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**This Tax Facts is designed to explain how sales and use tax applies to telecommunication and ancillary 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.**

## **Definitions**

Telecommunications service means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.

Telecommunications service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

Telecommunications service includes the following services:

- 800 service
- 900 service
- Fixed wireless service
- Mobile wireless service
- Paging service
- Prepaid calling service
- Prepaid wireless calling service
- Private communication service
- Value-added non-voice data service
- Voice over Internet Protocol (VoIP)

**Intrastate telecommunications service** originates and terminates in the same United States state, territory, or possession.

**Interstate telecommunications service** originates in one United States state, territory, or possession, and terminates in a different United States state, territory, or possession.

**International telecommunications service** originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession.

**Ancillary services** are associated with or incidental to the provision of telecommunications services, including detailed telecommunications billing, directory assistance, vertical service, and voice mail services. Vertical service is advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

**Service address** is:

a. The location of the telecommunications equipment to which the customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

b. If the location in a. is not known, service address means the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and

c. If the locations in a. and b. are not known service address means the location of the customer's place of primary use.

**Place of Primary Use** is defined as the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

## **Taxable Services**

### **Sales Tax**

Any intrastate, interstate, or international telecommunication service that originates or terminates in South Dakota and is billed or charged to a service address in South Dakota, or that both originates and terminates in South Dakota, is subject to the 4.5% state, plus applicable municipal sales tax. Taxes legally imposed on the telecommunications company are included in the gross receipts for sales tax purposes.

Ancillary services are subject to the 4.5% state, plus applicable municipal sales tax.

When nontaxable and taxable products or services are billed as one fee and the nontaxable items are not itemized on the invoice or identified in the books or records of the vendor, the entire charge is subject to sales tax.

## Telecommunication Services

### Wireless Gross Receipts Tax -Telecommunications Wireless Tax

In addition to state and municipal sales tax, a 4% gross receipts tax applies to the gross receipts on the retail sale of wireless personal communications service, wireless local loop services, enhanced special mobile radio services, fixed wireless services, and cellular services that provide two-way communication if the customer's place of primary use is located in South Dakota. Pagers are a wireless personal communications service.

Gross receipts only include revenue of a telecommunications company from the retail sale of intrastate and interstate telecommunications services, as defined above, billed to a customer with a place of primary use in South Dakota.

Sale at retail does not include special access or toll-free incoming calls or the sale of any telecommunications service by a telecommunications company to another telecommunications company if the service is resold or becomes a component part of the sale by the second telecommunications company. Any hospital, hotel, motel, or place that provides temporary accommodations and sells telecommunications services to its patients or guest is not a telecommunications company for the purposes of this chapter.

Carriers are allowed to pass this charge on to the carrier's customers. The tax is imposed on the carrier, but it does not prohibit a carrier from passing the tax on to customers. The carrier is required to collect sales tax on top of this charge.

Gross receipts include sales to governments, schools, and hospitals. There are no exemptions from the telecommunications wireless gross receipts tax for sales to governments or other sales tax exempt entities.

When nontaxable and taxable products or services are billed as one fee and the nontaxable items are not itemized on the invoice the entire invoice is subject to the wireless gross receipts tax. An example is charges for Internet service are included in a monthly basic charge fee. The entire fee is subject to the wireless gross receipts telecommunications tax because the Internet fee is not itemized.

The following chart is the tax application on fees that may or may not be included on an invoice.

Under South Dakota sales tax law, gross receipts do not include "any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser". Taxes legally imposed on the telecommunications company are included in the gross receipts for sales tax purposes.

Charge	Sales Tax	Wireless Gross Receipts Tax
Basic charge (monthly fee)	Y	Y
Extra minutes (overage)	Y	Y
Intrastate calling	Y	Y
Interstate calling	Y	Y
International long distance	Y	Y
Roaming	Y	Y
Add a line	Y	Y
Non-primary lines	Y	Y
Mobile to mobile	Y	Y
Low-volume user	Y	Y
Minimum charges	Y	Y
Call forwarding	Y	Y
Caller ID/Caller ID blocking	Y	Y
Three way calling	Y	Y
Call waiting	Y	Y
No answer / busy transfer	Y	Y
Texting	Y	Y
Paging	Y	Y
Data - photo, fax	Y	Y
Voicemail	Y	Y
411 - Directory assistance	Y	Y
Operator assisted calls	Y	Y
<b>Activation Fees</b>	Y	Y
Service upgrade	Y	Y
Reconnection fees	Y	Y
Hookup fees	Y	Y
Disconnect fees	Y	N
Early termination fees	Y	N
<b>Internet Access:</b> Data package, mobile web	Y	N
Detailed billing fees	Y	N
Ring tones	Y	N
Late fees	N	N
Wireless local # portability	Y	N
<b>Equipment</b>		
Equipment sales	Y	N
Equipment insurance (by licensed insurance company)	N	N
Equipment extended warranty	Y	N
Equipment service contract	Y	N
Insurance and warranty - Bundled one nonitemized price	Y	N

## Telecommunication Services

Charge	Sales Tax 4.5%	Wireless Gross Receipts Tax 4%
Roadside Rescue Plan	Y	N
<b>Taxes and Fees</b>		
Administrative fees	Y	Y
Regulatory fees	Y	Y
TDD - Telecom disability device fee	N	N
911 - State / Local	N	N
E911 - Federal	Y	Y
TRR or TRS - Telecom Relay	N	N
TRR Federal - Telecom Relay	Y	Y
Subscriber Line Charge - FCC	Y	Y
USF - Universal Service Fund	Y	Y
Franchise fees	Y	Y
10-33 SD Gross Receipts Tax (land lines)	Y	NA
10-33A SD Wireless Gross Receipt Tax	Y	N
Federal Excise Tax	N	N
State/City Sales Tax	N	N

### Equipment

Equipment sales and equipment warranties, service, or insurance plans are not included in the taxable wireless gross receipts. Equipment sales, including equipment warranties and service plans are subject to state and applicable municipal sales tax. Insurance is not subject to sales tax provided the charge for the insurance is stated separately from the warranty or service plans.

### Reporting Wireless Gross Receipts Tax

Telecommunications gross receipts tax is reported under the city section of the tax return using code 900-1.

The telecommunications wireless gross receipts tax is a tax imposed in lieu of property tax and is distributed between the property tax reduction fund and the counties.

## Sourcing Rules

Rules for determining which taxing jurisdictions may impose the sales or use tax are called sourcing rules.

The following sourcing rules apply to sales of telecommunications and ancillary services:

**Telecommunications services not billed on a call-by-call basis** are subject to the sales tax rate imposed at the customer's place of primary use.

**Telecommunications services billed on a call-by-call basis** (price is measured by each individual call) are sourced as follows:

1. When the call originates and terminates in the same taxing jurisdiction, the call is subject to the sales tax rate imposed in that jurisdiction.

2. When the call either originates or terminates at the customer's service address, the call is subject to the sales tax rate imposed where the service address is located.

**Post-paid calling service** paid for using a credit or debit card, or is charged to a telephone number not associated with the origination or termination point, is subject to the sales tax rate imposed where the call originated.

**Mobile telecommunications services**, other than air-to-ground radiotelephone service and prepaid calling service, are subject to the sales tax rate imposed at the customer's place of primary use.

**Prepaid calling service** or a sale of a prepaid wireless calling service is considered a sale of tangible personal property and is taxed at the store location where the service was purchased. If a service is recharged online or by phone, tax applies to the customer's address. However, the seller may tax the sale of a prepaid wireless calling service to the location associated with the mobile telephone number.

**Ancillary services** are subject to the sales tax rate imposed at the customer's place of primary use.

## Exemptions

The following telecommunication services are exempt from sales and use tax:

1. Any eight hundred or eight hundred type service unless the service both originates and terminates in South Dakota.
2. Any sale of telecommunication service to a provider of telecommunication services, including access service, for use in providing any telecommunication service.
3. Any sale of interstate telecommunication service provided to a call center that has been certified by the secretary of revenue and the call center has provided an exemption certificate to the telecommunications service provider.

The term, call center, means any physical location where telephone calls are placed, or received, for the purpose of making sales, marketing, customer service, or technical support. The term does not include:

- (1) Any location where telephone calls are primarily placed to, or received from, the same taxpayer, or affiliates of the same taxpayer, that owns or operates the location; or
- (2) Any insurance, real estate, or brokerage company.

A call center providing services to other businesses is operating a business subject to sales tax and must have a South Dakota sales tax permit. A call center owes sales tax on the receipts from businesses located in South Dakota.

### **Other Taxable Products and Services**

**Broken contract or early termination fees** are subject to sales tax when the product or service sold is subject to sales tax. Early termination fees relating to the customer's purchase of a below cost cellular phone are gross receipts subject to sales tax.

**Cell phones provided free** with the purchase of a plan are not subject to use tax.

**Cell phones sold** to the customer are subject to state and city tax where delivered to the customer. If a customer purchasing the phone may apply for a rebate, the full selling price is subject to sales tax. Sales tax is not refunded on the rebate amount.

**Cellular or radio tower construction** is subject to contractors' excise tax.

**Leasing space on a cellular tower** is the lease of real property and is not subject to sales tax. For additional information please review Installation and Repair of Communication Equipment Tax Facts on our website at <http://dor.sd.gov> or request a copy by calling the department at 1-800-829-9188.

**Coin-operated telephone charges** are subject to sales tax. Since the tax is included in the gross receipts, owners may back tax out of their total receipts when reporting the sales.

Owners of coin-operated telephones must pay tax on the purchase of the phones. The monthly service fee to operate a pay telephone is subject to state and city tax where the phone is located. The charges for long distance calls placed on the pay telephone may be purchased for resale from the phone company.

**Internet access charges** are subject to state and applicable municipal sales tax at the customer's place of primary use. Telecommunication services purchased by an internet service provider for providing internet services are not subject to sales tax. The internet service provider is responsible for sales tax on the full charge for providing internet services to their customers. For further information please review Internet Tax Facts on our website at <http://dor.sd.gov> or request a copy by calling the department at 1-800-829-9188.

**Motels, hotels and other lodging facilities** are subject to sales tax when they purchase telephone services. Charges to guests for the use of telephone services are not taxable if the charge is separately stated on the guest's bill. Equipment used by a hotel to provide telephone services is subject to sales or use tax.

**Installation of cable** or fiber optic cable for telephone service outside a building and the installation of cable inside a home, up to and including the phone jack, are subject to contractors' excise tax. Charges to repair or replace cable for telephone service are subject to contractors' excise tax. Installing a phone inside a building that is just plugged into an existing phone jack is subject to sales tax. For additional information please review Installation and Repair of Communication Equipment Tax Facts on our website at <http://dor.sd.gov> or request a copy by calling the department at 1-800-829-9188.

**Billing, collection, and data processing services** are subject to sales tax where the customer is located. Telecommunication companies that use a billing or collection service will owe use tax if the service provider does not collect sales tax. Use tax on billing and collection services is due on the portion of the billing service that applies to the telecommunication company's South Dakota customers.

**Products delivered electronically**, including but not limited to software, music, video, reading materials, or ring tones are subject to sales tax. For additional information please review Products Transferred Electronically Tax Facts on our website at <http://dor.sd.gov> or request a copy by calling the department at 1-800-829-9188.

**Tangible personal property** sold or leased is subject to sales tax where the product is delivered to the customer. Products to be sold or leased may be purchased for resale.

**Directory advertising**, including boldface listing and listing in the directory classified section, is exempt from sales tax.

**Fax services** are telecommunications services subject to sales tax.

**Telephone answering services** are subject to state and applicable municipal sales or use tax based on the customer's location. Automated voice mail services provided by the telecommunications company is an ancillary service and is subject to state and applicable municipal sales or use tax based on the customer's place of primary use.

**Teleconference services**, whether audio or video, are ancillary services subject to sales tax.

**Telegraph services** and teletype services are subject to sales tax where the service is received. If the customer purchases the service at the service provider's location, sales tax applies at that location. If the customer purchases online or by phone sales tax applies at the customer's address.

### **Exempt Entities**

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

- Indian Tribes
- United States government agencies
- State of South Dakota
- Public or municipal corporations of the State of South Dakota
- Municipal or volunteer fire or ambulance departments
- Public schools, including K-12, universities, and technical institutes supported by the State of South Dakota or public or municipal corporations of South Dakota.
- Non-profit hospitals
- Religious or private schools located in South Dakota
- Relief agencies

Governments from other states or the District of Columbia, including public schools and state universities, are exempt from sales tax if the law in that state provides a similar exemption for South Dakota governments. Purchases made directly by the governments from the

following states are exempt from South Dakota sales tax: Colorado, Indiana, Ohio, North Dakota, West Virginia, Alaska, Delaware, Montana, New Hampshire, and Oregon.

### **Documentation Required**

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.

- Government entities do not need to provide an exemption number on the exemption certificate.
- Non-profit hospitals must provide an exemption certificate to the seller.
- Relief Agencies and Religious or Private Schools must provide an exemption certificate with their South Dakota exempt permit number. The permit number should contain the letters "RA," "RS," or "RE." The purchase must be made directly from the exempt entity's funds.

### **911 Emergency Surcharge**

The following is effective July 1, 2012:

1. Retailers and providers that sell prepaid wireless phone services (such as prepaid wireless phone cards or prepaid plans or minutes) are responsible for collecting and remitting a 2% 911 Emergency Surcharge on their retail sales of prepaid wireless phone services.
2. Any telecommunications service provider, wireless telecommunications service provider, Interconnected Voice over Internet Protocol service provider is responsible for collecting and remitting a 911 Emergency Surcharge of \$1.25 per service user line each month.

All businesses reporting the 911 Emergency Surcharges must be register with the Department of Revenue and will remit the surcharges directly to the Department.

For further information see Tax Facts 911 Emergency Surcharge available on line at <http://dor.sd.gov>.

### **Municipal Tax**

In South Dakota, more than 200 municipalities impose sales or use tax on the sale of tangible personal property, products transferred electronically, and services.

A list of municipal tax rates is available on the department's web site at <http://dor.sd.gov> or by calling 1-800-829-9188.

### **Required Records**

Telecommunication companies must have a South Dakota sales tax license for each place of business within the state. Records, such as purchase and sales invoices, bills of lading, registration forms, 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.