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Want to receive **taxation** via
email? Send your email address
along with your tax license num-
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2010 Legislative Update

With the current economic conditions in South Dakota and the state's budget deficit in the forefront, lawmakers faced numerous tax-related issues during the 38-day session that officially ended on March 29.

The Department of Revenue & Regulation tracked 147 bills during the 2010 Session affecting the divisions under its jurisdiction. Following is a brief look at a few bills that had received final action by the time this article was submitted.

Sales Tax Issues

The passage of House Bills 1031 and 1039, along with Senate Bills 28 and 29, maintains the state's compliance with the Streamlined Sales Tax Agreement. House Bill 1031 adds "conference bridging services" to the current definition relating to telecommunication services. House Bill 1039 removes the requirement that taxpayers list exempt purchases on an exemption certificate. Senate Bill 28 relieves a retailer of any liability for failure to collect a new sales tax rate in the event of a rate change where there are less than 30 days between enactment and the new rate effective date. The definition of "direct mail" which means any printed material delivered or distributed by US mail or other delivery services to mass audiences for sales and use tax purposes was added to statute with Senate Bill 29. This bill also allows the direct mail service provider to exempt the postage and any markup of the postage from gross receipts, as long as the markup is reasonable and customary and the postage is itemized on the customer's invoice.

Senate Bill 33 consolidates the process for license revocation concerning delinquent tax accounts for sales, use, contractors excise tax, tourism, municipal gross receipts and telecommunications tax and the process for appealing a revocation in SDCL Chapter 10-59. This bill further clarifies the license revocation process for license holders by stating what triggers a license revocation and by setting forth in clear terms how to obtain an administrative hearing if aggrieved by an order to the secretary.

With passage of HB1094, the 2010 Legislation changed the application of contractors' excise tax on construction projects for municipal utilities. This change applies to contracts bid on or after February 25, 2010. Municipal owned utilities includes sewer systems, water systems, electric, light, heat, and power. Effective February 25, 2010, contracts for construction services or realty improvements for a municipal owned utility are subject to the contractors' excise tax under SDCL 10-46A. The prime contractors owe contractors' excise tax on their gross receipts, which includes the value of materials furnished by the city. The prime contractors also owe sales or use tax on materials furnished by the contractor or the city. Subcontractors may accept a prime contractors' exemption certificate and will not owe contractors' excise tax on their receipts.

CONTINUED...

Motor Vehicle and Motor Fuel Issues

In 2009, the Legislature adopted Senate Bill 21 providing for the taxation of intermediate blends of ethanol utilizing blender pumps by imposing a tax on denatured ethyl alcohol at the rate of \$.08 per gallon and repealing the ASTM standards. As a follow up to this bill, House Bill 1033 was offered in 2010 to clean up and clarify some areas included in last year's legislation and addresses unintended consequences. House Bill 1033 makes it permissible to once again make an E85% product with "natural" gasoline. To acknowledge the evolution of the ethanol industry and ensure proper tracking of ethyl alcohol in South Dakota, House Bill 1033 creates a license for ethanol brokers. An ethanol broker will be required to be licensed, maintain records of all sales and file reports to the Department on all ethyl alcohol sold in South Dakota.

House Bill 1034, now signed by the Governor, brings consistency to the mailing fees applied to certain transactions for motor vehicle registrants. This legislation brings uniformity to the fees assessed for the mailing of license plates and decals to the public, motor vehicle dealers, and motor carriers.

For more information on the 2010 Legislative Session, visit the Legislative Research Council's website at <http://legis.state.sd.us/sessions/2010/index.aspx>.

Bad Debt Deductions

A bad debt is any portion of the purchase price of a transaction that a seller has reported as taxable and has written off as uncollectible for federal income tax purposes. Taxpayers reporting on the accrual method may take credit for bad debts on the return for the period during which the bad debt is written off and is eligible to be deducted for federal income tax purposes.

Bad debts include worthless checks, worthless credit card payments, and uncollectible credit accounts. Bad debts do not include financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to unrelated third parties for collection, or repossessed property.

If a seller subsequently collects the debt in whole or in part, the tax on the amount collected must be paid and reported on the next return due after the collection. If a seller's amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, the seller may obtain a credit or refund of tax on any amount of bad debt. However, a credit or refund under this paragraph will not

include interest.

For further information on bad debts review the Gross Receipts Tax Facts available at www.state.sd.us/drr or call 1-800-829-9188.

Cigarette & Tobacco Retailers

All businesses that sell cigarettes or other tobacco products at retail must register with the Department of Revenue & Regulation. The registration works in conjunction with your sales tax license. There is no fee, no extra taxes, and no extra filing or reporting requirements for this registration. If you are a new business, you can register as a Tobacco Retailer when you apply for your sales tax license. Existing sales tax license holders can register either by completing a short form online, printing and mailing the form to Mickelson Building, Attn: Dept. of Revenue, 1302 E Hwy 14 Suite 1, Pierre, SD 57501-8501, or calling 605-773-7804 with your sales tax license number and business name. This registration remains in effect until your sales tax license is cancelled or until you stop selling tobacco products and notify the Department at 605-773-7804 to cancel your registration.

Tobacco Retailers must purchase their tobacco products from distributors and wholesalers licensed by the State of South Dakota. It is not legal to purchase cigars, chewing tobacco, or other tobacco products directly from a manufacturer or from an unlicensed wholesaler. A list of licensed wholesalers and distributors is on our website. You are required to keep documentation showing you purchased all of your tobacco products from a licensed wholesaler or distributor.

Pursuant to SDCL 10-50-99, a person or business who sells or distributes cigarettes or tobacco products may not ship or transport, or cause to be shipped or transported, cigarettes or tobacco products to any consumer in the state. This prohibits sales of cigarettes and tobacco products to consumers via e-mail, phone, fax, U.S. mail, the internet, or any other method which results in the shipment or transport of cigarettes or tobacco products to consumers in the state. Violation of this provision can result in injunctive action and substantial monetary penalties.

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 Sales Tax seminars cover topics including how and when to apply for a tax license, exemptions from sales and use tax, exempt entities, use tax, municipal taxes, purchases for resale, and how to file tax returns electronically with SDQUEST.

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.

April 29, 2010 **Sioux Falls, SD**

Sales Tax: 9:00am – Noon

Contractors' Excise Tax: 1:30pm – 4:30pm
SD Department of Revenue & Regulation
300 S. Sycamore, Suite 102

April 29, 2010 **Aberdeen, SD**

Sales Tax: 9:30am – Noon

Contractors' Excise Tax: 1:30pm – 4:30pm
SD Department of Labor
420 South Roosevelt St., 2nd floor conference room

May 7, 2010 **Mitchell, SD**

Sales Tax: 9:30am – Noon

Contractors' Excise Tax: 1:30pm – 4:30pm
Avera Queen of Peace Hospital
525 North Foster, Community room

July 14, 2010 **Sioux Falls, SD**

Sales Tax: 9:00am – Noon

Contractors' Excise Tax: 1:30pm – 4:30pm
SD Department of Revenue & Regulation
300 S. Sycamore, Suite 102

Small Business Workshops

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

April 22, 2010 **Watertown, SD**

Lake Area Technical Institute
1225 Arrow Avenue, Room 514

May 6, 2010 **Huron, SD**

Beadle County Extension Service Office
1110 3rd Street SW, Extension service office

May 20, 2010 **Sioux Falls, SD**

Southeast Technical Institute - Sullivan Health Center
2320 Career Place, Room 257

June 10, 2010 **Mirchell, SD**

Avera Queen of Peace Hospital
525 N Foster, Community room

June 24, 2010 **Yankton, SD**

Technical Education Center
1200 W 21st Street, Community room

Border Tax Seminars

Information regarding how tax applies in multiple states.

Tri-State (IA/MN/SD) Seminar **Sioux Falls, SD**

May 4, 2010

Sales Tax: 12:30pm – 4:30pm

May 5, 2010

Construction Contractors Tax: 9:30am – 3:30pm
Morningside Community Center
2400 S Bahnson Avenue, Room 257

ND/SD Border Tax Seminar **Watertown, SD**

May 11, 2010

Sales Tax: 8:30am – Noon

Construction Contractors Tax: 1:00pm – 3:30pm
Lake Area Technical Institute
1225 Arrow Avenue, Room 514

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 27

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 29

SD QUEST electronic payments due.

Questions Answered

Tourism Tax

Q: Do visitor attractions such as museums owe tourism tax on meeting room rentals?

A: If you are a visitor attraction such as a museum that rents meeting space, state sales tax plus any applicable municipal tax and tourism is due on those receipts. The gross receipts from admissions to any business establishment that offers recreation, entertainment, or interpretation of natural or cultural history are subject to the tourism tax. In addition, the sale of any products, services, parking, or transportation on the site of the visitor attraction is subject to the tourism tax. Tourism tax does not apply to the purchase of products or services used by the visitor attraction.

Exemption Numbers

Q: Do all sales tax exemption numbers have to be renewed?

A: No, only relief agency numbers have to be renewed every five years. We are in the process of updating all relief agency numbers. We are sending out renewal notices in groups of 25. When you receive your renewal notice from the Department please fill out a new electronic application for sales tax exempt status and provide updated articles of incorporation, bylaws, 501(c)3 status and financial information. Your renewal information will be reviewed and processed and if approved, we will email a new license card with a five year cancellation date.

Other exempt numbers such as schools, government and religious educational institutions are not required to renew their exempt status. Consolidation of several school districts would require a new application for exempt status for the new consolidated school.

Seminars

Q: We have a South Dakota business that is sending employees to a seminar in Iowa. Is South Dakota use tax due on the cost of the seminar for the South Dakota employees or would the seminar be exempt from use tax in this case?

A: There is no South Dakota sales or use tax due on a seminar that is held outside of South Dakota. Sales or use tax is due based on where the service is received or first used.

Text Messages and Email

Q: We are a local advertising company; part of our advertising service involves sending coupons and advertisements via email and text to individuals on behalf of our customer. Is this an advertising service and exempt from tax?

A: No, sending emails and text to individuals is similar to direct mail advertising. It is not placed in the media so these services are subject to the state and municipal tax. These are considered products transferred electronically.

Statement of Account Notice

Have you ever received this notice and wondered what it means? This article will explain what you need to do when you receive a Statement of Account Notice.

There are 3 sections on the Statement of Account Notice:

1. **Delinquent returns** – this area shows if you have not filed a state sales or contractors' excise tax return and it is now past due. The statement will list the reporting period of the return that has not been filed.

To correct this, you will need to file the missing sales or contractors' excise tax return or provide proof that the return has been filed.

You may not use the Statement of Account Notice to file a return. If a return needs to be filed you may download it at <http://www.state.sd.us/taxforms>.

2. **Recent Ledger Activity** – this area will show if you have a balance due or a credit on your account.

If you have a balance due, you will need to submit payment in the amount shown. If the balance due is incorrect, you will need to contact the Department.

If you have a balance due, you may send in a check with the Statement of Account Notice. Make sure to notate on your check your business name and license number.

If you have a credit due, you may use the credit by lowering the amount remitted on your next return by the credit amount shown. If the credit due is incorrect, you will need to contact the Department.

You may have one of these sections listed or a combination of both.

If you are out of business or have never started the business for which this license was issued, you should send a letter stating when you went out of business. All returns must be filed for the entire period during which you were in business.

If you put a \$0 on the statement and send it back stating out of business, the Department does not know which return should be a \$0 and when your license should be canceled. Please send a letter stating exactly when you went out of business and file any outstanding tax returns during the period your business was open.

If you have a credit and you are out of business, you may state on the Statement of Account Notice what date your business closed and request a refund of the credit on your account. Please verify where the refund should be sent. Remember, you must have filed returns for the entire time period during which your business was open before the Department will refund the credit.

3. **Back of Statement of Account Notice** - the reverse side of the statement of account notice lists the potential ramifications for disregarding the Statement if there are delinquent returns and or a balance due.

Reminder - Credit card purchases may be subject to use tax.

Did you know if you purchase items online or out of state you may owe use tax? More consumers than ever are making purchases online and out of state, either for convenience or savings. As South Dakotans receive credit card statements from their online and out of state shopping, the South Dakota Department of Revenue & Regulation reminds them that state and municipal use tax may be due on their purchases. Recent findings by the Department's Audit Division show that some businesses are making several out-of-state purchases with their credit cards and no tax is being paid..

South Dakota's use tax rate is 4%, the same as the state's sales tax rate. Municipal tax may also be due based on where the purchaser receives the goods. For licensees, use tax can be reported on Line 2 of the sales and use tax return. You can find use tax reporting forms and other information on South Dakota's use tax on the Department of Revenue & Regulation website at <http://www.state.sd.us/drr2/businesstax/st/usetax.htm>. People with questions on use tax can also call the Department's toll-free helpline at 1-800-829-9188.

Has your business information changed recently?

If you have recently made changes in your business, don't forget to include the Department of Revenue on your list of places that need to be updated. If you have changed any of the following recently, please give us a call so that we can ensure our records are up to date:

- Address
- Phone Number
- Email
- Website
- Federal Employee Identification Number
- Officers/ownership



445 EAST CAPITOL AVENUE
PIERRE, SD 57501-3185

taxation

www.state.sd.us/drr

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



Return Service Requested