

This tax fact sheet is designed to explain how use tax applies to purchases of tangible personal property and 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.

Use tax may be complex, depending upon your business. We encourage you to contact the department if you have any questions.

South Dakota, which has neither a personal nor a corporate income tax, is dependent upon the sales tax. Established in 1935, the sales tax relieved the state of financial burdens caused by an ineffective gross receipts tax that affected everyone, not just retailers. In 1939, the state established a use tax to complement the sales tax.

The use tax makes it impossible to avoid taxes by purchasing from an out-of-state vendor.

The 4.5% South Dakota use tax is the counterpart of the 4.5% South Dakota sales tax. Although the two taxes apply to the sales of the same goods and services and utilize the same tax rates and similar laws, there is a difference in the circumstances in which they apply.

Sales Tax Applies When

Sales tax applies to the gross receipts from a sale of services or tangible personal property **at the time** of the sale. Sales tax applies where the customer receives the product or service. The seller is responsible for reporting and remitting the 4.5% state and applicable municipal sales tax.

Use Tax Applies When

Use tax, on the other hand, applies **after** the transaction takes place and only on goods and services on which South Dakota sales tax was not paid. Use tax applies to products or services the purchaser uses, stores, or consumes in South Dakota. The purchaser or consumer is responsible for reporting and remitting the 4.5% state plus applicable municipal use tax in the filing period in which the purchaser receives the goods or services. The use tax is due on the purchase price, including delivery charges and travel expenses, such as airline tickets, meals and motels.

When a purchaser receives the product or service out-of-state, the supplier may legally charge that state's sales tax. When the purchaser uses, stores or consumes that product or service in South Dakota the purchaser owes use tax to South Dakota.

If the other state's sales tax is the same or more than South Dakota's tax, there is no South Dakota use tax owed. If it is less than South

Dakota's, the difference must be paid to South Dakota. The state plus applicable municipal taxes must be added together to determine if additional tax is due.

Tangible personal property delivered to a purchaser in South Dakota is subject to the South Dakota sales or use tax, even if the supplier charges another state's sales tax. The purchaser may request a refund from their supplier for incorrectly charged tax.

Businesses using services in South Dakota owe use tax on those services, even if the service provider completes their work outside the state. Services performed on tangible personal property are subject to use tax where the service is used.

Examples

1. A South Dakota business hires an unlicensed Iowa accountant to do their monthly payroll. Everything is done through the mail or by phone. The South Dakota business owes use tax on the payroll services.
2. Tech Support offers clients phone support for computer problems for a monthly fee. Tech Support does not have a South Dakota tax permit. South Dakota clients owe use tax on the monthly fee because they use this service in South Dakota.
3. An engineer takes soil samples from the service station in Brandon, tests them and sends the results to the owner in Iowa. Because the owner receives the results in Iowa, the engineer does not owe South Dakota sales tax. However, because the owner is using the service for the business in Brandon, the owner will owe the 4.5% state use tax, plus Brandon municipal tax on the testing service.
4. An unlicensed attorney from Nebraska provides legal advice to a South Dakota client on a parcel of land purchased in South Dakota. Because the attorney does not have a sales tax license, the South Dakota client will owe 4.5% state use tax, plus applicable municipal use tax based on where the client uses the service.

Use tax is also due on supplies taken out of retail inventory for the business's use. Use tax is due in the filing period in which the business takes items out of inventory.

Businesses must review all purchases of goods or services to determine if the vendor charged the proper sales tax. Businesses that overlook the use tax find themselves with a use tax liability plus penalty and interest for not reporting the use tax in a timely manner. Examples of items often assessed use tax in audits include:

Books	Meals furnished for employees
Computers	Office supplies
Leases of equipment	Software
Manufacturing equipment tools	Snow Removal

Examples of Use Tax Liabilities

Demonstration and sample items

Items withdrawn from inventory to demonstrate products are subject to use tax. However, items withdrawn temporarily from inventory to be demonstrated, that are returned to inventory to be sold, are not subject to use tax. The sale of demonstration items is subject to the 4.5% state sales tax plus applicable municipal tax. Samples owned by a business to show products they have as well as samples given to customers at no charge are subject to use tax.

Examples

1. A grocery store gives food samples to customers. The grocery store owes use tax on their cost of the food given away.
2. A computer store has a computer on display and for sale for customers to view. This computer is a display item and is not subject to use tax. The sale of the display computer is subject to sales tax.

Donations

A business donating items such as prizes for a contest or fundraiser owes use tax on the cost of the donated item if sales tax was not previously paid on the item. A business does not owe use tax on items donated to entities that are exempt from sales and use tax. Sales tax exempt entities include:

Governments	Relief Agencies
Non-profit Hospitals	Public Schools

Non-profit organizations are not exempt from sales tax just because they are non-profit. To find out if an organization is exempt from sales tax call 1-800-829-9188.

Equipment brought into SD from another state

New or used equipment delivered into South Dakota is subject to sales or use tax on the purchase price. The purchaser of the equipment owes the 4.5% state use tax, plus applicable municipal tax, if the vendor does not collect the applicable sales tax.

A business bringing equipment less than seven years old into South Dakota that was purchased for use in another state owes the 4.5% state use tax, plus applicable municipal tax on the fair market value of the equipment when it is brought into South Dakota. South Dakota allows credit for sales or use tax paid the other state.

Equipment that is more than seven years old when brought into the state by the person who purchased such property for use in another state is exempt from the use tax. The manufacture date, if documented, or the date of the purchase by the person bringing the property into this state determines the equipment's age.

Example

A Minnesota manufacturer moved to South Dakota June 1, 2002. Equipment brought to South Dakota on June 1, 2002 includes:

- A. Equipment that was purchased new in 1999 and no MN tax was paid. This equipment was less than seven years old when brought into South Dakota. Use tax is due on the fair market value of this equipment as of June 1, 2002.
- B. Equipment manufactured in 1992 that was purchased used in 1998. Equipment purchased for use in another state that is more than seven years old when brought into South Dakota is not subject to use tax.

Property withdrawn from inventory for purposes other than demonstration, such as for personal use or other commercial use, is subject to the use tax when withdrawn. The sale of the used equipment is subject to sales tax on the sale price without any deduction for the use tax paid.

Example

A furniture store purchases computer desks exempt from tax to resell to customers. The store uses one of the desks in their office for three months. The store owes use tax on their cost of the desk. When the desk is sold, sales tax is due on the selling price.

Purchases from unlicensed vendors

Not every business is required to have a South Dakota sales tax permit. Purchases from a business that is not licensed to collect and remit South Dakota sales tax are subject to the 4.5% state use tax, plus applicable municipal tax.

Examples

1. A business purchases pens from an unlicensed out-of-state mail order company. The purchaser owes use tax on the pens.
2. A business purchases and downloads computer software from an out-of-state Internet website. Internet businesses usually do not have the necessary physical contact in the state to be required to collect sales tax. Businesses purchasing products from unlicensed Internet vendors owe use tax on their purchases.
3. A business consults with an unlicensed service in Iowa concerning prospective sales in South Dakota. The consultant does all business by phone, mail, or Internet. The South Dakota client owes use tax on this service.

State And Municipal Use 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.