

This Tax Facts is designed to explain how sales and use tax applies to restaurants and bars. 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 of Food and Beverages

All receipts from furnishing, serving or preparing food, soft drinks, or alcoholic beverages, whether served on the premises or "to go," are subject to the state sales tax plus applicable municipal sales tax and municipal gross receipts tax. This tax must be paid on the sale of all meals, food, and drinks served or sold by restaurants, bars, casinos, hotels, boarding houses, drugstores, drive-in restaurants, lunch counters, snack bars, cafeterias, caterers, sandwich shops, cafés, or other similar places of business.

Gross receipts include taxable and non-taxable sales and services (including all video lottery receipts) and are reported on Line 1 of your tax return. You may deduct sales that are non-taxable on Line 3 of the return. Examples of taxable sales are sales of liquor, ciga-rettes, food, and cover charges. Examples of non-taxable sales are sales made for resale, sales of pull tabs and video lottery receipts.

Bars are allowed to back tax out of their gross receipts. For example, a drink is sold for \$3.00 which includes tax. At a 4.5% rate, the gross receipts subject to tax are \$2.87 (\$3.00/1.045). All other businesses must clearly state to the customer that tax is included in the price to be able to include taxes in the posted price.

On two-for-one drink promotions, no use tax is due on the cost of the "free drink" as gross receipts have been reported on the sale. For events such as "Ladies Night" where, for example, the customer pays \$2 at the door and drinks all night, the bar's gross receipts would be \$2 no matter how much the customer consumes. Bars are not allowed to sell alcohol below their cost.

Employee Meals

The receipts from the sale of meals to employees are subject to the 4.5% state sales tax, the municipal sales tax and municipal gross receipts tax. The cost of meals furnished to employees or others at no charge are subject to the 4.5% state use tax, plus the municipal sales tax.

Tips

Tips received as discretionary gifts to waiters, waitresses, or bartenders are not subject to sales tax.

Some businesses collect the tips for their employees. If the tip is added to the bill and is a mandatory charge for services, it is subject to the sales tax. For example, if a restaurant serves a dinner to an organization and adds a 15% tip when the organization is billed, the entire charge, including the tip, is subject to the sales tax. If the tips collected by the business are voluntary tips paid by the customer, the tip is not subject to sales tax. A restaurant may retain a fee for the credit card processing from the voluntary tips given to the staff. The fee retained for credit card processing is included in the restaurant's taxable receipts.

Sales for Resale

Food and other similar items that are sold to a customer may be purchased by the restaurant or bar from its supplier as a "sale for resale." The business does not pay sales tax to the supplier at the time of the purchase, but must furnish the supplier with a valid exemption certificate indicating the types of items being purchased for resale.

Tour guides and promoters are required to pay sales tax on meals purchased for tourists and clients.

Exemption certificates should be reviewed annually and list the items purchased for resale. Exemption certificates may be obtained from our website at <http://dor.sd.gov> or by calling 1-800-829-9188.

Sales to Governments and Exempt Entities

Sales made directly to and for use by the U.S. Government or the State of South Dakota and its counties, cities, townships, or school districts are not subject to the sales tax.

The purchase must be made with government funds. An exemption certificate or proof that payment was made with government funds must be kept by the seller as documentation of the exemption.

Sales made to other exempt organizations are not subject to the sales tax. However, the organization must provide the seller restaurant with an exemption certificate and number. The purchase must be paid by an authorized representative with a voucher that states that the purchase is for the organization's own use.

The purchase must be paid directly from the funds of the organization.

NOTE: Purchases made by individuals are not exempt from the sales tax, even if the individual is reimbursed later. This

includes high school ball players, cheerleaders, state and federal employees, city council representatives, or teachers who purchase their own meals.

Coupons

Retailer or store coupons are discounts or reductions given by a retailer at the time of sale. Because the retailer is not reimbursed by a third party for this amount, this discount is not subject to sales tax. To calculate tax on this sale, deduct the value of the coupon from the sales price of the item then calculate the tax.

Example:

Widget	\$200.00
Store Discount	- 20.00
Sub Total	\$180.00
Tax	8.10
Total Due	\$188.10

\$180.00 is reported as gross receipts on this transaction.

Manufacturer's coupons. The manufacturer reimburses the seller for the value of the coupon. Because the retailer receives reimbursement, the value of the coupon is part of the selling price and is subject to sales tax if the item sold is taxable. To calculate tax on this sale, calculate tax on the sales price of the item then deduct the coupon value.

Example:

Widget	\$ 200.00
Tax	9.00
Manufacturer's Discount	- 20.00
Total Due	189.00

\$200.00 is reported as gross receipts on this transaction.

Cigarettes

Receipts from the sale of cigarettes are subject to the 4.5% state sales tax plus applicable municipal sales tax.

Taxable Receipts include:

- Amounts received from customers from the retail sale of cigarettes are subject to sales tax.
- Amounts received from the manufacturer if the payment is directly related to a discount the retailer must provide to the purchaser when the purchaser is the end consumer and one of the following criteria is met:
 - a. The retailer shows the discount on the invoice as a discount from a manufacturer or third party;
 - b. The purchaser presents a coupon issued by a third party that indicates the third party will reimburse any retailer for the discount.

Example 1

ABC Quick Stop sells a carton of cigarettes for \$32.00. The manufacturer reimburses the store \$2.00 for each carton of cigarettes sold. The store is required to pass this discount to the customer.

- A. If the discount is listed as a manufacturer's discount, the store will include the \$2.00 in their taxable receipts.

Invoice A

Cigarettes	\$32.00
Sub Total	\$32.00
Tax	1.44
Manufacturer Discount	- 2.00
Total	\$31.44

\$32.00 is reported as gross receipts on this transaction.

- B. If the store does not list this as a manufacturer's discount, the store does not owe tax on the \$2.00 received from the manufacturer.

Invoice B

Cigarettes	\$32.00
Discount	- 2.00
Sub Total	\$30.00
Tax	1.35
Total	\$31.35

\$30.00 is reported as gross receipts on this transaction.

Example 2

ABC Quick Stop sells a carton of cigarettes for \$30.00. ABC owes sales tax on the \$30.00. ABC has signed a contract with the manufacturer stating they will put their cigarettes on the shelf nearest the cash register (most visible site) in return for \$2.00 for each carton of cigarettes sold. Because the \$2.00 is for placement of a product pursuant to a written contract, ABC does not owe sales tax on the \$2.00.

Displays and Signage

Payments received by a retailer from a manufacturer, wholesaler, or distributor pursuant to a written contract between the retailer and manufacturer, wholesaler, or distributor that requires the retailer to display the manufacturer, wholesaler, or distributor's product or signage in a specified manner or location are exempt from sales tax.

Examples

1. ABC Supply receives a cash payment for placing XYZ Softdrinks' products on the third shelf in the soft drink aisle.
2. XYZ Softdrinks offers retailers cash payments if the retailer sells soft drinks supplied only by XYZ Softdrinks.

Vending Machines and Games

The gross receipts from vending machines are subject to the state 4.5% sales tax, plus applicable municipal sales tax. Gross receipts from vending machines that serve prepared food, such as hot soup, coffee, or hot chocolate, are also subject to the municipal gross receipts tax. If a vending machine sells prepared food and other items, the municipal gross receipts tax will apply to all receipts unless documentation is kept to show the products sold. Gross receipts from vending machines located outside municipal limits are subject to the 4.5% state sales tax only.

The purchase of vending machines is subject to the 4.5% state sales tax, plus the municipal sales tax. Mechanical or electronic amusement devices or machines are subject to 4.5% tax, no municipal tax. Machines brought into South Dakota from other states are subject to use tax, however credit will be allowed for sales or use tax paid in the state the machine was originally used in.

Owners of these machines who place them in another person's business are considered retailers. They must have a sales tax license, and report and pay sales tax on the gross receipts from these machines. Owners of coin-operated amusement machines pay an annual fee of \$12 per machine in lieu of paying municipal sales tax. Tax on amusement machines is 4.5% of the total gross receipts, which includes any commission paid to the liquor store, bar or restaurant owner. Businesses do not owe sales or use tax on commissions they receive from receipts of amusement or vending machines owned and operated by others.

Video Lottery/Gaming

Lottery and gaming receipts are not subject to sales tax; however, all such receipts should be reported as gross receipts on line 1 of the sales tax return and deducted on line 3. Sales, rental and repairs to video lottery machines and gaming equipment are subject to sales or use tax at the time of purchase. Video lottery machines and repairs are exempt from municipal tax; however, all other gambling equipment is subject to municipal tax. If sales tax is not paid on machines or repair parts at the time of the purchase, use tax is due on the cost of the machine or parts. Sales tax applies to repairs that are delivered to customers in South Dakota.

Jukebox Licenses

An amusement decal for each jukebox or amusement machine must be purchased from the Department of Revenue. There is an annual fee of \$12, payable every July 1. In addition, businesses that play music generally are required to be licensed by national performing rights organizations. Contact BMI (1-800-669-4264) and ASCAP (1-800-910-7347, extension 36) regarding licensing fees for playing copyrighted music, or for an explanation of this system.

Franchise Operations

Most services provided by a franchisor to a franchisee are subject to sales tax. For more information, view the Franchise Tax Fact Sheet on our website at <http://dor.sd.gov> or request a copy by calling the department at 1-800-829-9188.

Use Tax

Equipment and supplies used by restaurants are subject to sales tax when purchased. If the supplier does not charge sales tax, use tax is due. In addition, items purchased with the intent to resell which are removed from inventory for use by the restaurant or bar are also subject to use tax. Use tax is the same rate as sales tax (4.5%), and both state and any applicable municipal taxes apply.

The following items are use taxable items commonly found in bars and restaurants (this list is **NOT** inclusive):

Air filter systems	Keg taps
Amusement machines	Magazine subscriptions
Appliances	Menus
Ashtrays	Microwave pizza ovens
Bands	Newspaper subscriptions
Banners	Office supplies
Barstools	On-line service fees
Bookkeeping fees	Paper towels/napkins
Can liners	Pitchers
Cards	Placemats
Cash registers	Poker chips
Chairs	Popcorn (if furnished free)
Cleaning service	Popcorn machines
Cleaning supplies	Posters
Coin counters	Pourers
Computer system	Serving trays
Cooking utensils	Signs
Coolers	Sink brushes
Dance wax	Software
Dice and cups	Stir sticks
Disposable eating utensils	Straws
Glassware	Sword picks
Glass washers	Tables
Internet access fees	Tableware
Jukebox or sound system	Toilet paper
	Uniforms

CO₂ used to dispense soda pop is **NOT** subject to use tax at the time the business purchases it since it becomes part of the pop, which is taxed. CO₂ used for dispensing beer is subject to sales or use tax since it is a catalyst that transports the beer out of the keg and does not become part of the beer.

Promotional and Donated Items

Items purchased for promotional purposes are use taxable if sales tax was not paid at the time of purchase. These may include t-shirts, frisbees, caps, liquor samples, etc., which are given away. Use tax is also due on items an employee or owner withdraws from inventory for personal use.

Merchandise (such as food or beverages) taken out of inventory and donated to a sales tax exempt agency is not subject to sales or use tax. A group is not exempt just because it is described as “nonprofit”, the group must hold a valid South Dakota exemption number. To find out if a group is sales tax exempt, contact the department at 1-800-829-9188.

Example

Steve’s Family Restaurant donates food for the Washington Elementary School PTA meeting. Since the PTA is not a sales tax exempt organization, the restaurant owes use tax on the cost of the donated food.

Drinks awarded as prizes for games of chance are subject to tax as in the following example:

Example

The VFW offers pull tabs to customers with the purchase of a drink. The pull tabs give the customer either a free drink or \$.25 off the next drink. The free drink is use taxable to the bar at their cost. The \$.25 would just lower the gross receipts by \$.25, therefore no use tax is due. If the supplier doesn’t charge the VFW sales tax on the pull tabs, they would owe use tax on the purchase price of the pull tabs. Drinks given away by the owner or employees to customers are use taxable on the cost of the drink.

Four and a half percent use tax plus the municipal use tax is due on the cost of meals and drinks given free of charge to customers.

Hors D’ourves

Food that is given away is subject to the 4.5% state use tax, plus the municipal use tax on the cost of the food. If a charge is made for the food, the receipts are subject to the 4.5% state sales tax, the municipal sales and municipal gross receipts tax.

Containers

Containers used for food or beverages are exempt from sales tax if they are used to hold items which are sold by the restaurant or bar and which are subject to the sales tax, such as coffee, sandwiches, french fries, or soft drinks. The container must be given free of charge and as a convenience to the customer. This is also true for an off-sale business purchasing bags. Paper or plastic bags are not subject to sales or use tax.

Examples of containers

Papercups and lids
Wrapping paper
Styrofoam containers
Paper or plastic bags
Tape
Doggie bags
Pizza boxes and liners
Disposable food trays

Items that are not containers but are subject to sales tax

Napkins
Straws
Utensils
Reusable plates, trays, or baskets

Catering

Catering services are subject to the 4.5% state sales tax, the municipal sales and municipal gross receipts tax rate based on the location of the catered event. A South Dakota restaurant that caters an event in North Dakota does not need to report South Dakota sales tax on the receipts from the event.

Catering services may purchase food and disposable plates, glasses, cups, and trays for resale. Napkins and utensils are subject to sales or use tax when purchased.

Delivery Services

Companies that sell and deliver prepared food can buy the food for resale by providing an exemption certificate to the restaurant. The sale of food, plus delivery charge is subject to the 4.5% state sales tax, the municipal sales and municipal gross receipts tax.

The delivery company hired by a restaurant to deliver meals sold by the restaurant is providing a transportation service that is exempt from sales tax.

Live Entertainment

Entertainment services are subject to sales tax. If you hire a band, comedian, dancer, or any other type of performer that is not an employee on your payroll, the entertainer should charge sales tax on the entire receipts for entertainment services. If an entertainer does not have a sales tax license or does not charge sales tax, the purchaser of the entertainer’s services is subject to use tax. If admission or a cover is charged, the admission or cover charge is subject to tax and the entertainer(s) may be given an exemption certificate.

Recordkeeping Requirements

Restaurant and bar owners must have a South Dakota sales tax license for each place of business in the state. Even outlets located in the same county or the same town must have separate licenses.

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.

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.

Municipalities may also have a 1% gross receipts tax. The municipal gross receipts tax (also referred to as the bed, board, and booze tax) is a 1% tax that is in addition to the municipal sales tax. The gross receipts tax can be imposed on alcoholic beverages, eating establishments, lodging accommodations, ticket sales, and admissions to places of amusement, or athletic and cultural events.

A list of municipal tax rates is available on our website at <http://dor.sd.gov> or by calling 1-800-829-9188.

Restaurants and bars must remit the municipal gross receipts tax (if applicable for that municipality) for all sales of food and beverages, admissions, and cover charges.

The municipal use tax applies to snacks, meals, or beverages that are given away free of charge. The municipal sales tax also applies to purchases of supplies and equipment.

Bad Checks/Bad Debts

Most restaurants and bars report tax on a cash basis, that is the amount of money collected during the month is the amount reported as gross receipts. If a customer's check is returned from the bank unpaid, and the restaurant or bar reports on a cash basis, the amount of the customer's check is not included in the gross receipts reported by the restaurant or bar for the month. The collection of the nonsufficient funds check must be included on the sales tax return when payment is received.

Bars and restaurants reporting on the accrual basis may take checks, which are returned unpaid because of nonsufficient funds or no account that are not collected by them, as a reduction in gross receipts. If the nonsufficient funds check is deducted then later collected, the collection of the nonsufficient funds check must be included on the next sales tax return.

Amounts written off as bad debts with the IRS may be deducted from the sales tax return during the twelve months following the IRS writeoff if those amounts were previously reported as taxable transactions.

Bad check fees or penalties charged by a restaurant, bar, or any other retailer are not subject to sales tax.

Advertising

Advertising which is prepared by an advertising agency and placed by that agency in the media is exempt from sales tax. In addition, charges by a newspaper, radio or television station for

placement of an ad are exempt.

All other advertising charges are subject to sales tax. Examples of taxable advertising are brochures, signs, posters, and promotional items given free of charge to customers.

Gift Certificates

No sales tax should be charged on gift certificates at the time the gift certificate is sold. Tax should be charged on items purchased with a gift certificate. If an individual has a gift certificate valued at \$50, and purchases \$55 worth of goods, sales tax is owed on the \$55. If the customer uses the \$50 gift certificate to purchase \$25 worth of goods and receives change, sales tax is owed on the \$25 purchase.

Sales of gift certificates are included in gross sales on line one of the sales tax return and deducted on line 3, Non-Taxable Sales.

Keg/Tapper Deposits

When a keg of beer is sold, the customer is frequently charged a deposit for the keg and tapper. If the keg and tapper are returned, there is no tax charged on the deposit. If the keg and tapper are not returned, the deposit becomes subject to sales tax. A business may choose to charge tax on all deposits and refund the tax when the deposit is refunded.

Alcohol Licenses

You must have the proper alcoholic beverage license and a sales tax license to legally sell alcoholic beverages or purchase alcoholic beverages for resale. The sales tax license and the alcoholic beverage license must be in the same owner's name.

To apply for a new alcoholic beverage license contact your county auditor or city finance officer for availability of licenses, the cost and the process for obtaining a license.

If an alcoholic beverage license is being transferred to new ownership, the seller and buyer must fill out the necessary forms from the city finance office or county auditor in which the property is located. The license will not be transferred until:

1. The seller has filed a final sales tax return and paid all taxes due; and
2. The new owner has obtained a sales tax license in the same owner's name as the alcoholic beverage license will be held.

The city or county will conduct public hearings to act on license applications and license transfers. If approved, the application is sent to the Department of Revenue to issue or transfer the license.

Legal Age to Sell and Serve

No person under 21 years old may sell, serve, or dispense alcoholic beverages. However, a person over 18 years old may sell or serve alcoholic beverages if:

- less than 50% of the gross business transacted by the establishment is from the sale of alcohol;

OR

- the licensee or an employee that is at least 21 years old is on the premises when the alcohol is sold or served.

The exception allowing a person over 18 years old to sell or serve alcoholic beverages does not include tending bar or drawing, pouring, or mixing alcoholic beverages. Under no circumstances may any person under 18 years old sell, serve, or dispense alcoholic beverages.

Legal Age to Purchase and Consume Alcohol

The legal age to purchase and consume alcohol in South Dakota is 21 years old.

- It is legal to sell alcohol to 18 to 20 year olds if they are in the immediate presence of a parent, guardian, or spouse who is over 21 years old. It is legal to refuse to serve anyone under 21 years old.
- It is illegal to serve alcohol to anyone under 18 years old, even if accompanied by a parent, guardian, or spouse who is over 21 years old.
- It is illegal for a person less than 21 years old to loiter on the licensed premises of an alcoholic beverage licensee.

For additional information on types of alcoholic beverage licenses and age restrictions, view Special Taxes Division website at <http://dor.sd.gov>.

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 Ave.
Pierre, SD 57501-3100**

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 57104

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