

This Tax Facts is designed to explain how sales and use tax applies to lawn, garden, and tree services. 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.

Sales Taxable Services

Lawn, garden, and tree services are subject to sales tax when performed apart from other contracts involving realty improvements. The state sales tax plus applicable municipal tax apply where the service is performed. Businesses performing sales taxable services in South Dakota are required to have a sales tax license.

Examples of services subject to sales tax:

Aerating
Dethatching
Diagnosing lawn conditions
Fertilizing
Hydro seeding
Installation of lawn edging, decorative rock, weed control fabric
Killing weeds, insects, rodents, or fungi
Landscape design
Lawn sprinkler systems -- turning on system and blowing out system
Mowing and trimming
Mulching
Ornamental plants, trees, and shrubs: planting, pruning, bracing, removal, surgery, stump removal
Preparing dirt to lay sod
Raking, including power raking
Seeding or reseeding
Snow Removal
Sod laying
Spraying
Tilling and soil preparation
Turf installation (except artificial turf)
Tree trimming for utility lines
Watering
Soil moving, grading, removal or installation completed in order to perform a sales taxable landscaping function (such as removing a top layer of soil to install sod) is subject to sales tax.

Contractor's Excise Taxable Services

Construction services and realty improvements subject to contractor's excise tax are not subject to sales or use tax. The materials, supplies and services purchased for the contract are subject to sales or use tax. Businesses performing construction or realty improvement services in South Dakota must have a contractor's excise tax license and must report their excise taxable receipts on their contractor's excise tax return.

Examples of projects subject to contractor's excise tax:

Land clearing, such as clearing shelterbelts, stump removal in fields, clearing lots for building

Installation, repair, or removal of the following:

- Artificial turf
- Bricks, including that done around a flowerbed
- Concrete blocks (Including Rip Rap)
- Driveways, sidewalks, parking areas, patios
- Decks, gazebos, retaining walls, ponds, or fountains
- Masonry, stone setting, terrazzo, tile marble or mosaic work
- Patios
- Plastering, drywall, acoustical, and insulation
- Retaining Walls – block, stone, or brick, including berm walls
- Sidewalks
- Sprinkler systems
- Stucco

Soil moving, grading, removal or installation performed as part of a project subject to contractor's excise tax, is also subject to excise tax.

Contracts That Include Sales and Contractor's Excise Taxable Work

When a job includes some services that if performed separately are subject to contractor's excise tax and some services that are subject to sales tax, the primary purpose of the job determines which tax that applies.

When the primary purpose is not clear you may apply tax in one of the following ways:

1. Itemize the services on the invoice, applying sales tax to the sales taxable services and contractor's excise tax to those subject to contractor's excise tax; or
2. If 25% or more of the dollar value of the contract is for excise taxable work, charge contractor's excise tax on the entire contract. If the excise taxable work is less than 25% of the dollar value of the contract, charge sales tax on the entire contract.

Examples:

1. A job is contracted to seed a new lawn. The service is subject to sales tax even if the top layer of soil is removed and new soil is added and leveled.
2. A job is contracted to install underground sprinklers. The service is subject to contractor's excise tax, even though they may plant seed or sod in the areas where they install the sprinklers.
3. A job is contracted to lay sod, install bricks around 3 flower beds, install underground sprinklers, and plant several trees, shrubs and flowers. Because there is no distinct primary purpose and the contract is not itemized, if the charge for installing the sprinkler system and bricks is more than 25% of the entire contract, the entire contract is subject to contractor's excise tax.

Contractor's Excise Tax Application

Contractor's excise tax is calculated on total gross receipts. Gross receipts are defined as the total amount received including, but not limited to, sales tax, contractor's excise tax, cost of materials, labor and profit, owner-furnished material and any other expenses. Because the tax is included in the gross receipts, the department has developed a factor of 2.041% that can be used to calculate excise tax due when preparing a bid or bill for a customer. This factor allows the contractor to recover the excise tax they will owe. The factor 2.041% is used to prepare a bid or bill, however, a straight 2% rate is used when calculating the excise tax on the return.

A Bid Factor Calculator, which is an excellent tool for calculating South Dakota contractor's excise tax, is available on the department's homepage, at <http://dor.sd.gov>. The calculator is a form that can be viewed with Adobe Acrobat Reader. The user will enter their figures and the form automatically calculates the tax due.

The contractor's excise tax for prime and subcontractors is as follows:

Prime contractors:

- Owe 2% contractor's excise tax on their gross receipts. Do not deduct sales or excise tax invoiced to customer.
- Owe 2% contractor's excise tax on the value of materials furnished by the owner.
- 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 and applicable municipal sales or use tax on the **cost** of materials they furnish for the contract.
- Must issue prime contractor exemption certificates to subcontractors.
- Cannot deduct amounts paid to subcontractors in determining gross receipts subject to the contractor's excise tax.

Subcontractors:

- Do not owe 2% contractor's excise tax IF a prime contractor's exemption certificate is received for that project
- Owe 4.5% state, plus applicable municipal sales or use tax on cost of materials they furnish for the contract.
- Subcontractors may only accept a prime contractor's exemption certificate if the **entire** project is subject to excise tax **and** the work they are performing is subject to contractor's excise tax.

When a project is subject to contractor's excise tax the prime contractor can issue prime contractor's exemption certificates to subcontractors performing excise taxable work. However, a contractor cannot issue a prime contractor's exemption certificate to a person performing sales taxable services.

Example: The contract is to build a retaining wall for a flower bed and to plant the flowers. Because the retaining wall is the primary purpose, the project is subject to contractor's excise tax. A subcontractor is hired to build the retaining wall; another person is hired to provide and plant flowers

A prime contractor's exemption certificate may be issued to the subcontractor hired to build the retaining wall. The prime contractor's exemption certificate cannot be issued for the labor to plant the flowers.

Projects for government entities

There are no exemptions from the contractor's excise tax. Therefore, projects for the U.S. Government, the State of South Dakota, counties, cities, schools, hospitals, churches, and private individuals ARE subject to contractor's excise tax. Contractors will also owe sales or use tax on all material they furnish and all material furnished by the governmental or sales tax exempt entity.

Highway construction projects

A subcontractor is a person contracting with a prime contractor to perform the following services: landscaping, seeding, hydro seeding, sodding, mulching, or erosion control on a highway construction project. The prime contractor may issue prime contractor's exemption certificates to these subcontractors. If the subcontractor does not receive a prime contractor's exemption certificate they are subject to 2% contractor's excise tax. Landscaping, seeding, sodding, mulching, and erosion control for projects other than highway construction are subject to sales tax. Contracts to provide these services directly to the government are exempt from sales tax.

When working on a public road construction project, all contractors, including landscapers, need both a contractor's excise tax license and a highway contractor's license. For further information visit: http://dor.sd.gov/Motor_Vehicles/Motor_Fuel/.

Material removed from retail inventory

If materials in a business's inventory were purchased without paying any state and city sales tax, those materials would be subject to state use tax, and any applicable city use tax, when they are removed from inventory and then used or consumed. State and city use tax is due based on the location where the materials are used or consumed. Any use taxes due on a construction project must be reported on the contractor's excise tax return.

Irrigation Projects

The installation of irrigation equipment is subject to contractor's excise tax. In addition, sales or use tax is due on the material.

Irrigation equipment used for non-agricultural purposes is taxed as follows:

Examples: lawns, golf courses, and governmental projects.

- Installation is subject to 2% contractor's excise tax.
- The 4.5% state plus applicable municipal sales or use tax is due on the materials.
- Repair and replacement parts and maintenance items for irrigation equipment used for non-agricultural purposes are subject to the 4.5% state plus applicable municipal sales or use tax.
- When irrigation equipment is brought to a shop to repair and there is no installation of the equipment to the irrigation system the repair is subject to 4.5% state plus applicable municipal sales or use tax. Repair services are subject to sales tax where the repaired item is delivered to the customer. Repairs completed out-of-state that are delivered to a South Dakota location are subject to 4.5% state plus applicable municipal sales or use tax.
- When repair is done onsite to an installed irrigation system, the gross receipts for the repair are subject to 2% contractor's excise tax. The contractor will also owe 4.5% state plus applicable municipal sales or use tax on the parts.

Irrigation equipment used exclusively for agricultural purposes is taxed as follows:

Agricultural purpose means the producing, raising, growing, or harvesting of food or fiber upon agricultural land.

- Installation is subject to 2% contractor's excise tax.
- Materials from the well head out are subject to the 4.5% state sales or use tax and no municipal tax.
- Materials from the well head down are subject to the 4.5% state plus applicable municipal sales or use tax.
- Repair parts that replace parts that have a part number assigned by the irrigation equipment manufacturer are not subject to sales or use tax.
- When irrigation equipment is brought to a shop to repair and there is no installation of the equipment to the irrigation system, the repair is not subject to sales or use tax.
- When repair is done onsite to an installed irrigation system, the gross receipts for the repair are subject to the 2% contractor's excise tax. The contractor will not owe sales or use tax on the parts, but will owe the 2% contractor's excise tax on the receipts for the parts and labor.
- Materials used in the construction or repair of water wells are subject to 4.5% state plus applicable municipal sales or use tax, plus the applicable contractor's excise tax.

Sales Tax Application

For projects or services subject to sales tax, the tax applies to the gross receipts from the project. The gross receipts include receipts for products sold, labor, mileage and other travel expenses, and delivery charges. The provider also owes sales or use tax on all supplies and equipment they use, with exception of products that are resold. The 4.5% state plus applicable municipal sales applies where products or services are delivered to the purchaser. Landscape work, such as planting trees, grass, etc. is subject to tax where the work is done.

Purchase for resale

For projects subject to sales tax, products sold to the customer that are used in doing the actual landscaping may be purchased for resale. Examples of items that can be purchased for resale are: sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips, landscaping materials, fertilizers, lawn care chemicals, and insecticides.

When a project is subject to sales tax and another business is hired to perform a portion of that job, those services may be purchased for resale if the service is purchased for a specific customer and is passed on unchanged. An exemption certificate may not be issued when purchasing services that are subject to contractor's excise tax.

A prime contractor cannot purchase a sales taxable service for resale, unless they hold a sales tax license, and the primary purpose of the contract is sales taxable. They cannot issue a prime contractor's exemption certificate for a sales taxable service.

Example: The primary purpose of a contract is to install a new flower bed which is subject to sales tax. The landscape contractor, who has a sales tax license, hires a subcontractor to install a new sprinkler head and hires another person to unload, till and prepare new soil. An exemption certificate may be issued by the contractor to the person tilling and preparing the soil. No exemption certificate may be issued for the installation of the sprinkler head as that service is subject to contractor's excise tax.

For projects subject to contractor's excise tax, no material or supplies may be purchased for resale. The contractor is responsible for paying sales or use tax on all items used in a project subject to the contractor's excise tax.

Use tax

Lawn care providers use equipment and tools such as chemical applicators, lawn mowers, rakes and shovels. Sales or use tax is due on the purchase or rental of equipment, machinery, accessories, tools, and the repair and maintenance of equipment and tools.

If the provider has items in inventory that were purchased for resale, use tax is due on the cost of the item if taken from inventory for donations or personal use.

Sales Tax Exempt Entities

Sales of landscaping design services, or other sales taxable services or products are exempt from sales tax when payment is made directly from the exempt entities funds. The business must keep an exemption certificate or a copy of the purchase order or check as

proof of funds. If you question the exemption of a purchaser please contact our office.

Greenhouse

Supplies that become part of the final package sold to the customer may be purchased for resale. This includes the flower pot, soil, peat moss, and plant. Starter containers, soil, fertilizers, pesticides, fumigants, preservatives, leaf shine, and insecticides used by the greenhouse in growing the plant are subject to sales tax at the time of purchase. If no sales tax was paid at the time of purchase, they become subject to state and applicable municipal use tax.

Fuel used to heat a greenhouse is subject to sales tax. Fuel used for growing trees and plants for sale at retail is subject to sales tax.

Examples of use taxable items:

- Fresh or artificial arrangements, or other items, displayed in the store and not to be sold are subject to use tax on the cost of the item.
- Promotional items given away such as pencils, key chains, and calendars.

Floral arrangements intended to be sold are not subject to use tax, but are subject to sales tax when sold. Flowers that spoil before being sold are spoilage and are not subject to sales or use tax.

Shelterbelts

Planting of shelterbelts on agricultural land is an agricultural service exempt from sales tax. Agricultural land includes the shelterbelt around farm residences. Cultivating and spraying of trees in shelterbelts on agricultural land is also exempt from sales tax.

Trees sold by conservation districts are subject to sales tax. Conservation districts that plant shelterbelts on agricultural land do not owe use tax on the trees they provide and plant as they are an exempt governmental agency. Businesses or individuals, other than the conservation district, that plant shelterbelts on agricultural land, do not owe sales tax on the fees charged for planting the trees, but owe sales or use tax on the trees they provide. The sale and planting of trees on land, other than agricultural land, are subject to sales tax.

Removal of ornamental trees is subject to sales tax. Land clearing, including removal of shelterbelts on agricultural land, is subject to contractor's excise tax.

Soil Testing

Soil testing is subject to state, plus applicable municipal sales tax based on where the testing report is delivered. If the lab is out-of-state and is not licensed, use tax is due on the lab fees.

Record-Keeping Requirements

Any business subject to sales, use, or contractor's excise tax in this state must keep all business records for at least three years.

Examples of business records include:

Gross Receipts:

Sales and billing invoices
General ledger
Cash register tapes - Journal tapes, detail tapes, Z tapes, guest checks
Bank deposit slips and statements
Sales and/or cash receipts journal
Contracts
Pricing information
Appointment books

Deductions: All deductions to gross receipts allowed by law and claimed in filing returns must be supported by the following types of documents:

Exemption certificate
Proof of exemption (exemption certificate or proof of government funds)
Bills of lading or other proof of delivery
Credit memorandums
Bad debts as claimed on federal income tax returns

Use Tax: Tangible personal property or services on which sales tax has not been paid are subject to use tax. Services and use taxable items which are stored, used or otherwise consumed should be identified by:

Purchase invoices
Cash disbursement journal or check register
Fixed assets schedule
Inventory withdrawal records
Depreciation schedules

The above records should be preserved for a period of three years and must include the normal books of account ordinarily maintained by the average prudent businessperson. All tax returns, as well as the schedules or working papers issued in connection with the preparation of tax returns, should also be preserved. In addition to the above records, the business should keep copies of supporting information, worksheets, schedules, etc. showing how the sales and use tax amounts were determined.

Anyone who fails to keep the records and books required, or refuses to exhibit these records to the Department of Revenue for the purpose of examination, could be found guilty of a Class 1 misdemeanor.

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