



<http://dor.sd.gov/> 1-800-829-9188

Professional Employer Organization

Request for Approval

December 2017

The purpose of this Tax Fact is to provide general guidelines on how tax applies to a Professional Employer Organization in South Dakota. It is not intended to answer all questions that may arise. The information contained in this fact sheet is current as of the date of publication.

Professional Employer Organization

A **professional employer organization** is a firm which meets the following:

- Enters into a contractual agreement with a client company to create a co-employment relationship for the provision of payroll, benefits, and other human resources functions;
- Covers at least seventy-five percent of the client company’s full-time or full-time equivalent employees domiciled in South Dakota; and
- Maintains separate books and records of account for each client company.

The gross receipts of a professional employer organization are subject to sales tax. However, a professional employer organization may deduct from its taxable gross receipts its actual disbursements to the employee or for employee expenses (see examples box for more information).

Each professional employer organization doing business in South Dakota must be approved by the Department of Revenue as a professional employer organization as defined by South Dakota state law. To request approval from the Department of Revenue, please complete the Request for Approval document on pages 2 and 3.

Any organization not approved as a professional employer organization may be a temporary help agency or a payroll processing company.

Payroll Processing Services

The gross receipts for payroll processing services, performed for a separate company, are subject to sales tax. The payroll company may receive payment for their service and reimbursements for payments made on behalf of their client.

The payroll company may deduct receipts for amounts paid on behalf of their client provided the charges for those items are separately state on the invoice, bill of sale, or similar document given to the client (see examples box for more information).

The payment received for the payroll processing services itself is subject to sales tax. Any services provided in addition to the payroll processing are also subject to sales tax, such as accounting, training, processing of employment applications, background checks, drug testing, and dispute resolution services.

When a charge is for taxable and nontaxable services and the charge for each service is not separately stated on the invoice, bill of sale or similar document given to the client, the entire charge is subject to sales tax.

Temporary Help Agencies

A temporary help agency hires employees who are available to work for any client of the agency on a day-to-day basis.

A temporary help agency is required to pay sales tax on all fees charged the client with no deduction for actual disbursements to the employee or for employee expenses unlike professional employee organizations and payroll processing services.

South Dakota Applicable Laws and Administrative Regulations:

SDCL [10-45-96](#), [10-45-97](#), and [10-45-98](#)

ARSD [64:06:02:89](#) and [60:06:02:89.01](#)

Examples of Deductible Expenses for Professional Employer Organizations and Payroll Processing Services

- Wages
- Salaries
- Payroll Taxes
- Payroll deductions
- Worker’s compensation costs
- Insurance premiums
- Welfare benefits
- Retirement benefits

South Dakota Department of Revenue

Request for Approval as a Professional Employer Organization

To apply for approval as a Professional Employer Organization (PEO):

- **Complete an application for a sales tax license at <http://sd.gov/taxapp>.**

PEO status will not be considered if the sales tax application has not been submitted. A license will not be issued if it is determined you do not owe SD Sales Tax.
- **Complete the Request for Approval, pages 3 and 4 of this document.**
- **Send the completed Request for Approval with a copy of the signed contract between the organization and the client (a sample contract is not acceptable) to the Department of Revenue at:**

South Dakota Department of Revenue
Business Tax Division
445 East Capitol Ave
Pierre, SD 57501

Email: bustax@state.sd.us
Fax: 605-773-6729

1. Professional Employer Organization's name: _____
2. Address: _____
3. Contact person and phone number: _____
4. Contact person email address: _____
5. SD sales tax application confirmation number: _____
6. SD sales tax license number (if you have an active license): _____

Client Information (please include information for each client with employees in South Dakota)

7. Client's Name: _____
8. Address: _____
9. Number of client's full-time employees located in SD: _____
10. Number of client's full-time employees in SD covered by the contract: _____
11. Contract start date: _____
12. Contract end date: _____
13. Date co-employment begins: _____
14. Date co-employment ended (if applicable): _____
15. Do you maintain separate books and records of account for each client company? Yes No

South Dakota Department of Revenue

Request for Approval as a Professional Employer Organization

The following six items **must** be stated in your contract. Please indicate the section in your contract that covers each item. Send a copy of your contract with this request for approval.

Each contract is subject to review and if it does not meet the criteria as a Professional Employer Organization, you may have additional tax liabilities to the state.

1. The professional employer organization assumes the responsibilities listed in this subdivision, including the payment of wages, salaries, payroll taxes, payroll deductions, workers compensation costs, insurance premiums, welfare benefits, and retirement benefits, and preparing and filing necessary tax returns and other documents as required by state or federal law.

Contract Section: _____

2. The client company must be the employer to any existing employees prior to the contractual relationship with the professional employment organization.

Contract Section: _____

3. The client company retains primary control over the hiring, firing, wage rates, salary increases, training, and directing the day-to-day activities of the co-employees.

Contract Section: _____

4. If the contractual relationship between the professional employer organization and the client company is terminated, then the co-employees' employment with the professional employer organization is also terminated.

Contract Section: _____

5. If a co-employee leaves the employment of the client company, that co-employee's employment is terminated with the professional employer organization.

Contract Section: _____

6. The professional employment organization does not manage or direct the operation of the client company's business.

Contract Section: _____

Contact Us

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

Call toll-free: 1-800-829-9188

Business Tax Division Email: bustax@state.sd.us

Website: <http://dor.sd.gov/>

Mailing address and office location: South Dakota Department of Revenue
445 East Capitol Ave
Pierre, SD 57501