

This Tax Fact Sheet is designed to explain to advertising agencies and those offering advertising services how sales and use tax applies to items and services they sell. If your specific question is not answered in this Tax Fact Sheet, please call our toll-free helpline at 1-800-829-9188 weekdays from 8 a.m.-5 p.m. CST.

Information found in this document rescinds and replaces all previous, written information on this subject. All readers and users of this publication are responsible for keeping informed about changes in tax laws and regulations by reading the Department of Revenue newsletters, press releases, Tax Facts, and other documents published by the department.

Advertising agencies are establishments engaged in preparing and placing advertising for publication in newspapers, magazines, placemats, billboards, or handbills or for broadcast and welcoming services for clients on a contractual or fee basis.

For the purposes of this Tax Fact Sheet, a client is the advertising agency's customer, and a supplier is sublet labor or a subcontractor.

Advertising fees are not subject to sales tax when the agency that prepares the advertisement *also* places the advertisement in the media. If the advertisement is not placed in the media, but given to the client, it is subject to sales tax. This fee is subject to sales tax even if the customer subsequently places the advertisement in the media.

The key factor is that the agency must prepare the advertisement **and** place the advertisement with the media before it is an exempt advertising service. Sales of products used for preparing advertisements are subject to South Dakota's 4.5% sales tax, plus applicable municipal sales tax.

## Advertising Services

If an agency prepares and places the advertisement in the media, the service fee is not subject to sales tax. In the case of newspapers, the advertisement must be placed in an integral part of the paper. Charges for creating and printing advertising brochures or flyers which are inserted as a separate section in the newspaper or shopper's guide are subject to sales tax. Charges by the newspaper to insert a publication or advertising flyer are not subject to sales tax. Advertisements sold directly to the client are subject to sales tax. Professional business services such as public relations and consulting services are taxable.

### **Example**

An agency prepares a videotape for a client and gives the tape to the client for placement in the media. This is a taxable sale because the agency did not place the tape in the media, but sold it as tangible personal property.

An agency places a client's business name on signs, pens and caps and sells them to the client. This is taxable because the agency did not place those items in the media.

## Brochures and Flyers

Brochures, flyers and other printed materials are subject to state and municipal sales tax.

## Billboards

An advertisement on a billboard is considered part of the media. If an advertising agency creates AND places an advertisement for a client on an existing billboard, this is a sales tax exempt advertising service. If a contractor is hired to put the advertisement on the billboard, the contractor's charges are subject to contractors' excise tax.

If an advertising agency creates an advertisement, builds a billboard and title to the billboard goes to the client, the advertising agency may owe contractors' excise tax on their gross receipts and use tax on the cost of materials. The advertising agency should contact the department at 1-800-829-9188 to determine if they need a contractors' excise tax license.

## Electronic Signs

Many businesses are installing flashy digital signs to advertise their business. These signs are usually sold with installation provided. Depending on how the sale is handled determines how sales or excise tax applies.

The sale and installation of digital or electronic signs may be subject to sales or contractors' excise tax depending on the contract.

- The sale of a digital sign without installation is subject to sales tax. The purchaser will owe use tax if sales tax is not collected by the seller.

- The installation of a digital sign is subject to contractors' excise tax. The contractor will owe the excise tax on his gross receipts, which includes the value of the sign when the

customer furnishes the sign to install. The contractor will also owe use tax on the sign if the purchaser did not pay sales or use tax when he purchased the sign.

- When the contract includes the sale of the sign and installation of the sign, the contractor will owe contractors' excise tax on the receipts from the entire contract. In addition the contractor will owe use tax on his cost of the sign.

Prime contractors may hire subcontractors to install the sign. If the subcontractor has a prime contractors' exemption certificate on file for that project and the project is not for a qualified utility company, the subcontractor will not owe contractors' excise tax on his receipts. Subcontractors are responsible for sales or use tax on material they furnish and may be responsible for use tax on material furnished by the owner or prime if sales or use tax was not previously paid.

### Supplies and Materials

An agency pays sales or use tax on the purchase of tangible personal property and products transferred electronically used in preparing advertisements. The agency is the user of these items and the purchases cannot be for resale. The agency **cannot** provide the seller of the items with an exemption certificate or tax exemption number. The following items are subject to sales tax: (This list is not inclusive.)

- |       |                                |
|-------|--------------------------------|
| paper | computer software/hardware     |
| ink   | office supplies                |
| paint | audio/video tape and equipment |
| tools | equipment rental               |

### Purchases for Resale

A service may be purchased exempt from sales tax by the agency provided the service or product is an integral and inseparable part of the ultimate service to its customer.

Following are examples of services or products that may be purchased for resale if they are an integral part of the final product:

- |                     |                           |
|---------------------|---------------------------|
| airbrushing         | photography               |
| art work            | photo studio rental       |
| audio studio rental | post-production editing   |
| color separation    | production studio/service |
| copy-writing        | production studio rental  |
| dubbing             | prop rental               |
| editing             | proofreading              |
| hand-lettering      | retouching                |
| illustration        | sound effects             |
| keylining           | silk screening            |
| music rights        | typesetting               |
| modeling            | video studio rental       |
| photo finishing     |                           |

Advertising agencies must give an exemption certificate to their suppliers in order to purchase services and supplies exempt from sales tax.

State law requires exemption certificates be complete and accurate. The buyer is responsible for properly completing an exemption certificate. Exemption certificates may be obtained from the department's website, <http://dor.sd.gov/>, or by calling 1-800-829-9188.

Cleaning, legal, research, accounting and repair of machinery are not services that can be purchased for resale. These types of services are not integral parts of the final advertising service provided to the agency's customer.

#### **Example**

If an advertising agency contracts with a graphic artist, the artist's work becomes part of the finished product. The agency may purchase the artist's work for resale by providing a valid resale certificate.

### Sales for Resale

An advertising agency may sell his or her services or products for resale if the buyer provides an exemption certificate. It is the buyer's responsibility to know when a service or product qualifies as a sale for resale. The seller is responsible for maintaining a complete exemption certificate. For more information on sales for resale, view the Exemption Tax Fact on our website at <http://dor.sd.gov> or request a copy by calling the department at 1-800-829-9188.

### Use Tax

Supplies, materials, or services purchased without an exemption certificate are subject to use tax, if sales tax was not paid at the time of purchase. The state use tax rate is 4.5%, plus applicable municipal use tax, and is payable to the department in the filing period in which the **advertising agency** receives the supplies or services.

Products **delivered into South Dakota** by the supplier are subject to the South Dakota sales or use tax, even if the supplier charges another state's sales tax.

When a purchase is made out of state and possession is taken out of state the supplier may charge you that state's sales tax. If the rate of the other state's sales tax is the same or more than South Dakota's tax rate, you do not owe any South Dakota use tax. If it is less than South Dakota's, you pay the difference in use tax. Add the state and any applicable city rates together to determine if you owe additional use tax.

Use tax is also due on supplies taken out of retail inventory for the business' use. Use tax is due on these items in the filing period they are taken out of inventory.

No deduction can be made in the agency's taxable receipts for the cost of materials or services used, the cost of property sold, or tax paid on those purchases.

### **Example**

A South Dakota advertising agency's bookkeeping was done by a Nebraska accountant. The service was used in January and the Nebraska accountant did not charge the South Dakota agency sales tax. The agency owes South Dakota use tax to the department for the January filing period.

### Co-operative Advertising

Gross receipts received by a retailer as a cost share or reimbursement for purchases of exempt advertising services made by the retailer are not subject to sales tax if they meet the following criteria:

- The gross receipts are paid by a manufacturer or supplier to the retailer for including the manufacturer's or supplier's identity in the retailer's advertisement.
- The retailer denotes the gross receipts as a cost share or reimbursement for exempt advertising services.
- The retailer has documentation verifying that the gross receipts were received as a cost share or reimbursement for a specific exempt advertising service purchased by the retailer.

An exemption is also allowed for gross receipts received by a franchiser as a cost share or reimbursement for purchases of exempt advertising services made by the franchiser if:

- The gross receipts are paid by a franchisee to its franchiser for exempt advertising services purchased by the franchiser for the franchisee's business or the franchise.
- The franchiser denotes the gross receipts as a cost share or reimbursement for exempt advertising services.
- The franchiser has documentation verifying that the gross receipts were received as a cost share or reimbursement for a specific exempt advertising service purchased by the franchiser.

### Municipal Tax

Many municipalities in South Dakota have a sales and use tax in addition to the state sales tax. If the customer receives a product or service in one of these municipalities, the product or service is subject to that municipality's sales tax. A list of municipal tax rates is available on our website at <http://dor.sd.gov> or by calling 1- 800-829-9188.

In an effort to ease the burden retailers may encounter trying to identify which South Dakota addresses are inside a city with a sales tax, the department created a Geographic Information System (GIS) called TaxMatch that is easily accessible by computer over the Internet.

It can help users quickly find the correct tax rate and city tax codes for locations throughout South Dakota. Users enter any South Dakota address into the Tax Match system; the system then provides all the applicable tax codes and rates for that address.

For quick and easy access, click on the State of South Dakota outline on the department's web site at <http://dor.sd.gov>.

### Exempt Entities

Non-profit private or religious schools, public schools, non-profit hospitals, approved relief agencies, and government entities are exempt from sales and use tax. The seller must keep copies of payment documents received from the exempt purchaser in their records. Non-profit private or religious schools and relief agencies have license numbers assigned by the department that should be provided to the seller.

### Required Records

Records, such as purchase and sales invoices, bills of lading, books of all receipts and sales, cash register receipts, and other pertinent papers and documents are required to be kept for at least three years and be available for inspection during business hours.

Businesses must keep adequate documentation to support that products are delivered outside city limits. Examples of documentation that shows delivery of products include: truck driver log books; directions to delivery point; contract carrier bills of lading; and shipping invoices.

## Talk to Us!

If you have a tax problem or question, call the South Dakota Department of Revenue toll-free at 1-800-829-9188. Visit us on the web at <http://dor.sd.gov>, email us at [bustax@state.sd.us](mailto:bustax@state.sd.us) or write us:

South Dakota  
Department of Revenue  
445 East Capitol Ave.  
Pierre, SD 57501

Aberdeen  
14 South Main, Suite 1-C  
Aberdeen, SD 57401

Sioux Falls  
300 S. Sycamore, Suite 102  
Sioux Falls, SD 57110

Mitchell  
417 N. Main, Suite 112  
Mitchell, SD 57301

Watertown  
715 S Maple  
Watertown, SD 57201

Rapid City  
1520 Haines Avenue, Suite 3  
Rapid City, SD 57701

Yankton  
1900 Summit Street  
Yankton, SD 57078