

taxation

South Dakota Department of Revenue & Regulation

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2009 Legislative Update

by Kelly Thompson

With the state facing a budget deficit and lawmakers focusing on ways to maintain funding for programs and services, tax and fee increases, refund programs, and impending changes in the way agricultural land is valued for property tax purposes were among the tax-related issues discussed by the South Dakota Legislature during the 40-day legislative session that officially ended on March 30.

The Department of Revenue & Regulation tracked 215 bills during the 2009 Session affecting the divisions under its jurisdiction. Following is a brief look at several bills that had received final action by the time this article was printed.

Property Tax Assessments

South Dakota took another step toward implementation of the productivity method for valuing agricultural land with the signing of Senate Bill 3. The bill was proposed by the Ag Land Assessment Implementation and Oversight Advisory Task Force which was created by the 2008 Legislature to fine-tune the productivity valuation system before its July 1, 2009 implementation date.

Senate Bill 3 cleaned up language in the original bill (House Bill 1005) passed last year as well as set the percentages of the gross revenue capitalized to determine the productivity value for cropland and pastureland, specified that ag values cannot increase or decrease more than 10% in any year, and extended the phase-in period for the repeal of the 150% rule for owner-occupied and commercial property through 2017.

When the new system is fully implemented, agricultural land in South Dakota will be valued based on what it can produce for a farmer or rancher, instead of how much someone is willing to pay for it.

Liquor License Changes

A law approved by the 2008 Legislature which allowed cities and counties to issue full-service restaurant on-sale alcohol licenses got some tweaks from lawmakers this year with House Bill 1026. The bill was prompted by confusion over the law that went into effect July 1, 2008. While it did not make substantial changes to the existing law, it fixed the inconsistencies and minor issues causing confusion for cities and counties over who could receive the licenses.

Governor Rounds signed two bills during the 2009 Legislative Session which dealt with the number of alcoholic beverage retail licenses that could be held by a person or entity. Currently, an individual or entity can own or have an interest in three on-sale or off-sale licenses (or a combination of the two) plus three

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additional on-sale licenses if the business gets more than 50% of its revenues from the sale of prepared food. House Bill 1268 allowed an unlimited amount of additional on-sale licenses if the license holder derives more than 50% of its annual gross receipts from the sale of food at the location where the license is held. And under Senate Bill 77, businesses receiving certain retail licenses after June 30, 2009 and who get less than 50% of their revenues from the sale of alcohol must sell their alcoholic beverages (other than malt beverages) behind a physical barrier from the rest of the establishment.

Sales Tax Issues

South Dakota's tourism tax is going up for the next two years with the signing of HB1072. The legislation increased the tax rate from 1% to 1.5% on visitor-related goods and services as of July 1. The increase will be in effect through June 30, 2011. A portion of the revenues will go to support the state arts office, which had lost its funding in the proposed state budget cuts.

Applicants who are approved for refund permits through South Dakota's construction refund programs now have a definite deadline by which to file for the refund or risk losing the opportunity to receive one. Prior to the signing of House Bill 1009, applicants could be approved for a permit and never file for any refunds. Permit holders have a 36-month refund period, starting on the construction date, in which to request a refund for sales, use and contractors' excise tax incurred and paid within that time period. House Bill 1009 set a time limit of 12 months for the applicant to file for a refund after the 36-month time period. If the applicant fails to file for a refund during the 12 months, no refund will be allowed.

Holders of construction refund permits no longer have to worry about the status of their permit should their company reorganize before the refund is paid. Under House Bill 1011, the Department of Revenue & Regulation may permit the assignment or transfer of a permit or refund claim if a business entity reorganizes into a new entity but still has common ownership. The reorganization must have been completed for a legitimate business purpose and the new entity will be required to file with the department for an amended application for permit.

The state fulfilled another Streamlined Sales Tax Agreement requirement with the passage of House Bill 1010. The bill clarified what telecommunications and ancillary services are subject to the sales and use tax, and defined those terms. The new law neither imposes an additional tax nor repeals an existing one; it merely sets out in its own statute that such services are taxable, a distinction that was required by the Streamlined Sales Tax Agreement for states to remain in compliance with the agreement.

Governor Rounds put his signature to a bill that makes partners in partnerships or members of limited liability companies responsible for the tax debts of their organizations. House Bill 1022 made members and partners who are responsible for filing returns and remitting tax, civilly and criminally liable for the tax debts of the business.

Motor Vehicle and Motor Fuel Issues

The growth of biodiesel and biodiesel blend production will be better documented in South Dakota, thanks to the signing of Senate Bill 16. The bill was proposed as a clean-up to last year's legislation that offered a tax credit which takes effect when biodiesel production facilities reach a nameplate capacity of at least 20 million gallons per year and produce at least 10 million gallons. To track when these producers become eligible for the credit, Senate Bill 16 requires anyone producing biodiesel to be licensed as a producer, anyone selling the fuel to collect and remit the tax to the state, and requires a monthly report to be filed showing the amount of gallons produced and to whom the biodiesel was sold.

And a compromise between the Department of Revenue & Regulation, the ethanol industry, and motor fuel retailers regarding the taxation of ethyl alcohol resulted in the successful passage of Senate Bill 21. For many years, the ethyl alcohol products typically sold in South Dakota were the E10% product taxed at \$.20 per gallon and the E85% product taxed at \$.10 per gallon. Recently, there has been a move to offer intermediate blends utilizing blender pumps. Senate Bill 21 provided for the taxation of these new blends by imposing a tax on denatured ethyl alcohol at the rate of \$.08 per gallon. The tax will be collected at the supplier level, just as the tax on gasoline is collected, and after the \$.08 per gallon is paid, no additional taxes are due.

For more information on the 2009 Legislative Session, visit the Legislative Research Council's website at <http://legis.state.sd.us/sessions/2009/index.aspx>.

Mini-Warehousing & Sales Tax

In December of 2008 a Supreme Court decision held that the rental of mini-storage units and self-storage units are not subject to sales tax when no other service is provided in conjunction with renting the space. Those renting mini-storage and self-storage units with no other services should stop collecting the tax. Please call our taxpayer assistance number at 1-800-829-9188 if you have questions. More information will be provided in a mailing and press release to those businesses.

EXEMPT ENTITIES

Businesses are sometimes confused as to what entities are exempt from sales tax in South Dakota. The following explains exemptions that may apply to your business. In all of the following cases, documentation must be kept by the seller for a minimum of three years for all exempt sales. Lack of documentation may result in the seller owing the sales tax.

Government

The sale of products and services to the federal government and to South Dakota government entities is exempt from South Dakota sales tax. These entities must provide an exemption certificate to the seller or the seller must keep documentation to show the purchase was paid from government funds. Documentation may include government vouchers, check stubs, or copies of government credit card receipts.

Out-of-State Government

Sales to out-of-state government entities may not necessarily be exempt from sales tax. To be exempt, the state must provide a like exemption to South Dakota governments. States providing the like exemption, and thus exempting their government entities from South Dakota sales tax, are North Dakota, Colorado, Indiana, West Virginia, and Ohio. Iowa government entities are exempt except for lodging and Minnesota government entities are exempt except for lodging, food and beverage. An exemption certificate or documentation showing the purchase was paid by the government entities must be kept by the seller.

Public Schools & Universities

South Dakota public schools and universities are exempt from sales tax. These schools are issued exemption numbers that contain the letters "RS". Public schools must provide an exemption certificate with their exemption number, or documentation must be kept by the seller that payment came directly from school funds, such as a purchase order or check stub.

Out-of-State Public Schools & Universities

Out-of-state public schools and universities in North Dakota, Colorado, Indiana, West Virginia, Ohio, Iowa and Minnesota are exempt from South Dakota sales tax if they provide an exemption certificate or documentation showing the purchase was paid by the school. *Lodging is not exempt for Iowa public schools and universities and lodging, food and beverage are not exempt for Minnesota public schools & universities.

Religious and Private Educational Institutions

Churches are NOT exempt from South Dakota sales or use tax. However, the sale of products and services to South Dakota religious or private educational institutions is exempt. The educational institutions must obtain an exemption number from the Department of Revenue and Regulation. The exemption number contains the letters "RS" or "RE". These educational institutions must provide an exemption certificate with their exemption number to the seller in order to purchase products and services exempt from sales tax. The exemption does not apply when the institution purchases goods for the personal use of employees or for purchases of goods used in a taxable business.

Out-of-State Religious or Private Educational Institutions

Out-of-state religious or private educational institutions are not exempt from South Dakota sales tax unless they have a South Dakota exemption number containing the letters "RS" or "RE" and provide the number on an exemption certificate.

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Tax Filing Deadlines

April

April 20

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 28

SD QUEST electronic payments due.

June

June 1

Paper returns & payments due for bi-monthly filers.

June 20

Paper returns & payments due for monthly filers.

June 23

SD QUEST returns due.

June 30

SD QUEST electronic payments due.

Non-Profit Charitable Hospitals

All non-profit charitable hospitals, whether located in South Dakota or outside the state, are exempt from South Dakota sales tax when purchases are made by authorized officials, payment is made from the institution's funds, and title to the property is retained in the name of the institution. Hospitals must provide an exemption certificate to the seller with their tax permit number. The exemption does not apply when the hospital purchases goods for the personal use of employees or for purchases of goods used in a taxable business.

For-Profit Hospitals

All for-profit hospitals are subject to South Dakota sales tax, unless purchasing for resale or purchasing qualifying medical devices or prescription drugs. They must provide an exemption certificate with their tax permit number in order to purchase these items exempt from tax.

Non-Profit Charitable Organizations

Non-profit charitable organizations are NOT exempt from South Dakota sales tax as a general rule. However, certain non-profit organizations may qualify for exemption as relief agencies. The sale of products and services to relief agencies is exempt from South Dakota sales tax. In order to be exempt from sales tax, relief agencies must obtain an exemption number from the Department of Revenue and Regulation. The exemption number contains the letters "RA". Relief agencies must provide an exemption certificate with their exemption number to the seller in order to purchase products and services exempt from sales tax.

Resale

A business that purchases items to sell, rent, or lease in the normal course of their business may purchase those items exempt from sales tax. Manufacturers, wholesalers, and retailers doing business in South Dakota must have a South Dakota tax permit. They must provide an exemption certificate with their tax permit in order to purchase items or services exempt from sales tax. South Dakota tax permit numbers containing the letters "ET" or "UT" cannot be used for tax-free purchases.

For more information on exempt entities please download a copy of the Exemption Certificate Tax Fact at www.state.sd.us/drr - click on Business Tax, then Publications. Or call our toll free number at 1-800-829-9188.

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.

Basic Tax Seminars

Basic Contractors' Excise Tax meetings cover topics including how to apply for a CET license, projects for qualifying utilities and governmental agencies, sales and use tax, prime and subcontractors, reservation projects, owner-furnished materials and how to file tax returns electronically using SDQUEST.

South Dakota

April 28, 2009

Sales Tax: 9:00am – 11:30am

Contractors' Excise Tax: 1:30pm – 4:00pm

Western Dakota Technical Institute
Corporate Education Center, Room CTC-A
800 Mickelson Dr

Rapid City, SD

South Dakota

June 18, 2009

Sales Tax: 9:00am – 11:30am

Contractors' Excise Tax: 1:30pm – 4:00pm

300 S Sycamore St, Ste 102

Sioux Falls, SD

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 22, 2009

Lake Area Technical Institute
1225 Arrow Avenue, Room 514

Watertown, SD

May 6, 2009

Dacotah Bank
320 Main Street

Mobridge, SD

May 20, 2009

Southeast Technical Institute
Sullivan Health Center
Room 257

Sioux Falls, SD

June 10, 2009

Avera Queen of Peace Hospital
525 North Foster (Community Room)

Mitchell, SD

June 24, 2009

Technical Education Center
Community Room

Yankton, SD

July 22, 2009

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

Aberdeen, SD

Border Tax Seminars

Do you do business in South Dakota and Iowa, Minnesota, Nebraska, Wyoming, or North Dakota? Confused about which state taxes what services, or when to include tax on the freight charges? These seminars cover many of the basic differences in application and reporting of sales and use tax between South Dakota and other border states.

South Dakota / Minnesota

April 22, 2009

Sales Tax: 9:00am – Noon

Contractors' Tax: 1:00pm – 4:00pm

Morningside Community Center
2400 S. Bahnson Avenue
Sioux Falls, SD, 57103-4462

Sioux Falls, SD

Tri-State Seminar

May 6-7, 2009

Sales Tax: 05/06/09 - 12:30pm - 4:30pm

Contractors' Tax: 05/07/09 - 9:00am - 4pm

Advanced Sciences Bldg, Room L416
Western Iowa Tech Community College
4647 Stone Ave
Sioux City, IA 51102-5199

Sioux City, IA

South Dakota / North Dakota

May 20, 2009

Sales Tax: 8:30am - Noon

Contractors' Tax: 1pm - 3pm

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

Watertown, SD

South Dakota / Iowa

June 4, 2009

Sales Tax: 8:30am - Noon

Contractors' Tax: 1pm - 4pm

Morningside Community Center
2400 S. Bahnson Avenue
Sioux Falls, SD, 57103-4462

Sioux Falls, SD



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taxation

www.state.sd.us/drr

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Return Service Requested

