

June 2016

This fact sheet is designed to provide general guidelines and examples of situations that may occur when a municipality is purchasing or selling products or 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.

Taxes and Rates that may apply to a retail business.

State Sales and Use Tax.....	4.5%
Tourism Tax.....	1.5%
Municipal Sales and Use Tax	1 to 2%
Municipal Gross Receipts Tax	1%
Motor Vehicle Gross Receipts or Leasing Tax	4.5%
Wireless Gross Receipts Tax	4%

Are sales to municipalities subject to sales tax?

The sale of products and services to the following governmental entities is exempt from South Dakota sales and use tax.

- Public or municipal corporations of the state of South Dakota
- Municipal or volunteer fire or ambulance departments

Government entities 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.

The department issues some government entities exemption numbers. These agencies will include their exemption number on the exemption certificate. The exemption number for public schools contains the letters "RS". The exemption number for other governments contains the letters "RG". Government entities are not required to furnish an exemption number on the exemption certificate.

Employee Purchases

The exemption from sales and use tax for governments, non-profit hospitals, relief agencies, and religious or private schools does not extend to the purchase of products or services for the personal use of officials, members, or employees of such institutions.

Employees or representatives of an exempt entity cannot buy products or services without paying sales tax if they use a personal check or personal credit card. This is true even if the exempt entity later reimburses the employee. The exempt entity must pay the vendor from the exempt entity's funds.

Sales Tax

A municipality providing a taxable service or selling a taxable product must have a sales tax permit. Some municipalities may need to have more than one tax permit. For example:

- a sales tax permit to operate an alcoholic beverage business
- a separate sales tax permit to sell electricity, gas, garbage collection service, and miscellaneous sales and services, such as sales of tangible personal property, pool fees, and park and recreation fees
- a contractors' excise tax license for construction work performed on real property

Airport

There are many services and products sold at airports. Landing fees and passenger terminal rent are not subject to sales tax.

Hangar rental, parking, and the sale of tangible personal property are subject to the state sales tax, plus applicable municipal sales tax.

Alcohol

The sale of all alcoholic beverages are subject to state and municipal sales tax and municipal gross receipts tax.

Ambulance and Fire Departments

Municipal and volunteer fire departments and ambulances perform governmental functions. Receipts for their services are exempt from sales tax. Items purchased for use by the fire or ambulance department are exempt from sales tax if title to the item remains with the fire or ambulance department.

Fundraising activities that last more than three consecutive days are subject to sales tax. If the fundraiser lasts three days or less, the goods and services purchased for the activities are subject to sales

tax, but the gross receipts are exempt from sales tax. Gross receipts from bingo and lotteries are not sales taxable. However, sales tax must be paid on any goods or services purchased to conduct bingo or lottery. **Exception:** Admissions to rodeo and rodeo-related events are subject to sales tax.

Cemetery

The sale of a grave is the sale of real property and is not subject to sales tax. The following items are subject to sales tax: cremation, grave digging, interment, openings and closings, perpetual care fees, reburial, setting markers, setting monuments, and tent setup.

Fines

Fines are not subject to sales tax.

Land Rental

The lease or rental of land, including garden space, is not subject to sales tax.

Licenses and Permits

The sale of a license or permit is not sales taxable. The following are examples of licenses a municipality may issue.

Licenses

- Arborist
- Animal
- Auction
- Bicycle
- Electrician's
- Entertainment
- Health license/permit
- Inspection license/permit
- License transfer
- Liquor license
- Mobile home
- Public safety license/permit
- Sanitation license/permit
- Sign Manufacture
- Taxicab
- Trailer
- Transient Merchant
- Vending Machine

Permits

- Building
- Conditional Use
- Excavation
- Extra-Territory
- Mobile Home Placement
- Precious Metal and Gems
- Sign/billboard
- Special Police
- Street Cutting
- Monument Setting Permit

Services that are not subject to sales tax include ambulance fees, library fees, accident reports, driving records, animal control, litter removal, weed mowing and cutting, mosquito control, and junk removal if required by ordinance.

Municipal Owned and Operated Community Facilities

Community facilities include, but are not limited to, arenas, athletic fields, auditoriums, civic centers, coliseums, gymnasiums, and meeting rooms owned and operated by a municipality. The rental of space in a community facility is not taxable.

However any service offered with the rental is subject to sales tax. If the charge for the service is not stated separately, the entire fee, including the space rental, is subject to sales tax. Taxable services may include, but are not limited to: chair rental, table rental, etc., fire protection, guard services, lighting, police protection, stagehands.

Concession sales at community facilities are subject to sales tax.

Park and Recreation Services and Equipment

The following chart identifies the tax(es) that apply to the listed service. For additional information on Tourism tax please refer to the Tourism Tax tax facts. To determine if a municipality imposes a municipal sales tax or municipal gross receipts tax on admissions please refer to the Municipal Tax Information Bulletin. Both publications are available on the department website at <http://dor.sd.gov> or by calling 1-800-829-9188.

Management of Revolving Loan Fund

Receipts received by the State of South Dakota and any of its political subdivisions including multi-county planning and development districts established pursuant to Executive Order 70-7, or its successor, from management services provided to a revolving loan fund operated by a nonprofit entity are exempt from sales and use tax.

Miscellaneous Sales and Services

Products and services sold by a municipality, that are not required by state law, are subject to sales tax. The following are examples of such taxable sales of tangible personal property: accident pictures, photocopies, garbage bags, gravel, maps, and surplus property (including items sold at auction, such as culverts, planks, used equipment, blades and poles).

Sales taxable services include: Audio-visual rentals, ice and snow removal, table and chair rental and towing charges.

Municipalities

Service	State Sales Tax	Municipal Sales Tax (if within city limits)	Municipal Gross Receipts Tax (if within city limits)	Tourism Tax
Admissions to Visitor Attractions	X	X	X	X
Admissions to Spectator events	X	X	X	X
Campground Fees	X	X	X	X
Fitness center: Daily or weekly passes	X	X		
Fitness center: Memberships (except YMCA & YWCA)	X	X		
Fitness center: YWCA & YMCA	Exempt	Exempt	Exempt	Exempt
Golf - Driving ranges	X	X	X	X
Golf - Club rental	X	X		X
Golf - Membership fees and Green fees	X	X	X	
Museum, Admissions to	X	X	X	X
Picnic Equipment Rental	X	X		
Recreational Court Rental - tennis, racquetball, volleyball, ice skating. Equipment rented with a recreational court is also subject to tourism tax.	X	X		X
Recreational Equipment Rental - golf clubs, skis, snow shows, bumper cars, recreational water equipment.	X	X		X
Zoo, Admissions to	X	X	X	X
Swimming Pool, Admissions to	X	X	X	
Craft items or supply sales	X	X		
Woodshop use	X	X		
Pottery completion charges (use of kiln)	X	X		
Instruction fees for sports or other activities except ski instruction	X	X		
Ski instruction	X	X		X
Nonprofit historic sites, Admissions to	Exempt	Exempt	Exempt	Exempt
Repertory theater performances, Admissions to	Exempt	Exempt	Exempt	Exempt

Refer to SDCL 10-45D or the Tourism Tax Facts for a complete list of products and services subject to tourism tax.

¹ Visitor attractions include: aerial tramways, amusement parks, animal exhibits, animal shows, antique car exhibits, antique exhibits, arboreta, aquariums, batting cages, botanical gardens, bumper boats, bumper cars, bungee jumps, carnival rides, chuck wagon suppers, commercial playgrounds, go-cart raceways, gold mines, golf driving ranges, historic sites, human mazes, hunting preserves, miniature golf courses, museums, music shows, observation towers, outdoor dramas, pitch 'n putt golf courses, playhouses, racetracks, recreational gold mining, reptile exhibits, restorations, scenic railroads, shooting preserves, show caves, ski areas, spectator events, water slides, wave pools, wax figure exhibits, and zoological gardens. All businesses conducted on the site of a visitor attraction are subject to Tourism tax.

² Spectator events include: air shows, auto races, auto shows, balloon shows, boat races, car rallies, carnivals, circuses, concerts, dance festivals, draft horse contests, ethnic festivals, exhibitions, expositions, fairs, greyhound races, horse races, horse shows, monster truck shows, motorcycle expositions, motorcycle races, music festivals, rodeos, sporting events, stage performances, threshing bees, tractor pull contests, and water-skiing shows. All businesses conducted on the site of a spectator event are subject to Tourism tax.

³ Campgrounds include: campgrounds, camping cabins, camping resorts, commercial picnic grounds, organizational camps, park units, recreational vehicle parks, trailer parks, and youth camps.

⁴ The Tourism tax only applies to recreational equipment rented for twenty-eight days or less. Recreational equipment rentals include: all-terrain vehicles, beach chairs, bicycles, bumper boats, bumper cars, campers, camping trailers, firearms, fishing equipment, flotation devices, go carts, golf clubs, hunting dogs, hunting equipment, mopeds, motor coaches, motorcycles, pack animals, recreational courts and equipment, recreational gold mining equipment, recreational vehicles, recreational water equipment, rock climbing gear, roller blades, saddle horses, skis, snowboards, snowmobiles, snowmobile trailers, snowshoes, watercraft, and watercraft trailers.

Utilities

Sewer, Water, Sanitation Services

The sale of water and sewer services and related services are not subject to sales tax. Late charges on these services are not taxable. The following is a partial list of sewer, water and sanitation services municipalities may offer which are **not subject to sales tax**:

Remote reader sales; deposits; sewer charge; tap-in water line (water taps); turn off and turn-on fees; water meter tests; water sales (metered or bulk for domestic use); plumbing inspection; basic hookup charges and re-connection charges for water and sewer.

Electricity

The sale of electricity and related services such as turn-on and turn-off fees, meter tests, basic hookup charges and re-connection charges **BY** municipalities are subject to sales tax **except** to: other municipalities, counties, Indian tribes, qualified relief agencies, the State of South Dakota, townships, and the United States Government and its instrumentalities. Sales of electricity and related services **TO** municipalities are not subject to sales tax. Electrical inspection by the municipality is not subject to sales tax.

Garbage Collection Service

Garbage collection and tipping fees are subject to the 4.5% state sales tax and municipal sales tax. Garbage collection services are subject to tax based on where the garbage is picked up. Tipping fees charged to a commercial solid waste carrier may be sold for resale if the solid waste carrier provides the municipality with a valid exemption certificate.

Telephone

All telecommunications services, including those services offered by a municipality are subject to state and municipal sales tax.

Contractors' Excise Tax

Generally, any person making a realty improvement for his or her own use with his or her regular employees is not considered a prime contractor and is not liable for the contractors' excise tax. A municipality that makes realty improvements on its own property or private property does not owe contractors' excise tax if no charge is made for the improvement. However, like any other contractor, when a municipality performs construction services or makes a realty improvement and charges a customer for the work, the municipality is responsible for the 2% contractors' excise tax and must have a contractors' excise tax license.

Examples of realty improvements.

Line installation, either above or below ground for sewer, water or electricity.
Moving electrical lines or transformers.
Repairing a telephone pole, fire hydrant, stop sign, etc...
Laying concrete for sidewalk on the property of a resident.
Digging ditches and maintaining roads.

If a municipality hires a contractor to perform construction services or realty improvement work for the municipality, the contractor will owe excise tax on the gross receipts from that work. In addition, the

contractor will owe sales or use tax on all materials they use in the project. The contractor must pay use tax and contractors' excise tax on materials supplied by the municipality for use in their work.

A government entity may NOT issue an exemption certificate to a contractor that is performing construction services or realty improvements for that entity.

State law allows contractors to list their tax expense as a separate line item on all contracts and bills. The contractors' excise tax and the contractor's use taxes are part of the contractor's total bill and are collectible from all entities, both public and private.

When a municipality charges a customer for construction work, the municipality is a prime contractor and may issue a prime contractors' exemption certificate to contractors they hire. The subcontractor will not owe contractors' excise tax on their gross receipts; however, they are still responsible for sales or use tax on materials they furnish or materials the municipality has furnished for their use.

Utility Contracts

With passage of HB1094, the 2010 Legislation changed the application of contractors' excise tax on construction projects for municipal utilities. This legislation moved the taxation of municipal utility construction contracts from the alternate contractors excise (SDCL 10-46B) to the regular contractors excise tax (SDCL 10-46A). This bill contained an emergency clause with an effective date of February 25, 2010. This change applies to contracts bid on or after February 25, 2010.

· Municipal owned utilities including sewer systems, water systems, electric, light, heat, and power.

Effective February 25, 2010, contracts for construction services or realty improvements for a municipal owned utility are subject to the contractors' excise tax under SDCL 10-46A. The prime contractors owe contractors' excise tax on their gross receipts, which includes the value of materials furnished by the city. The prime contractors also owe sales or use tax on materials furnished by the contractor or the city. Subcontractors may accept a prime contractors' exemption certificate and will not owe contractors' excise tax on their receipts.

For tax application on contracts bid prior to February 25, 2010 please contact the Department at 1-800-829-9188

· Municipal owned telephone systems.

Both prime contractors and subcontractors performing construction services or realty improvements for a municipal owned telephone system are subject to contractors' excise tax under SDCL 10-46B. The contractors' owe sales or use tax on materials furnished by the contractor or the city. They do not owe contractors' excise tax on materials furnished by the municipality.

Municipalities

Examples

- 1) A car hits a stop sign. Municipal employees replace the stop sign and the municipality bills the car driver \$300 for the new sign. The municipality has \$300 in gross receipts subject to the 2% contractors' excise tax.
- 2) Municipal employees repair a cracked section of a resident's sidewalk and the municipality bills the resident for the repair. The municipality owes 2% contractors' excise tax on the receipts for this repair.
- 3) The municipality hires a contractor to resurface a street in a residential neighborhood. The municipality does not charge residents for the resurfacing. Since the municipality is not charging anyone for this construction project, the municipality does not owe contractors' excise tax because the municipality is not considered the prime contractor. The contractor hired by the municipality will owe 2% contractors' excise tax on their gross receipts, plus contractors' excise tax and sales or use tax on materials the contractor or the municipality furnished for the project. The contractor may pass the excise tax on to the municipality as a cost of completing the project.
- 4) The municipality hires a contractor to install telephone lines in a newly annexed area. Because this work is for a municipal owned telephone utility, the contractor owes 2% contractors' excise tax on their receipts, but does not owe contractors' excise tax on the materials furnished by the municipality.

Talk to Us!

If you have a tax problem or question, call the department 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:

**South Dakota
Department of Revenue
445 East Capitol Avenue
Pierre, SD 57501**

Or visit your nearest Department of Revenue Field Office:

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

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

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

Watertown Office
715 S Maple
Watertown, SD 57201

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

Yankton Office
1900 Summit Street
Yankton, SD 57078

Unlicensed Contractors

Public corporations may not award contracts for the construction of any public improvement to unlicensed contractors. Please contact the department at 1-800-829-9188 to verify the contractor's license prior to letting bids.

Contractors must provide documentation to the public corporation that these licensing requirements are met before the public corporation can do business with them.

Contractors may obtain an application for a tax permit from our website at <http://dor.sd.gov> or by calling 1-800-829-9188.