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2011 Legislative Update

The budget deficit, spending cuts, and how to maintain funding for programs and services were at the forefront of the 2011 South Dakota Legislative Session. Lawmakers reviewed possible tax and fee increases, tax exemption repeal options, and explored ways to increase revenue during the 38-day legislative session that officially ended on March 28.

The Department of Revenue tracked 146 bills during the 2011 Session affecting the divisions under its jurisdiction. The following is a brief look at several bills that had received final action by the time this article was printed.

Sales Tax Issues

House Bill 1028 fulfills another Streamlined Sales Tax Agreement requirement for South Dakota. The bill allows taxpayers until the next business day to file and pay a tax return when the return due date falls on a Saturday, Sunday, legal holiday or day the Federal Reserve is closed. This bill applies to sales tax, use tax, contractors' excise tax, and fuel tax and to both paper and electronic returns.

The sunset clause on the 2009 Legislative session increase in South Dakota tourism tax rate was extended to July 1, 2013 with the passage of House Bill 1248. Effective July 1, 2009, the tourism tax rate was increased from 1% to 1.5%. This higher rate was scheduled to end on June 30, 2011. The 2011 Legislature voted for the 1.5% tourism tax rate to remain in effect for an additional two years. The tourism tax applies year-round to the gross receipts of hotels and lodging establishments, campgrounds, motor vehicle and recreational equipment rentals, recreational services, spectator events, and visitor attractions. The tax also applies to the gross receipts of visitor-intensive businesses during the months of June, July, August, and September. State law defines visitor-intensive businesses as "any antique shop, book store, candy store, flea market, gift shop, indigenous arts and crafts shop, jewelry, lapidary shop, leather goods shop, marina, novelty shop, pottery shop, rock shop, souvenir shop, and t-shirt shop" if more than 50% or more of the business' annual total receipts come from the sale of tangible personal property or any product transferred electronically during the months of June through September.

South Dakota legislators also supported a bill revising certain provisions regarding what organizations qualify for an exemption from sales tax as a relief agency or a religious educational institution. Senate Bill 39 would require relief agencies and religious educational institutions to maintain a physical presence in South Dakota as part of the criteria they must meet to receive a state sales tax exemption.

Governor Dugaard signed into law Senate Bill 147, which expands the application of nexus (which means a physical presence in the state) and gives the

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Department of Revenue more clarification to require an out-of-state retailer to become licensed to collect tax. Currently, by federal law, an out-of-state retailer with no physical presence in a state is not required to be licensed to collect sales tax in that state. This bill states that a physical presence is created if an out-of-state retailer has a substantial ownership in an in-state business and (1) both retailers sell substantially the same products under a similar name; or (2) the in-state retailer advertises for the out-of-state retailer; or (3) the out-of-state retailer has a substantial ownership in an in-state warehouse that delivers property sold by them.

Property Tax Assessments

South Dakota continues to fine-tune the productivity method for valuing agricultural land with the signing of House Bills 1001 and 1002. The bills were proposed by the Ag Land Assessment Advisory Task Force to address issues with the productivity valuation system implemented on July 1, 2009. House Bill 1001 allows the Task Force to explore and make recommendations to the Legislature on other sources of cropland and noncropland data to use to value agricultural land. House Bill 1002 adds language to clarify that the Director of Equalization can make adjustments to the base values of ag land determined by the productivity formula. The new language requires the adjustment to be documented with reasonable data to support the adjustment.

The potential for a significant shift in funding for the schools and the counties was addressed with the passage of House Bill 1029. State law allows two ways for wired telecom companies to be taxed. Companies with less than \$75 million in gross receipts pay a 4% tax on their gross receipts, while companies with gross receipts over \$75 million or who do not provide local exchange service are centrally assessed and pay property taxes. In 2010, the last big telecom company went below the \$75 million threshold. To prevent further significant shifts in funding for schools and counties, House Bill 1029 removes the \$75 million threshold and requires all telecom companies providing local exchange service to pay tax using the gross receipts method.

Liquor License Changes

A law approved by the 2010 Legislature which was essentially a re-write of South Dakota's alcohol beverage laws was further tweaked by lawmakers this year with Senate Bill 48. While the changes made during the 2010 legislative session were minor in the Department's view, the amended statute (SDCL 35-1-5.3) drew considerable attention and caused some confusion. This further confusion is what prompted the bill. Senate Bill 48 clarifies that cities and counties can permit the sale of alcoholic beverages on publicly owned property or property owned by a non-profit corporation if a temporary license has

been issued for a special event at the location.

Governor Dugaard signed two bills during the 2011 Legislative Session which expanded the alcoholic beverage license options available in South Dakota. Senate Bill 121 creates a new license classification that would allow for on/off sale beer along with on/off sale South Dakota farm wine only. A licensee would be allowed to sell any type of beer but would be limited to selling only South Dakota farm wines. Senate Bill 193 will allow counties to issue non-transferable on sale liquor licenses (above their current cap limits) to certain licensed hunting preserves. The licensees will be limited to serving alcohol to their guests as part of a hunting or shooting package, and they will be prohibited from selling and serving alcohol to the general public.

Motor Vehicle and Motor Fuel Issues

Clarification on how tax would apply in the circumstance when fuel would be loaded on a truck from one terminal and hauled to another terminal for distribution is provided in Senate Bill 42. This bill requires the fuel to be taxed at the first terminal, eliminating any question as to when the tax is applicable and ensuring that South Dakota receives all the fuel tax due.

Companies with over 50 vehicles in their fleet are now able to register their vehicles on-line with the signing of House Bill 1026. The bill repeals the provision that the larger fleet holders could register directly with the department and allows the companies to utilize the on-line internet renewal option available at SDcars.org.

In an effort to provide more money to counties, cities, and townships to help repair and maintain roads and bridges, the 2011 Legislature passed House Bill 1192, veto of the Governor notwithstanding. This bill increases motor vehicle license fees in two stages, one in July 2011 and the other in July 2013. The bill also removes the 30% reduction in license fees from 5 years to 10 years of age.

For more information on the 2011 Legislative Session, visit the Legislative Research Council's website at <http://legis.state.sd.us/sessions/2011/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 <https://apps.sd.gov/applications/RV23Education/classes.aspx>

Small Business Workshops

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

April 21, 2011 **Watertown, SD**
Lake Area Technical Institute, Room 514
1225 Arrow Avenue

May 5, 2011 **Spearfish, SD**
BHSC - Women's Center

May 26, 2011 **Sioux Falls, SD**
Southeast Technical Institute-Sullivan Health Ctr,
Room 257
2320 Career Place

June 2, 2011 **Mobridge, SD**
Dacotah Bank
320 Main Street

June 23, 2011 **Yankton, SD**
Regionnal Technical Education Center, Community Room
1200 W 21ST St

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 sub-contractors, reservation projects, owner-furnished materials and how to file tax returns electronically using SDQUEST.

July 13, 2011 **Sioux Falls, SD**
Sales Tax: 9:00am – 11:30am
Contractors' Excise Tax: 1:30pm – 4:00pm
SD Department of Revenue, Conference Room
300 S. Sycamore, Suite 102

July 14, 2011 **Rapid City, SD**
Sales Tax: 9:00am – 12:00 Noon
Contractors' Excise Tax: 1:00pm – 4:00pm
Western Dakota Technical Institute
800 Mickelson Drive

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.

SD/NE Border Tax Seminar **Chadron, NE**
May 10, 2011
Sales & Use Tax: 8:30am – Noon
Microenterprise Tax Credit (NE) & Contractors' Excise Tax (SD): 1:00pm – 4:30pm
Chadron State College, Bordeaux Lakota Room

SD/MN Border Tax Seminar **Sioux Falls, SD**
May 11, 2011
Sales Tax: 9:00am – Noon
Construction Contractors Tax: 1:00pm – 4:00pm
Morningside Community Center
2400 S Bahnson Ave

SD/ND Border Tax Seminar **Aberdeen, SD**
May 17, 2011
Sales Tax: 9:00am – Noon
Construction Contractors Tax: 1:00pm – 3:30pm
Northern State University Williams Library, Room 118
1200 S Jay Street

SD/NE Border Tax Seminar **Sioux City, IA**
May 24, 2011
Sales Tax: 8:30am – Noon
Construction Contractors Tax: 1:00pm – 4:30pm
Western Iowa Technical Institute
Advanced Sciences Bldg, Rooms L416 and 417
Sioux City, IA

Tax Filing Deadlines

April

April 20

Paper returns & payments due for monthly filers.

April 23

SD QUEST returns due.

April 28

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.

May 31

Paper returns & payments due for bi-monthly & quarterly filers.

June

June 20

Paper returns & payments due for monthly filers.

June 23

SD QUEST returns due.

June 29

SD QUEST electronic payments due.

From the Secretary

David Wiest is the Interim Secretary of the South Dakota Department of Revenue. Prior to his appointment as Interim Secretary, he had been the Department's Deputy Secretary since 2007. Before becoming Deputy Secretary, Wiest served as an Assistant Attorney General with the South Dakota Attorney General's Office in Pierre, assigned to represent the South Dakota Department of Revenue & Regulation from 1990 to 2007.

"It is an honor to serve as the Interim Secretary for the department and I thank Governor Daugaard for this opportunity," Wiest said. "The department will continue to follow its established goals: to execute maximum revenue collection, to collect revenue due to the state in an equitable manner, to help create a business friendly culture, and to provide quality service to our constituents."

Wiest is serving in the interim capacity while newly-appointed Revenue Secretary Andy Gerlach completes his current military deployment in Afghanistan. Wiest will return to his role as Deputy Secretary when Gerlach assumes the position of Secretary of the Department.

A native of Seneca, South Dakota, he earned a Bachelor of Science degree in Business Administration from the University of South Dakota in 1983, and a Juris Doctor degree from the University of South Dakota School of Law in 1986.

He lives in Pierre with his wife Rolayne and daughter Brooke.



State Water Resources - Water Projects

The State Water Resources Management System identifies large, water projects which exceeds the sum of twenty million dollars, that require specific state or federal authorization and financing. As projects are established a special contractors' excise tax code is assigned to each project. The contractors' excise tax due is reported using that code in the city/special jurisdiction section of the contractors' excise tax return. Tax reported under these codes is transferred to the water and environment fund for use on future water system projects.

For information on reporting tax for these projects review State Water Resources Management Systems tax facts available on our website or contact the Department at 1-800-829-9188.

TAXATION INFORMATION

Do you Shop Online?

What do your online shopping purchases have to do with the budget gap South Dakota and many municipalities are struggling to fill? The sales tax that is not being collected by many online merchants is revenue that could help fill those gaps. The customer is responsible for paying taxes on most online purchases, even when the retailer doesn't collect.

Because of U.S. Supreme Court decisions, a state cannot require a business without a physical presence in that state to collect and remit the sales tax. Despite this, sales tax is still due in South Dakota, and it is the customer's responsibility to pay it directly to the state. When a sales tax is paid in this manner it's called a "use tax," and it's not a new tax - South Dakota has had a use tax since 1939.

But most individuals are not aware they are to pay the use tax, so with that in mind the legislature recently passed SB 146. This bill asks online and catalog retailers that are not required to collect the sales tax to put a notice on the customer's receipt explaining that the customer may owe use tax to South Dakota. Use tax is reported on line two of the sales tax return, or line 6 of the excise tax return. Individuals who do not have a tax license can report the use tax on a simple form provided by the department found at <http://www.state.sd.us/drr2/businessstax/bustax.htm>.

A University of Tennessee study has determined that South Dakota loses over \$40 million a year in sales tax due to online shopping and online sales continue to grow at a fast rate. If customers were to pay those taxes to the state it would go a long way in providing needed revenues for our schools, Medicare and other programs for our citizens.

South Dakota is an active participant in the Streamlined Sales Tax organization. This national organization is working with Congress to get federal legislation passed that will require online and catalog retailers to collect the tax. But until then everyone needs to be aware of the use tax responsibility when purchasing from unlicensed out-of-state companies.

Figuring out Use Tax

Businesses that purchase services from out of state suppliers will owe use tax on the cost of these services if the provider did not charge them sales tax at the time of purchase. Use tax is based upon where the purchaser uses the service, which in some cases is not where the actual service is performed.

- A South Dakota business hires an unlicensed Iowa accounting firm to prepare their monthly financial statements. The reports are prepared by the accounting firm at their office in Iowa and mailed to the South Dakota business location. Use tax is due by the business based on

their South Dakota business location.

- A South Dakota manufacturer sends drill bits to an unlicensed sharpening business in Minnesota. The bits are sharpened at the Minnesota location and mailed back to the South Dakota business. Use tax is due on the cost of the sharpening fee, including shipping charges, based on the South Dakota business location.

- A publishing company in South Dakota hires an unlicensed business in Nebraska to provide computer tech support services to their employees both online and over the telephone. Use tax is due on the fees paid for the services by the publishing company based on their South Dakota business location.

Special Events

Special events, such as concerts and sporting events, are often put on by professional promoters or solicitors. The promoter or solicitor may contract with a nonprofit organization to help draw people to the event. Proceeds from the event are then split with the nonprofit organization.

The promoter or solicitor is responsible for reporting sales tax on the entire proceeds from ticket sales or admissions, booth rental, and sales of products or services made by the promoter or solicitor. The receipts are subject to the state sales tax, municipal sales tax, and tourism tax. Municipal gross receipts tax also applies to ticket sales or admissions and the sale of food or alcohol products. Any vendors that sell at these events are responsible for sales tax on their receipts.

If the event is held at an arena or civic center that collects the ticket sales for the event holder, the arena or civic center will pay the tax due on the tickets. The promoter will not owe tax on the receipts from the civic center for the ticket sales.

The nonprofit organization does not owe sales tax on the amounts they receive from the promoter or solicitor.

Example: A promoter is holding a boxing match in Rapid City. The promoter contracts with two local charities to sponsor the event for a 25% share of the proceeds. The promoter collects for tickets or admissions, sells t-shirts, posters and other promotional material, and runs the concessions. The promoter's total receipts were \$100,000. No other vendors are at the event. The promoter owes tax on the \$100,000. The local charities do not owe sales tax on the \$25,000 they receive from the promoter.

If your organization is holding an event please contact the department to determine if they are responsible for sales tax on the proceeds from the event.

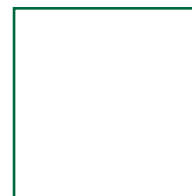


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