

Nonprofit Hospitals

South Dakota Department of Revenue | <http://dor.sd.gov/> | 1-800-829-9188 | June 2016

The purpose of this Tax Facts is to explain which South Dakota state and local taxes apply to nonprofit hospitals. It is not intended to answer all questions that may arise, but is intended to help you become familiar with the sales and use tax. The information contained in this fact sheet is current as of the date of publication.

This guide may change with updated information or added examples.

Nonprofit, charitable hospitals are exempt from paying South Dakota sales and use tax on purchases of products and services for use by the nonprofit hospital for hospital purposes. While a nonprofit hospital is exempt from sales tax on purchases of products and services, the nonprofit hospital will owe sales tax if it sells taxable products or services.

The purchase of products and services are exempt from sales and use tax when:

1. An authorized official of the nonprofit hospital makes the purchase,
2. Payment is made from the nonprofit hospital funds, and
3. The nonprofit hospital keeps title to the property.

A provider-based clinic that is part of a nonprofit hospital is also exempt from sales and use tax on its purchases when the following seven criteria are met:

1. The clinic applied for and received approval for provider based status from Medicare,
2. The clinic operates under the same state medical license as the hospital,
3. The clinic is located within 35 miles of the main campus of the hospital,
4. The clinic has ready access to the hospital's medical records and vice versa,
5. All Medicare patients are registered as hospital patients at the clinic and hospital,
6. Signage identifies the clinic as part of the hospital, and
7. The clinic is subject to the Emergency Medical Treatment & Labor Act.

The exemption from sales or use tax for nonprofit hospitals does not apply to products or services purchased or used by:

- Nursing homes
- Clinics, other than provider-based clinics
- Surgical centers, unless it is a nonprofit hospital
- For profit hospitals

Sales tax applies to items bought for:

- The personal use of a hospital employee
- Use in a taxable business

Hospital Defined

South Dakota law defines a hospital as "...any establishment with an organized medical staff with permanent facilities that include inpatient beds and is primarily engaged in providing by or under the supervision of physicians, to inpatients, and of the following services:

Diagnostic or therapeutic services for the medical diagnosis, treatment or care of injured, disabled or sick persons; obstetrical services including the care of the newborn or rehabilitation services for injured, disabled or sick persons. In no event may the inpatient beds include nursing facility beds or assisted living center beds unless the same are licensed as such pursuant to this chapter." (SDCL 34-12-1.1(5))

A nonprofit hospital should issue an exemption certificate to the supplier when buying products or services for the nonprofit hospital's use.

Hospital purposes relate to the services provided in the normal conduct of the hospital.

Examples

1. A nonprofit hospital buys computers for doctors in a clinic to communicate with the hospital. The hospital owns the computer. No sales or use tax is due. This only applies when the doctors use the computer strictly for hospital work and there is no charge for the computer use.
2. A nonprofit hospital purchases 100 hospital beds. Sixty beds remain in the hospital and 40 beds go to a nursing home owned by the hospital. Sales or use tax must be paid on the 40 beds that go to the nursing home because the beds are not used for hospital purposes.

Related Corporations - Controlled Groups

A hospital may be part of a group of related entities that qualify as a controlled group. A controlled group may include exempt and taxable entities such as a nonprofit hospital, clinic, nursing home, or surgical center.

There are specific exemptions from sales and use tax for certain services provided between members of a controlled group.

- A controlled group member does not owe sales tax on services it provides for another member of the same controlled group.
- A controlled group member does not owe sales tax on payments from other members of that controlled group for services purchased from a third party. Sales or use tax must be paid on the service purchased from the third party.

Occasional Sale of Products: The occasional sale of products between members of a controlled group is subject to sales tax, unless sales or use tax was previously paid on that product.

Transfer of Products: Products transferred from a nonprofit hospital to a for-profit entity are subject to sales or use tax unless tax was previously paid on that product.

Sharing Equipment: A nonprofit hospital may own equipment that other members of its controlled group may also use. Use tax is due on the equipment when used by a taxable member of the control group. The value of the equipment may be allocated based on the percentage of use by the taxable and nontaxable entities.

Example

If the nonprofit hospital uses the equipment 75% of the time and a nursing home uses the equipment 25% of the time, 25% of the equipment value is subject to use tax.

Controlled Group Defined

As defined in SDCL 10-45-20.3., a controlled group is a group of related entities that are:

Able to file a consolidated federal income tax return under the Internal Revenue Code as in effect on January 1, 2002, or

Entitled to only a single surtax exemption for federal corporate income tax purposes under the Internal Revenue Code as in effect on January 1, 2002, and

Includes a controlled group of corporations as defined at 26 U.S.C. § 1563 as in effect on January 1, 2002.

A controlled group also consists of any subchapter S corporation, limited liability company, limited liability partnership, general partnership, or limited partnership with at least eighty percent common ownership as if the entity was converted to or taxed as a subchapter C corporation under the Internal Revenue Code as in effect on January 1, 2002.

Sharing Services or Utilities: When the service is for both taxable and exempt entities, only the portion the taxable entity uses is subject to sales or use tax.

Example

A nonprofit hospital buys electricity for the hospital and its connected nursing home. The utility company runs all service through the same meter. The hospital may use square footage to allocate the utility cost. If 30% of the combined square footage is for the nursing home, then 30% of the utility is subject to sales or use tax.

Allocations of products or services should be reasonable. Be prepared to support the basis for the allocation (i.e., square footage, census count, gross billings, etc.). If you do not document who uses the equipment or service, the entire fee is subject to sales or use tax.

Examples of products or services a taxable entity may owe use tax on:

- ♦ Attorney services
- ♦ Accountant services
- ♦ Cable TV
- ♦ Computer programming, support and maintenance
- ♦ Electricity
- ♦ Housekeeping supplies and equipment
- ♦ Internet Access
- ♦ Janitorial services
- ♦ Laundry supplies, equipment and services
- ♦ Maintenance supplies and services
- ♦ Marketing supplies
- ♦ Natural gas
- ♦ Office supplies
- ♦ Security services
- ♦ Telephone

Cafeterias

Meals

The sale of food is subject to sales or use tax.

The sale of food to non-patients is subject to the state and municipal sales tax and the municipal gross receipts tax.

Patient meals are subject to the state and municipal sales tax. Tax is calculated on \$9.66 per patient day. (this amount does not include newborn patients.) Municipal gross receipts tax does not apply to patient meals.

Sales or use tax does not apply to In-patient hospital meals paid for by the United States, South Dakota or a political subdivision of the state, Medicare, Medicaid, CHAMPUS, Indian Health Services, or county poor relief patients. (10-45-14.6)

Employee meals provided in lieu of salary are subject to sales tax based on \$69 per person per month.

Cafeteria Equipment

A nonprofit hospital may purchase equipment to prepare food exempt from sales or use tax.

Catering

Catering services are subject to the state and municipal sales tax and the municipal gross receipts tax based on the location of the catered event.

Patient Comforts/Services

Welcome Kits/Comfort Kits

Hospitals may provide patients items to use for personal grooming and hygiene, e.g., combs, toothbrushes, tissues, mouthwash, etc.

- If the hospital gives these items to the patient, use tax is due on the cost of the items, if sales tax was not paid when the items were purchased.
- If the hospital sells these items to the patient, sales tax is due on the amount charged to the patient.
- If a manufacturer gives these items to the hospital at no charge, the manufacturer is responsible for South Dakota use tax.

Accommodation Centers

Receipts from sleeping rooms provided to non-patients are subject to state and applicable municipal sales tax.

A nonprofit hospital does not owe sales or use tax on services it supplies for use in its accommodation center such as housekeeping and security.

Telephones

A nonprofit hospital does not owe sales or use tax on telephones purchased for patient, doctors, or staff use.

Televisions

Receipts from the rental of televisions are subject to sales tax. A nonprofit hospital does not owe sales or use tax on its purchase of televisions, cable services, satellite dishes, etc. for staff or patient use.

The installation of satellite dishes for a hospital or clinic is subject to contractors' excise tax. The contractor will owe use tax on equipment the nonprofit hospital furnishes for him to install.

Miscellaneous Items

A hospital may provide services and products that are not related to healthcare. Charges for a service or product directly related to health services are exempt. For example, charges to a patient for use of a humidifier is health-related (environmental control), therefore the charge for the humidifier is exempt from sales tax. On the other hand, the hospital's charge for a TV or for personal laundry is not part of the health service and is subject to sales tax.

Other Services

Home Healthcare and Hospice Programs

Receipts for home healthcare are exempt from sales and use tax. A nonprofit hospital does not owe sales or use tax on supplies, equipment, or other products bought for use in its home healthcare program.

Other Hospital Outreach Programs

A nonprofit hospital does not owe sales or use tax on products and services bought for use in its alcohol and drug rehabilitation centers, schools of nursing, medical research libraries, and related programs.

Educational Classes

Fees a hospital or a licensed health care professional receives for classes such as childbirth classes, quit smoking clinics, and athletic injury classes are exempt from sales and use tax.

Temporary Help

A hospital or an office or clinic of licensed healthcare practitioners does not owe sales or use tax on receipts from temporary health care services it provides on a contract or fee basis. Healthcare services include doctors, nurses, medical lab technicians, and pharmacists. See The Health Services, Drugs, and Medical Devices tax facts for further information on temporary help.

Medical Records

Charges for copying or the sale of medical records is subject to sales tax. Medical records sold to Medicaid or other exempt entities are exempt from sales and use tax.

For example, an attorney requests a copy of a client's medical records. The charge to the attorney for copying the records is subject to sales tax based on where the records are delivered to the attorney.

Day Care Centers

A nonprofit hospital may provide childcare services for employees, patient families, and others. Day care services are not subject to sales tax. However, the products and services purchased for the center's use may be subject to sales or use tax.

- If the center is for employee use only, no sales or use tax is due on products or services the center uses.
- If the center is only for non-employees, sales or use tax is due on products or services the center uses.
- If the center is for employees and non-employees, the tax due on products and services the center uses is based on the percent of non-employee to employee use. If 25% of the use is for non-employees, 25% of the value of the products and services is subject to use tax.

The day care center owes sales or use tax on food it provides to the children. The use tax may be computed based on \$9.66 per day, per child, or the hospital may pay use tax on the actual cost of the food.

Wellness/Fitness Centers

Wellness and Fitness Centers a nonprofit hospital owns and operates are taxed as follows:

- State and municipal sales tax applies to receipts from:
 - ▶ Membership fees
 - ▶ Fitness classes
 - ▶ Sales of products such as socks, t-shirts, fitness equipment
- Sales or use tax is due on equipment and supplies bought for the center. The tax due is based on the percent of use by members under doctor's orders to those that are not under doctor's orders. If 60% of the members are not under doctor's orders, 60% of the value of the equipment is subject to use tax.

Exemption Certificates

Nonprofit hospitals should issue an exemption certificate when buying products or services.

A taxable entity that buys items that exempt members of their controlled group will use should buy those items without sales tax.

Use tax is due on any product or service the taxable entity uses when sales tax was not paid at the time of purchase.

It is your responsibility to identify taxable items when an exemption certificate is used. You must either tell your vendors to charge you tax on the taxable items or report the use tax on your sales tax return at the time you make the purchase.

If you intentionally buy items for resale that you know will not be resold or you provide an exemption certificate with the intent to not pay the tax, you must pay the use tax on those items and you may be:

- charged a penalty of 50% of the use tax due
- charged with a Class 1 misdemeanor. (SDCL 10-45-61)

Records

Hospitals are required to keep a list of all purchases that are exempt from sales and use tax. (SDCL 10-45-14) All businesses are required to keep 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 at least three years from the date the return is filed. These records must be available for inspection during business hours.

South Dakota Taxes and Rates	
State Sales and Use Tax – applies to all sales or purchases of taxable products and services.	4.5%
The following taxes may apply <i>in addition</i> to the state sales tax:	
Municipal Sales and Use Tax – applies to all sales of products and services that are subject to the state sales or use tax if the purchaser receives or uses the product or service in a municipality that imposes a sales or use tax.	1 to 2%
Municipal Gross Receipts Tax (MGRT) – May apply to the sale of alcoholic beverages, eating establishments, lodging accommodations, and ticket sales and admissions to places of amusement and cultural events when the item is sold or the event is within that municipality. MGRT is in addition to the municipal sales tax. MGRT does not apply when you are remitting use tax.	1%
Tourism Tax –applies to lodging and campgrounds, certain motor vehicle rentals, recreational equipment rentals, recreational services, spectator events, visitor attractions and visitor-intensive businesses. See the Tourism Tax Facts for a full listing of services subject to tourism tax. Tourism tax does not apply when you are remitting use tax.	1.5%

Contact Us

If you have any tax questions, please contact the **South Dakota Department of Revenue.**

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