

October 2018

This fact sheet is designed to provide general guidelines and examples of what is included in a retailer's gross receipts. 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's newsletters, press releases, Tax Facts, and other documents published by the Department of Revenue.

Direct Selling Companies

For sales tax purposes, a direct selling company is a business that sells products to direct sellers who resell the products to retail customers, or a company that has direct sellers who take orders for their products. A direct selling company may be called a multi-level marketing company. A direct selling company will be referred to as "company" in this tax facts.

Direct sellers

Direct sellers (seller) are people who make retail sales or take orders for products, often working out of their homes. They sell at sales parties or by appointment in someone's home. Their customers are often co-workers, friends, relatives, or neighbors. Selling items as a company employee does not make someone a direct seller. Sellers must be in business for themselves. A direct seller will be referred to as "seller" in this tax facts.

A direct seller signs up with a direct selling company to sell its product line. The company may use one of many titles for its direct sellers, including:

- consultant
- coordinator
- dealer
- demonstrator
- designer
- distributor
- director
- instructor
- manager
- representative
- sales representative
- supervisor

Who must register for sales tax?

Every person or company making taxable retail sales in South Dakota must collect the state and applicable municipal tax on those sales. Ordinarily, this means direct sellers must register to collect sales tax and remit the sales tax to the Department. However, in **certain cases**, the Department authorizes direct selling companies to remit sales tax for their own sales **and** for the sales made by their direct sellers. In these cases, individual direct sellers do not need to register to collect and remit tax.

A direct selling company must be authorized by the Department before they begin to collect and remit sales tax for their direct sellers' sales.

Requirements for direct selling companies to collect, report and remit South Dakota sales tax for their direct sellers:

1. The company must have a South Dakota sales tax license and must assume responsibility for the sales tax due from the sellers. A sales tax application may be completed online at www.state.sd.us/taxapp.
2. To request authorization to collect and remit sales tax on behalf of sellers contact the Department at 1-800-829-9188 to request a Direct Selling Company Affidavit. The Department will notify you when the request is approved.
3. The company may report sales tax based on:
 - a. The actual selling price to the consumer, plus delivery charges, if known. If not known, then tax is due on the suggested retail selling price, plus delivery charges. The sellers must provide documentation to the company on the actual selling price. **OR**
 - b. The suggested retail selling price, plus delivery charges. They do not need to have seller's report the actual selling price to them, if this option is chosen.
4. The tax rate is based on the location where the company delivers the products.
5. Sellers who have a South Dakota tax permit may prefer to handle their own sales tax. If they choose to do so, they

must provide the company a completed exemption certificate indicating they are purchasing the products for resale.

Direct Seller Responsibilities

Before you begin selling, contact our office to find out if the company is authorized to collect and remit sales tax for you.

1. If the direct selling company is licensed:

A. Collect sales tax from your customers based on the actual selling price or the suggested retail selling price, plus delivery charges, as the company instructs you. Because the company is responsible for the sales tax, the tax rate is based on the location the company will deliver the products. This will usually be the seller's home or the hostess's home, but may also be the customer's home. The location the seller or hostess delivers products to does not determine the rate charged by the direct selling company. If the direct selling company delivers to a location out of state, South Dakota sales tax does not apply.

B. Provide documentation to the company showing your selling price and delivery charges as the company requests.

C. Pay the sales tax to the company.

D. You do not need a South Dakota sales tax permit and will not need to file South Dakota sales tax returns for the sales made for the company.

2. If the direct selling company is not licensed you are required to have a sales tax permit and report and remit your own sales and use tax.

A. Apply for a sales tax permit by completing the sales tax application online at www.sd.gov/taxapp. The Department will contact you after the application is received.

B. Provide a completed Exemption Certificate to the company to buy products for resale.

C. Collect and remit sales tax from customers based on the actual selling price, plus delivery charges. Because you are responsible for the sales tax, the tax rate is based on the location where you deliver the products. When the company ships the products directly to the host or to each customer you are responsible for sales tax based on where the company ships the products. Neither the location of the party nor where the host delivers products determine

the tax rate. If you deliver items out of state or the company delivers items directly to a host or customer out of state, South Dakota sales tax does not apply.

D. Items you use or give away are subject to sales or use tax. If the company does not collect the South Dakota sales tax, you must report and remit use tax based on your cost, plus delivery charges.

3. If the company is licensed, but you have sales of other taxable products or services, you are required to have a sales tax permit in order to remit tax on the other products or services. You may choose to charge sales tax on the company's products or you may have the company handle the tax for you.

If you choose to have the company remit the tax, follow the instructions under #1. If you choose to remit tax on sales you make, follow the instructions under #2.

The tax rate due is the rate in effect at the location where the taxable items are delivered by the company or person that is remitting the tax to the state. See 1. A. and 2. C. above.

Examples:

1. A candle party is held at a host's home in Aberdeen. The company ships the candles to the direct seller in Groton. The seller delivers the candles to the host in Aberdeen, and the host delivers the candles to the customers at various locations.

If the company remits the tax, the location of the sale in this example is Groton, since the company shipped the candles to Groton.

If the seller remits the tax, the location of the sale is Aberdeen, since that is where the seller delivered the candles.

2. A candle party is held at a host's home in Aberdeen. The company ships the candles to the seller in Groton. The host picks them up from the direct seller in Groton and delivers them to the customers. The location of the sale in this example is Groton, whether the company or the seller handles the tax.

3. A party is held at a host's home outside city limits. The company ships the products to the seller in Groton. The seller delivers the products to customers in Aberdeen, Groton, and Watertown.

If the company remits the tax, the location of the sale is Groton, where the company shipped the products.

Direct Selling Companies

If the seller remits the tax, the tax rate to remit is based on each location where the seller delivers the goods. In this case the seller will remit tax for all three cities.

How to compute sales taxes

The 4.5% state sales tax plus applicable municipal sales tax must be charged on the sales price of taxable items sold in South Dakota. Municipal tax rates are available online at <http://dor.sd.gov>. Select Business Tax, then Municipal Tax

The **sales price** is the price charged for the product plus delivery charges. Delivery charges include all shipping and handling charges. This is the total amount paid by the purchaser. The suggested retail selling price, plus delivery charge is the sales price when the actual sales price is not known or if the company has chosen to report on the suggested retail price. The company is responsible for informing sellers which amount to collect the sales tax on.

When a company agrees to remit tax on the actual selling price, but did not know that price at the time tax is due, they will report tax on the suggested retail price, including delivery charges. If the seller provides the company documentation of the lower price, the company may adjust the amount reported by making a reduction on their next return. However, because tax was already reported they are not required to make that adjustment.

Example:

1. A seller orders an item with a suggested retail selling price of \$40.00 and pays 6.5% state and municipal sales tax of \$2.60 to the company. The seller charges \$30.00 for the product plus 6.5% sales tax of \$1.95. The seller notified the company of the \$30.00 selling price. The company may adjust their records and report the actual selling price. However, they are not required to make an adjustment, since the actual selling price paid by the final purchaser was not known to them at the time they sold the product to you.

Host or Hostess credits and discounts

Credits: When the hostess receives “credits” for hosting a party and uses them against her purchase, this is considered a discount. Sales tax is due on the actual charge to the hostess. Tax is not due on the “credits”.

Example:

A hostess earns \$45 in merchandise credits for receiving orders of \$250 from guests. The hostess selects taxable items totaling \$52, uses her credits and pays the \$7 difference. The hostess owes sales tax on the \$7.

Discounts: When a host is offered items at half price (or other reduced price) for party bookings or for reaching certain sales levels, tax is due on the amount paid for the item.

Example:

For obtaining two bookings from his guests, a host is able to purchase one item at half price. He selects a \$50 taxable item, and pays \$25 for it. He owes sales tax on \$25.

Delivery charges

Delivery charges include transportation, shipping, postage, handling, crating, packing and similar charges. Delivery charges are taxable unless the item purchased is not taxable.

When taxable and nontaxable items are on the same invoice, the delivery charges may be prorated based on the dollar amount of the nontaxable to taxable sales. If 60% of the invoice is taxable, then 60% of the delivery charge is taxable. See Tax Facts Delivery Charges for more information.

Purchases for personal use

Products sellers purchase for their own use are subject to sales or use tax. For these purchases, the seller is considered a customer of the company rather than a seller, since the item is not being resold. The seller should notify the company that the products are for personal use and the company should charge sales tax on the price paid for the products.

If the company is reporting based on the suggested retail price and you are charged a lower amount, the company may charge you tax based on the suggested retail price. Because they report on the suggested retail price, the company is not required to give refunds or make adjustments.

Sales aids

Sales of advertising display cases, demo kits, sample cases, brochures, sales catalogs, order forms, and similar items are subject to state and applicable municipal sales tax where the products are delivered. If a company provides these items free to South Dakota sellers or customers, the company must pay South Dakota sales or use tax on their cost of the items.

Prizes, free samples and gifts

Sales or use tax must be paid on taxable items given away as prizes, free samples or gifts. The giver of the prize, free sample or gift (whether it is the seller, the company, or host or hostess) must pay sales or use tax, including applicable local tax, on their cost of the item.

If the company is licensed and the seller has provided an exemption certificate, the seller must tell the company which

items will not be resold, so the company can collect the sales tax on those items. This includes items given away as free samples, prizes or gifts.

Sales to Exempt Entities

Accredited schools, non-profit hospitals, approved relief agencies, and government entities are exempt from sales and use tax. Government entities, including public schools, must provide an exemption certificate to the vendor or the vendor must keep documentation to show the purchase was paid from government funds. Documentation may include a purchase order or a check stub. Relief agencies and religious or private schools must provide an exemption certificate to purchase products and services exempt from sales and use tax.

Use tax

The purchase of business equipment and supplies, such as computer hardware or software, office supplies or furniture is subject to sales or use tax. Sales tax is generally charged by the retailer at the time of sale. However, if the retailer does not charge South Dakota sales tax, you must pay use tax. State use tax plus applicable municipal tax is due on your cost of the item including delivery charges.

You must also pay use tax when you buy items exempt as a sale for resale, but take the items out of inventory for business or personal use (either for your own use or to give as a gift, prize or sample).

Report state and applicable municipal use tax when you file your South Dakota sales and use tax return.

A seller that does not have a South Dakota sales tax license can report use tax by using the use tax form available online at <http://dor.sd.gov>. Go to Business Tax, Forms, Sales Tax Forms, and select Use Tax Form.

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:

SD 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