

This tax fact sheet is designed to explain how sales, use, and contractors' excise tax applies to contractors installing communication equipment. If this Tax Facts does not answer your specific question, please call the department's toll-free helpline at 1-800-829-9188 between 8:00 AM - 5:00 PM CST, Monday through Friday.

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.

Any person entering into a contract for construction services enumerated in Division C of the Standard Industrial Classification Manual of 1987 or engaging in services that include the construction, building, installation, or repair of a fixture to real property must have a South Dakota contractors' excise tax license. This includes repair or remodeling of existing real property, or the construction of a new project.

Communication Equipment Installation

Gross receipts from the installation of communication equipment and the repair of communication equipment are subject to contractors' excise tax. Examples of services and realty improvements subject to contractors' excise tax are:

- Cable laying
- Cable splicing
- Cellular tower construction
- Conduit installation
- Communication or intercommunication equipment installation
- Pole line construction
- Radio or television transmitting tower construction
- Satellite installation for commercial use
- Sound equipment installation
- Tap or filter installation outside the building
- Telegraph or telephone line installation
- Telephone installation construction
- Transmission line construction

Construction services for qualified utilities (qualified utility projects) are subject to tax under SDCL 10-46B, the alternative contractors' excise tax. All other construction services in South Dakota are subject to tax under SDCL 10-46A. The contractors' excise tax that applies to the original contract applies to all change orders to that contract.

Construction projects for the following types of utility companies are qualified utility projects subject to tax under 10-46B.

- Electric, Heating, Power, Water, and Gas Companies
- Telephone Companies
- Rural Electric, Telephone, or Water Supply Companies
- Rural Water Systems
- Railroads (if they own track in South Dakota)

Examples of realty improvements for utilities include office buildings for utility companies, and the construction of their generating plants, power lines, and telephone lines. See the Qualified Utility Projects Tax Facts for additional information. Please call 1-800-829-9188 to determine if a business is a qualifying utility.

Prime Contractors' Exemption Certificate

A prime contractor has a contract with the owner of the property.

A subcontractor has a contract with another contractor to complete part or all of a construction project.

Except for projects for a qualifying utility, it is the prime contractor's responsibility to issue a completed prime contractors' exemption certificate to the subcontractors for each project. Prime contractors' exemption certificates cannot be issued to subcontractors on contracts for qualifying utilities.

The prime contractors' exemption certificate must show the prime contractor's valid excise tax license number and the project location.

Subcontractors must retain the prime contractors' exemption certificates in their records. Any subcontractor who fails to retain a prime contractors' exemption certificate for each project will be considered a prime contractor and subjected to the contractors' excise tax.

Gross Receipts

"Gross receipts" includes the amount received directly or indirectly in money, credits, property, liquidated damages, or other money's worth in consideration of the performance of a contract within South Dakota. Gross receipts also include the greater of the cost or fair market value of materials furnished by the owner for the contractor to install.

A contractor cannot take a deduction for the cost of the property sold, cost of the materials used, the cost of services or labor purchased, amounts paid for interest or discounts, or any other expenses or losses.

Tax Application

Projects that are not qualified utility projects

Tax applies under 10-46A

The prime and subcontractors' tax liability is as follows:

Prime Contractors:

- Owe 2% contractors' excise tax on their gross receipts.
- Include the value of material furnished by the owner in their gross receipts subject to the contractors' excise tax.
- Owe 4.5% state, plus applicable municipal use tax on materials furnished by the owner if the owner does not document sales or use tax was previously paid
- Owe 4.5% state, plus applicable municipal use tax on material they furnish for the contract if sales or use tax was not previously paid.
- Must issue prime contractor exemption certificates to subcontractors.
- Cannot deduct amounts paid to subcontractors in determining gross receipts subject to the contractors' excise tax.

Subcontractors:

- Do not owe the 2% contractors' excise tax IF a prime contractors' exemption certificate is received for that project.
- Owe 4.5% state and applicable municipal sales or use tax on material the subcontractor furnishes for the contract.

The prime contractor's contract determines the tax application for all subcontractors. If the prime's contract is for a qualified utility construction project subject to tax under 10-46B, the subcontractor's contracts are also subject to tax under 10-46B.

Qualified Utility Projects

Tax applies under 10-46B

The prime and subcontractors' tax liability is as follows:

Prime Contractors:

- Owe 2% contractors' excise tax on their gross receipts.
- Do not include the value of the owner furnished material in their gross receipts subject to the contractors' excise tax.
- Owe 4.5% state and applicable municipal use tax on materials furnished by the owner if the owner does not document sales or use tax was previously paid.
- Owe 4.5% state and applicable municipal sales or use tax on material they furnish for the contract.
- Cannot issue prime contractor exemption certificates to subcontractors for a qualified utility project.
- Cannot deduct amounts paid to subcontractors in determining gross receipts subject to the contractors' excise tax.

Subcontractors:

- Owe 2% contractors' excise tax on their gross receipts.
- Owe 4.5% state and applicable municipal sales or use tax on material the subcontractor furnishes for the contract.
- Cannot accept a prime contractors' exemption certificate for a qualified utility project.

Owner-Furnished Material

The prime contractor owes contractors' excise tax on the value of material furnished by the owner for construction projects. The fair market value of the owner-furnished materials includes sales or use tax on the material. On projects for Qualifying Utilities, the contractor does not owe contractors' excise tax on the value of the material furnished by the owner.

When a government or sales tax exempt entity furnishes material for a realty improvement contract, the contractor owes 4.5% state use tax plus applicable municipal use tax on the value of the material. The value of the material includes the amount the exempt entity paid for the material, including delivery charges.

Examples

1. An owner buys material for \$213,000 (\$200,000 plus 6.5% sales tax of \$13,000). The owner hires a contractor for \$400,000 to install the materials. The contractor is liable for contractors' excise tax on \$613,000 (\$400,000 plus \$213,000).

2. The State of South Dakota buys wire for \$10,000. The state did not pay sales tax. The state then contracts with ABC to install the wire for a phone system. ABC receives \$5,000 for their work. ABC owes 6.5% use tax on the owner-furnished materials (\$10,000 x 6.5% = \$650 use tax). ABC also owes contractors' excise tax on \$15,650. (Owner-furnished materials \$10,000 plus \$650 use tax and \$5,000 receipts for the labor).

Cable TV

The installation of cable or fiber optic cable, taps, or filters for cable television outside a building is subject to contractors' excise tax. The installation of cable or filters inside a home for television is subject to sales tax. The charge to turn cable service on or off (hookup charges) that does not include installation of any cable or equipment outside the home is subject to sales tax.

Companies that provide both cable TV and telephone services are qualifying utilities. The installation of cable for a qualifying utility is subject to contractors' excise tax under 10-46B as a Qualified Utility Project.

Examples

1. John Doe has CC Cable TV add cable to two rooms in his home. The charge for installing cable in these rooms is subject to sales tax.

2. CC Cable TV is installing new fiber optic cable throughout a town. CC hires a contractor to bury the cable. The contractor will owe contractors' excise tax on their receipts, plus on any material furnished by CC Cable.

Computers

The installation of computers that are a part of a communication system or that control the function of real property are subject to contractors' excise tax. Computers used for office work, Internet

Installation and Repair of Communication Equipment

access, games, etc. are subject to sales tax. The installation of computer networking lines is subject to sales tax.

Connection Charges (Hookup Fees)

A connect charge is the fee to turn on or off the communication service.

Connection charges for communication services that do not include the sale or installation of any material are subject to sales tax.

Connection charges for communication services that include the sale of material or the installation of material inside the building, but no installation of material outside the building, are subject to sales tax.

Connection charges for communication services that include installation of material outside the building are subject to contractors' excise tax. This may include the charges to bring the communication service to the building, digging trenches, putting in culverts, running lines, or putting in controls such as taps or filters. If the connection charge is listed separate from the construction services, the connection charge is subject to sales tax.

Lease of Real Property

The lease or rental of real property is exempt from sales tax. However, leased or rented tangible personal property installed into real property may be subject to contractors' excise tax. Contractors' excise tax applies to lease payments when the contractor that installs the property is also receiving lease payments on the property. Use tax is due on the cost or fair market value of the equipment at the time it is purchased or taken out of inventory.

Examples of leased or rented tangible personal property that become real property subject to contractors' excise tax include:

- Burglar alarms
- Irrigation systems
- Restaurant equipment
- Security systems
- Signs
- Switching equipment

Leasing space on a tower for placement of a sign or a satellite dish is not subject to sales tax.

Example

1. ABC Leasing installs and leases switching equipment to a cellular communications company. ABC Leasing owes use tax on the cost of the equipment. Because ABC Leasing performed the installation, they will owe the 2% contractors' excise tax on each lease payment.

2. ABC Leasing leases switching equipment to a telephone company. ABC Leasing purchases the equipment and installation from TeleContracting. Because TeleContracting performed the installation, TeleContracting will owe use tax on their cost of the equipment and

the 2% contractors' excise tax on their receipts. ABC Leasing does not owe contractors' excise tax or sales tax on the lease payments because the contractor has paid the tax.

Material Supplier

The sale of material or supplies without installation is subject to sales tax. You do not owe contractors' excise tax or use tax if your contract is to supply materials only. A prime contractors' exemption certificate cannot be used to exempt the material from the 4.5% state sales tax and applicable municipal tax.

Satellite Dish Installation

Receipts from the installation or repair of a commercial satellite dish system are subject to contractors' excise tax. Charges for installing poles or lines between the satellite dish and the building are subject to the contractors' excise tax. Receipts from the installation or repair of a satellite dish for home use are subject to sales tax.

Sound Systems

The installation or repair of sound systems is subject to contractors' excise tax. This includes installation of built-in speakers and wiring for home entertainment centers or intercom systems.

Telephone

Telephone companies, including Rural and Municipal telephone systems, are qualifying utilities. Cellular phone companies typically are not a qualifying utility. When a telephone company expands their business to provide wireless services, any construction for the wireless service will be subject to tax under 10-46B because the telephone company is a qualifying utility.

The installation of telephones into pre-wired outlets, which are in a separate contract, is subject to sales tax.

Examples

1. A municipality is installing telephone lines in a new development. The municipality furnishes lines valued at \$200,000. A contractor installs the lines for \$100,000. The contractor owes 4.5% state use tax plus applicable municipal use tax on the \$200,000 and owes contractors' excise tax on his receipts of \$100,000.

2. Contractor A is building an office building for a municipal telephone system for \$300,000. Contractor A hires Contractor B to do the plumbing for \$20,000. Contractor A owes contractors' excise tax on his receipts of \$300,000. Contractor B owes contractors' excise tax on his receipts of \$20,000.

Testing or Sweeping Lines

Testing or sweeping lines to determine if the lines are working properly is subject to sales tax.

A contract to test or sweep lines that includes the repair of the line is subject to contractors' excise tax.

Sales or Use Tax

All contractors must pay the 4.5% state sales or use tax, plus applicable municipal tax, on all material and sales taxable services they purchase.

The prime contractor also owes the 4.5% state sales or use tax, plus applicable municipal tax, on all owner-furnished material, if the sales or use tax has not been paid on the material.

The prime contractor can be held liable for use tax on materials furnished by the owner or any subcontractor.

Government Contracts

Contractors may list the contractors' excise tax and any sales or use tax due as a separate line item on all contracts and bills, both for public and private entities. The contractors' excise and use taxes are part of the contractor's total expenses and are collectible from all entities, both public and private.

Municipal Sales and Use 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.

Additional municipal use tax may be due when the material is used. If the contractor paid 4.5% state sales or use tax on the material when it was delivered, the contractor owes the municipal use tax if the material is used inside a municipality that has a municipal tax. The municipal use tax is due on the cost of the material, including delivery charges, used in the municipality's limits.

Example

A South Dakota Phone System buys wire and stockpiles it at their location outside Pierre. SD Phone System paid 4.5% state sales tax on the wire at the time of purchase. SD Phone System uses some of this wire on a house in Pierre municipal limits. SD Phone System owes Pierre's municipal use tax on the cost of the wire used in Pierre municipal limits.

Required Records

Records, such as contracts, prime contractors' exemption certificates, 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.

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 or write us:

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