments due for monthly filers.

May 23

SD QUEST returns due.

May 29

SD QUEST electronic payments due.

May 31

Paper returns and payments due for bi-monthly filers.

June

June 20

Paper returns & payments due for monthly filers.

June 23

SD QUEST returns due.

June 27

SD QUEST electronic payments due.

What Tax Applies to Fitness Centers?

Due to confusion regarding the correct tax rate that applies to fitness centers, below is a chart listing the correct rates to charge.

Service	4% State Tax	Applicable Municipal Tax	1% Applicable Municipal Gross Receipts Tax	1% Tourism Tax
Membership Fees	X	X	X	
Daily Pass	X	X	X	X
Weekly Pass	X	X	X	X
Trainer Fee	X	X		

Fitness centers also owe state and applicable municipal sales or use tax on purchases such as equipment, towels, cleaning supplies, office supplies, music, TVs, computers and software. This list is not all inclusive.

Trainers who work independently are required to have a sales tax license and charge state and applicable municipal tax on their service.

If you have additional questions, please contact the Department at 1-800-829-9188.

Municipal Gross Receipts and Tourism Tax

Any municipality may impose a one percent tax upon gross receipts of the following:

- Lease and rental of hotel, motel and campsites or other lodging accommodations within the municipality for periods of less than 28 consecutive days;
- Sale of liquor, beer or wine;
- Eating establishments;
- Admission to places of amusement, athletic and cultural events.

The following notes the tax liability for specific businesses:

- All sales of tangible personal property, food, services, parking or alcohol at a spectator event or visitor attraction are subject to state sales tax, city general rate, any applicable municipal gross receipts tax and tourism tax.
- Any type of food sold at a lounge, bowling alley, movie theatre or similar establishment is subject to the state sales tax, city general rate plus any applicable municipal gross receipts tax.
- When a deli sells hot prepared food such as chicken or ribs or any food consumed on site, the state sales tax, city general rate and municipal gross receipts tax apply.
- For delis and grocery stores the sale of food that is cold or frozen, such as frozen pizzas, is not subject to the municipal gross receipts .
- At convenience stores, food sold for immediate consumption such as nachos, hot dogs and prepared popcorn is subject to the state sales tax, city general rate and municipal gross receipts tax.

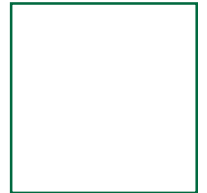
The list on page 7 identifies how state tax, city general rate tax, municipal gross receipts tax and tourism tax apply.

Service	4% State Sales Tax	Applicable Municipal Sales Tax	1% Applicable Municipal Gross Receipts Tax	1% Tourism Tax
ADMISSIONS TO PLACES OF AMUSEMENT, CULTURAL OR ATHLETIC				
Admissions to Visitor Attractions	X	X	X	X
Admissions to Spectator events	X	X	X	X
Admissions to Movies	X	X	X	
Carnival Rides	X	X	X	X
Dances, except school sponsored	X	X	X	X
Sporting Events, except school sponsored	X	X	X	X
Concerts, Operas, Plays, Ballets	X	X	X	X
Fitness center: Daily or weekly passes	X	X	X	X
Fitness center: Memberships (except YMCA & YWCA)	X	X	X	
Fitness center: YWCA & YMCA	Exempt	Exempt	Exempt	Exempt
Golf - Driving Ranges	X	X	X	X
Golf - Membership fees and Green fees	X	X	X	
Golf - Miniature	X	X	X	X
Instruction fees for sports or other activities	X	X		
Museum	X	X	X	X
Nonprofit historic sites	Exempt	Exempt	Exempt	Exempt
Recreational Court Rental - Tennis, Racquetball, Volleyball, Ice Skating, etc.	X	X	X	X
Repertory theater performances - nonprofit	Exempt	Exempt	Exempt	Exempt
Skiing, Lift Tickets, Season Pass, Daily Pass	X	X	X	X
Swimming Pool	X	X	X	
Waterslides - wave pools	X	X	X	X
Zoo	X	X	X	X
RENTAL OF EQUIPMENT				
Picnic Equipment Rental	X	X		X
Recreational Equipment Rental	X	X		X
LODGING				
Motel/Hotels/Bed & Breakfast	X	X	X	X
Campground Fees	X	X	X	X
ALCOHOL				
Alcoholic Beverages, on or off sale	X	X	X	
Alcoholic Beverages sold at special events	X	X	X	X
EATING ESTABLISHMENTS				
Restaurants, including Fast Food & Sit Down	X	X	X	
Concession Stands	X	X	X	
Concession Stands, amusement parks - spectator events	X	X	X	X
Special event temporary vendor stands	X	X	X	X
Juice bars	X	X	X	
Grocery Store Deli items sold to be eaten on the premise or sold hot	X	X	X	
Convenience Store food to be eaten on the premise or food sold hot	X	X	X	
Fountain Drinks	X	X	X	
Food sold at any establishment to be eaten on the premise	X	X	X	
Food sold at Visitor Attractions	X	X	X	X
Food Service at Colleges/Universities	X	X	X	



Revenue &
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PIERRE, SD 57501-3185



taxation

www.state.sd.us/drr

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

Return Service Requested