

This Tax Facts is designed to explain how sales and use tax applies to oil and gas field 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 previously 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.

South Dakota's sales and use tax applies to a wide variety of services and tangible personal property. The 4.5% state plus applicable municipal sales tax applies to the gross receipts from the sale of products and services where the product or service is received. The gross receipts include all charges for labor, material, supplies, and miscellaneous items such as mileage, travel expenses, or delivery charges.

Service providers also owe sales or use tax on all material, equipment, and supplies they use or consume in providing their service.

Examples of sales taxable services are:

- Consulting
- Electricity
- Engineer services
- Geologists
- Mowing
- Repair to tangible personal property
- Snow removal
- Well operator fees
- Waste water disposal

Receipts for certain oil and gas field services rendered on non-commercial and commercial wells are specifically subject to sales tax, even though some of these services may be construction services. Oil and gas field services are typically received at the location of the well site.

Oil and gas field services subject to sales and use tax include:

Acidizing wells
Aerial geophysical exploration
Bailing wells
Building oil and gas well foundations
Cementing oil and gas well casings

Chemically treating wells
Cleaning lease tanks
Cleaning wells
Derrick building, repairing, and dismantling
Directional drilling of oil and gas wells
Dismantling of oil well rigs
Erecting lease tanks
Erecting tanks
Excavating slush pits and cellars
Exploration
Fishing for tools
Gas compressing, natural gas at the field
Gas well rig building, repairing, and dismantling
Geological exploration
Geophysical exploration
Grading oil and gas well foundations
Hard banding service
Horizontal drilling
Hot oil treating of oil field tanks
Hot shot service
Hydraulic fracturing wells
Impounding and storing salt water in collection with petroleum production
Logging wells
Mud service, oil field drilling
Oil sampling service for oil companies
Oil well logging
Perforating well casings
Pipe testing service
Pit Liners, installation of
Plugging and abandoning wells
Pumping of oil and gas wells
Redrilling oil and gas wells
Removal of condensate gasoline from field (gathering) lines
Repairing lease tanks
Reworking oil and gas wells
Roustabout service
Running, cutting, and pulling casings, tubes, and rods
Seismograph surveys
Servicing oil and gas wells
Shooting wells
Shot-hole drilling service
Spudding in oil and gas wells
Surveying wells
Swabbing wells
Well drilling: gas, oil and water intake

Construction Services and Realty Improvements

Construction services and realty improvements, except for items specifically listed as oil and gas field services, are subject to contractors' excise tax. Construction services subject to contractors' excise tax are not subject to sales or use tax.

The tax application for prime and subcontractors is as follows:

Prime Contractors:

- Owe 2% contractors' excise tax on their gross receipts.
- 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.
- Are to include the value of material furnished by the owner in their gross receipts subject to the contractors' excise tax.
- Owe 4.5% state and applicable municipal sales or use tax on material 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 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 they furnish for the contract.

Examples of construction services are (list is not all inclusive):

Building construction and repair
 Cattle guard installation
 Dirt moving
 Electrical work
 Land clearing
 Land reclamation
 Pipeline construction
 Repairs to real property (unless listed as an oil and gas field service)
 Road construction and repair

Oil Well Operator's Fees

Fees for managing or overseeing the operation of an oil well in South Dakota are subject to 4.5% state plus applicable municipal sales tax. Sales tax applies where the well is located. The service provider owes sales or use tax on equipment, supplies, and services they purchase.

Products and services provided by the Operator are subject to sales tax when billed to the owner.

Examples of charges subject to sales tax:

Drilling
 Roustabout services
 Monitoring and regulating services at well site
 Charges for facilities and equipment furnished by the Operator.
 Employee expenses (supplies, cell phone, lodging, meals, etc.)
 Administrative, supervision, and office services

The gross receipts include all charges for labor, material, supplies, and miscellaneous items such as mileage, travel expenses, standby charges or delivery charges. No deduction may be made for employee salaries and related expenses.

The operator may purchase supplies, services or equipment for the owner. This includes equipment, supplies, and oil and gas field services used to operate the well. The operator will owe use tax on these purchases, if sales tax is not collected by a supplier. The operator does not owe sales tax on the charges to the owner for these products and services provided:

1. Sales tax or use tax is paid at the time of purchase,
2. The charges are itemized, and
3. The items are billed to the owners at cost (without markup).

If the operator pays sales or use tax at the time of purchase, but charges more for the purchase than the actual cost, the operator will owe sales tax on the additional charge.

Examples

1. Pete's Operating has a contract to oversee the operation of Wade's Oil Wells in South Dakota for \$1000 per month. Pete's purchases equipment and oil and gas field services of \$5000 on behalf of Wade's. 4.5% South Dakota sales tax was paid on the purchases. Pete's bills Wade's \$1000 for their operator's fee and \$5000 for the oil and gas field services. Pete does not mark up the equipment and services he purchased for the owner.

a. Sales tax is due on the \$1000 fee for overseeing the wells.

b. Because sales tax was paid on the equipment and services and Wade's Oil Wells is the owner of the equipment, no additional sales tax is due on the \$5000.

2. Pete's provides drilling services in addition to the operator services. Pete's owns a drilling rig and purchases various supplies that are consumed in providing the drilling service. Pete's owes sales or use tax on his drilling rig and any equipment and supplies he uses or consumes to provide the drilling service. Pete's charge for drilling is in addition to the operator's fees.

a. Pete's owes sales tax on the total charge for the drilling service, including any charges passed on for equipment use or supplies that were consumed in the drilling process.

Use of Services

Sales tax applies to services where the service is first used or received. The 4.5% state plus applicable municipal use tax applies if the service is used in South Dakota. When calculating use tax, credit will be allowed for sales or use tax legally due and paid to other states. Use tax is not due on the purchase of construction services subject to the contractors' excise tax.

- Oil and gas field services are subject to sales and use tax where the property is located.
- Management services such as overseeing the operation of an oil well are subject to sales and use tax where the property being managed is located.

Testing services are subject to sales tax where the report is delivered. However, use tax is due where the sample is drawn, which is usually at the well site. Credit will be given for sales tax legally due and paid at the time of purchase.

Examples

1. A Denver based company is a well operator that oversees the operation of oil wells in South Dakota for a flat monthly fee. They authorize and pay for services, chemicals, and parts needed for each well. These expenses are reimbursed by the wells' owner. Is this service taxed?

- a. The 4.5% state tax plus applicable municipal tax applies to the operator's fees based on the location of each well.
- b. The operator owes use tax on the chemicals, parts, and equipment purchased on behalf of the owner, if sales tax was not paid. The operator will not owe sales tax on the reimbursement by the well owner for these items if sales or use tax was paid and the charge is not marked up.
- c. If the operator is not licensed to collect sales tax in South Dakota, the well owner will owe South Dakota use tax all charges.

2. Sam checks a well site on a regular basis and reports problems to the appropriate people.

- a. This fee is subject to sales tax based on the well site.
- b. If sales tax is not collected, the purchaser will owe South Dakota use tax on the full charge because the service is used for the well site in South Dakota.

3. Ted provides oil shot services. Ted's bill includes hourly charges for labor and charges for propane and oil. The propane is used to heat the oil to shoot down the well.

- a. Ted's entire receipts are subject to 4.5% state and applicable municipal sales tax.
- b. In addition, Ted must pay 4.5% sales or use tax on the propane, oil, and any other items consumed in providing this service.
- c. If Ted does not charge sales tax, the purchaser will owe use tax on the full charge.

Use Tax

The state and many cities impose a use tax that applies when the seller didn't charge sales tax. The difference between the sales tax and the use tax is who is responsible for its payment. Where the sales tax is the responsibility of the seller, the use tax is the responsibility of the purchaser. If the person selling material doesn't charge sales tax, for whatever reason, the purchaser is responsible for paying the use tax.

Use tax is due in the tax reporting period the purchaser is invoiced. The use tax applies to the amount paid for the material including all delivery and handling charges.

Use tax due on services is on the total amount paid for the service including labor, equipment, supplies, and travel charges such as mileage, meals, motels, and plane tickets.

Use tax is due on products where possession takes place. If the product is delivered within a city in South Dakota, city use tax is due in addition to the state use tax. If the product is delivered outside city limits, then only the 4.5% state use tax is due. Additional use tax is due if the material is used at a location that imposes a higher use tax than was previously paid on the material.

When purchasing material or equipment outside South Dakota that is delivered into South Dakota by a transportation company or by the supplier, be careful that the seller does not charge the other state's sales tax. That material and equipment is subject to the South Dakota sales or use tax even if the supplier charges another state's sales tax. South Dakota will not give a credit for taxes paid to another state if the material is delivered into South Dakota.

If a purchase is made out-of-state and possession of the property is taken out-of-state, the supplier will most likely charge that state's sales tax. If the other state's sales tax is the same or more than South Dakota's tax, no additional South Dakota use tax is due. However, if charged less tax in the other state than what is charged in South Dakota, the difference is owed to South Dakota. South Dakota 4.5% state sales tax plus applicable municipal taxes must be added together to determine if additional tax is owed.

Credit for sales or use tax paid to another state, up to the amount of use tax due South Dakota, is applied towards the amount of South Dakota state use tax first, then against the municipal tax due.

Examples

1. Material is purchased in Minnesota and Minnesota sales tax is paid to the supplier. The material is used in Buffalo, SD. If the use tax due in Buffalo is higher than the sales tax paid to the Minnesota supplier, additional use tax is due.

2. Material is purchased from an unlicensed business in Ohio. The material is shipped by common carrier to Buffalo where it is used in a project. Because the supplier did not charge sales tax the contractor owes the 4.5% state use tax plus the Buffalo city use tax. The tax applies to the total paid for the material including delivery and handling charged by the supplier.

Equipment

Equipment purchased for use in South Dakota is subject to the 4.5% state plus applicable municipal sales or use tax. Credit will be allowed for sales or use tax paid if the equipment is purchased and delivered to the taxpayer in another state.

When used equipment originally purchased for use in another state that is seven years old or less is brought into South Dakota, use tax must be paid on the fair market value of the equipment.

- The equipment age is based on the manufacture date if available; if not available, the age is based on the purchase date.
- The amount of tax on the equipment will be reduced by the amount of sales or use tax previously paid to another state.
- In the absence of independent documentary proof of the value of the equipment at the time it is brought into South Dakota, the value of the property is presumed to be the purchase price reduced by ten percent for each year of use of the property by the person bringing the property into this state. Statements, opinions, or depreciation schedules of the owner of the property are not independent documentary proof of the value of the property.

Equipment used in a municipality is subject to that municipality's use tax. Credit will be given for municipal sales or use tax previously paid.

Examples of taxable equipment:

Drilling rigs

Tools

Construction equipment

Example

1. Tom operates an out-of-state drilling company. Tom has a contract to perform a drilling service for an oil and gas well operator in South Dakota that started October 1, 2011. Tom brought a drilling rig into South Dakota that was not previously taxed. The drilling rig was manufactured and purchased in 2010. Does Tom owe use tax on the drilling rig to the State of South Dakota?

a. Yes, 4.5% state use tax is due on the fair market value of the drilling rig because the drilling rig was less than 7 years old at the time it was brought into South Dakota.

Miscellaneous Products and Services

Bucket Trucks leased without an operator are subject to the 4.5% state plus applicable municipal sales tax if leased for 28 days or less. Bucket trucks leased without an operator for more than 28 consecutive days are exempt from sales tax. If an operator is provided to operate the equipment being furnished, the contract is for a service and does not meet the definition of a lease. The type of service provided in this contract determines the tax application. Construction services as defined in Division C of the 1987 Standard Industrial Classification manual are subject to contractors' excise tax, except those listed as oil and gas field services. Oil and gas field services and all other services are subject to sales tax, unless they are specifically exempt.

Delivery Charges are the charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property or services sold by that retailer.

Delivery charges include transportation, shipping, postage, handling, crating, and packing. Delivery and handling charges are subject to the same state and municipal sales tax rate as the merchandise when delivered to a customer in South Dakota.

If the product is not taxable, the delivery and handling charges are not taxable. If a retailer hires a transportation company and bills the customer for the transportation service, the retailer must include the transportation charges in their taxable receipts.

Diesel fuel, heating oil, and propane used for drilling, heating buildings, and heating oil or equipment are subject to the 4.5% state plus applicable municipal sales or use tax.

Drilling services used in exploring for petroleum and natural gas are subject to the 4.5% state plus applicable municipal sales tax. Sales tax is due on drilling charges, pipe charges, standby charges, drill up or drill down charges, plus reimbursable expenses such as fuel and mileage (list is not all inclusive).

Gravel sales, including transportation charges, are subject to the 4% state plus applicable municipal sales tax.

Repairs to tangible personal property and repairs specifically listed as oil and gas field services are subject to the 4.5% state plus applicable municipal sales tax. Tax applies to the total price of the service including labor, parts, and miscellaneous charges such as travel expenses. Sales tax applies based on where the repaired item is delivered. Repairs to items at the well site are subject to tax based on the well site location. If repaired items are delivered to another location, sales tax applies based on where the repair is delivered. Repair companies can purchase repair parts for resale.

Repairs to realty improvements, except for services listed as oil and gas field services, are subject to contractors' excise tax. The contractor repairing real property will owe sales or use tax on repair parts they use or consume in providing the repair.

Examples

1. John repairs gas rigs. John itemizes the hourly labor charges, materials used, and mileage.

a. Because gas rig building, repair and dismantling are included in the list of oil and gas field services, John is providing a service subject to sales tax.

b. The 4.5% state plus applicable municipal sales tax applies to the total charge for the repair service, materials, and travel expenses.

c. The repair parts may be purchased for resale.

2. Bridge Builders does repair to a small bridge on a temporary road to a well site. Bridge Builders provides lumber and cable. They charge for the materials, labor, and mileage.

a. Because bridges are real property and are not listed as an oil and gas field service, the receipts from this contract are subject to contractors' excise tax. The receipts include the total charge for

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materials, labor and mileage.

b. In addition, Bridge Builders owes use tax on the materials, if sales tax was not previously paid.

Trucking only, including loading and unloading, is exempt from sales or use taxes.

Trucking that includes erecting or dismantling equipment is subject to sales tax.

Loading and unloading services that are not part of a trucking company's service are subject to sales or use tax.

Water purchased directly from a water supply system is not subject to sales tax.

Water that is not purchased from a water supply system is subject to the 4.5% state plus applicable municipal sales tax. This includes the charges for water plus any delivery charges including mileage and pumping charges. The water supplier may purchase the water for resale by issuing an exemption certificate to the seller.

Waste disposal is subject to the 4.5% state plus applicable municipal sales tax. This includes collecting water or other fluids from the well or tanks and hauling it away for disposal. Sales tax applies based on where the waste is picked up. If picked up in South Dakota and hauled to another state, South Dakota sales tax applies. The entire fee is subject to tax including the charge for pumping, mileage from the trucks' base to the SD well, mileage from well to disposal site, and other charges for disposal at the site.

Royalties

A royalty interest is the interest typically retained by a mineral owner in an oil and gas lease and is typically a fraction or percentage of the total oil and gas production attributable to the lease. A royalty interest is typically not subject to the costs of production but is subject to a share of gross production and oil extraction taxes and post-production costs. This interest is sometimes called a "landowner's royalty." The "landowner's royalty" is not subject to sales tax.

Municipal 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.

In an effort to ease the burden retailers may encounter trying to identify which South Dakota addresses are inside a city with a sales tax, the department created a Geographic Information System (GIS) called TaxMatch that is easily accessible by computer over the Internet.

It can help users quickly find the correct tax rate and city tax codes for locations throughout South Dakota. Users enter any South Dakota address into the Tax Match system; the system then provides all the applicable tax codes and rates for that address. For quick and easy access, look for the GIS icon on the department's web site at <http://dor.sd.gov>.

Required Records

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, are required to be kept for at least three years and be available for inspection during business hours.

Businesses must keep adequate documentation to support that products are delivered outside city limits. Examples of documentation that shows delivery of products include: truck driver log books; directions to delivery point; contract carrier bills of lading; and shipping invoices.

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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