

This fact sheet is designed to provide general guidelines on how tax applies to the sale of products, services, and construction work in Indian country in South Dakota. If this Tax Facts does not answer your specific question, please call the Department's toll-free helpline at 1-800-829-9188 weekdays from 8:00am - 5:00pm CST.

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.

Sales To Tribal Government

According to state law the sale of products and services to the following are exempt from sales and use tax:

- Tribal governments (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 that are supported by the State of South Dakota or public or municipal corporations of South Dakota

Government entities, including Tribal Governments, 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 copy of the check.

Examples

An employee of the Rosebud Sioux Tribe purchases chairs in Sioux Falls to use at the tribal headquarters in Rosebud, SD. The employee pays for the chairs with a tribal check. Is this transaction taxable?

The transaction is exempt from sales tax because payment was made directly from tribal funds. The retailer needs to keep either a copy of the check or have an exemption certificate on file to support the exempt transaction.

If the employee pays for the chairs with his or her own money and is later reimbursed by the Tribe, the transaction between the business in Sioux Falls and the employee is taxable because payment was not made by an exempt entity.

Tax Collection Agreements

At present, five Indian Tribes in South Dakota have tax collection agreements with the State that include sales, use and contractors' excise taxes. Two Indian Tribes have limited tax collection agreements that include contractors' excise tax and use tax.

The tax collection agreements ensure that all businesses making sales or providing construction services on property included in a tax collection agreement are subject to the same taxes, tax rates, and exemptions. All businesses, including those owned by tribal members, are responsible for remitting tax.

Indian country controlled by a Tribe that is part of a tax collection agreement is considered a Special Jurisdiction. All tax due in each Special Jurisdiction is reported on the state tax return using the code assigned to that Special Jurisdiction. The tax remitted is then distributed between the State and Tribal Governments based on the tax collection agreements.

Special Jurisdictions

The Special Jurisdictions for the five tax collection agreements are as follows:

Cheyenne River Special Jurisdiction - the Cheyenne River Indian Reservation, which is Dewey and Ziebach Counties, excluding a 500 foot strip of land in the northern-most portions of Dewey and Ziebach Counties.

Crow Creek Special Jurisdiction - the Crow Creek Indian Reservation, which includes portions of Hughes, Hyde, and Buffalo Counties.

Oglala Special Jurisdiction - the Pine Ridge Indian Reservation, which is Oglala Lakota County and that portion of Jackson County south of the White River. This Special Jurisdiction also includes the Allen Store in Allen, SD.

Rosebud Special Jurisdiction - the Rosebud Indian Reservation, which is Todd County. This Special Jurisdiction also includes Indian country defined by 18 U.C.S. 1151 (b) and (c) in Mellette, Tripp, and portions of Gregory and Lyman Counties controlled by the Rosebud Sioux Tribe.

Standing Rock Special Jurisdiction - the Standing Rock Indian Reservation, which is Corson County and a 500 foot strip of land in the northern-most portions of Dewey and Ziebach Counties.

Agreements that Include Tourism Tax

Four Indian Tribes also include tourism tax in their agreements. The tourism tax is reported on the sales tax return with a separate code in the same manner municipal taxes are reported.

Tourism tax does not apply on the Oglala (Pine Ridge) Special Jurisdiction.

To determine if your business is subject to tourism tax, review the Tourism Taxfacts available at <http://dor.sd.gov> or by calling 1-800-829-9188.

Limited Tax Collection Agreement

Two Indian Tribes have limited tax collection agreements. The limited agreements do not include all taxes and will apply to specific businesses or locations.

Unless otherwise specified, taxes collected under these agreements is reported as explained in the sections “How to Report Contractors’ Excise Tax for Special Jurisdictions” and How to Report Sales Tax for Special Jurisdictions”.

Businesses that make sales or provide services on Indian country controlled by Tribes with limited agreements that is not included in the agreement, continue to be required to remit the 4% state sales tax on these transactions. For information on reporting tax on transactions on Indian country not included in this agreement see section on “Tribal Governments without Tax Collection Agreements.”

Sisseton-Wahpeton Oyate

The Sisseton-Wahpeton Oyate “limited” tax collection agreement with the State includes the contractors’ excise and use tax at the following locations:

1. The Dakota Connection Property - a casino, restaurant, convenience store, and gas station located east of Sisseton at the junction of I 29 and HWY 10;
2. The Agency Village Property – a convenience store and gas station located in Agency Village (10 miles South of Sisseton); and
3. The Dakota Sioux Property – a casino, hotel, restaurant, convenience store, and gas station located northwest of Watertown.

The limited tax collection agreement does not include the sales tax and does not include Indian country controlled by the Sisseton-Wahpeton Oyate not listed in 1, 2, and 3 above.

Receipts from construction services for projects on the above locations must be reported on the state’s excise tax return and on the Tribe’s tax return. The excise tax may be paid to either the State or to the Tribe. If you are paying the excise tax to the Tribe, use Line 25 of the state tax return to deduct the amount paid to the Tribe. Please note that the deduction is for excise tax paid directly to the Sisseton-Wahpeton Oyate.

Use tax must be reported on the state tax return and paid to the State.

Yankton Sioux Tribe - The Yankton Sioux Tribe’s “limited” tax collection agreement with the State includes the contractors’ excise and use tax at the following locations:

1. Fort Randall Casino & Smokehouse property
2. Yankton Travel Plaza

Both properties are located on Highway 46, 10 miles west of Wagner, SD or 3 miles east of Pickstown, SD.

Receipts from construction services for projects at either of the above locations must be reported on the state’s excise tax return. Contractors will report use tax on the state tax return using the Yankton special jurisdiction tax code. Retailers delivering materials to the project location are responsible for collecting the 4% state sales tax.

Indian Country Definition

State law adheres to the federal definition of “Indian country” which is as follows: 18 U.S.C. § 1151. Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means

- (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,
- (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
- (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Questions concerning whether or not a business or customer is located on Indian country should be referred to the Department at 1-800-829-9188.

Sales and Use Tax

Retail sales of tangible personal property and services delivered within the Special Jurisdictions are subject to 4% sales and use tax. This rate reflects the state and tribal sales

and use taxes and is reported under the appropriate Special Jurisdiction codes on the state sales tax return. Do NOT remit additional state tax on these transactions.

Examples

1. ABC Furniture in Rapid City delivers a bedroom set to an individual living on the Pine Ridge Indian Reservation. What tax is due?

The entire invoice including the delivery charge is subject to 4% sales tax. The tax is reported using the Oglala Special Jurisdiction code because the product was delivered to an area that is part of the Oglala Special Jurisdiction, the Pine Ridge Indian Reservation.

2. An enrolled member of the Cheyenne River Indian Reservation drives to Pierre, SD, buys a television and takes it back to Eagle Butte. What tax is due?

Because the customer took possession of the product in Pierre the transaction is subject to the 4% state sales tax and Pierre municipal sales tax. The tax is not reported under the Special Jurisdiction codes because the product was not delivered on Indian country.

housing in McLaughlin. The Tribe purchases all building materials from the local on-reservation lumberyard and supplies them to the contractors. What tax is due?

The prime contractor for the construction project owes the 4% use tax and McLaughlin municipal use tax on the materials because the Tribe purchased the materials exempt from sales tax. The use tax is reported using the Standing Rock Special Jurisdiction code.

The prime contractor also owes 2% contractors' excise tax on its gross receipts for this project. Gross receipts include the materials furnished by the owner and use tax on the owner furnished materials. This tax is reported using the Standing Rock Special Jurisdiction contractors' excise tax code.

2. A contractor buys material from an unlicensed out-of-state supplier. The material is delivered to the contractor in McLaughlin, SD, on the Standing Rock Indian Reservation.

What tax is due?

The contractor owes 4% use tax and McLaughlin municipal use tax. The use tax is reported using the Standing Rock Special Jurisdiction code because the material was delivered within the Special Jurisdiction for the Standing Rock Sioux Tribe.

Contractors' Excise Tax

Receipts from construction services or realty improvement projects within Special Jurisdictions are subject to contractors' excise tax. This applies to Indian and non-Indian contractors on all projects. This rate reflects the state and tribal contractors' excise tax and is reported using the applicable Special Jurisdiction code on the state contractors' excise tax return.

Use Tax on Construction Material

Contractors owe 4% sales or use tax on construction materials used in all construction projects whether performed for the United States Government, the Tribal Government, the State of South Dakota, or private persons. Contractors also owe use tax on material furnished to the contractor by an exempt entity, such as the Tribal Government or the State of South Dakota. Municipal sales or use tax is due if the material is delivered or used in a city that imposes a municipal tax.

Sales or use tax on all material delivered within a Special Jurisdiction is reported using that Special Jurisdiction's code for sales or use tax. If the contractor picks the material up at a location outside the Special Jurisdiction, but within South Dakota, the state sales tax would apply. If the contractor picks the material up at a location outside South Dakota, and takes the material directly to the project within the Special Jurisdiction, the Special Jurisdiction use tax would apply. Credit will be allowed for tax paid to the other state.

Examples

1. The Standing Rock Sioux Tribe is constructing tribal

Special Jurisdiction Rates and Codes

Tribe	Code	Rate
Cheyenne River Sales (CRST-ST)	408-4	4.00%
Cheyenne River Excise (CRST-ET)	408-2	2.00%
Cheyenne River Tourism (CRST-TT)	408-5	1.50%
Crow Creek Sales (CCST-ST)	417-4	4.00%
Crow Creek Excise (CCST-ET)	417-2	2.00%
Crow Creek Tourism (CCST-TT)	417-5	1.50%
Oglala Sales (OGST-ST)	411-4	4.00%
Oglala Excise (OGST-ET)	411-2	2.00%
Rosebud Sales (RBST-ST)	412-4	4.00%
Rosebud Excise (RBST-ET)	412-2	2.00%
Rosebud Tourism (RST-TT)	412-5	1.50%
Standing Rock Sales (SRST-ST)	413-4	4.00%
Standing Rock Excise (SRST-ET)	413-2	2.00%
Standing Rock Tourism (SRST-TT)	413-5	1.50%
Sisseton-Wahpeton Oyate Sales (SWO-UT)	414-4	4.00%
Sisseton-Wahpeton Oyate Excise (SWO-ET)	414-2	2.00%
Yankton Use (YST-UT)	418-4	4.00%
Yankton Excise (YST-ET)	418-2	2.00%



SALES AND USE TAX RETURN

Reporting Period _____

Return _____

Return Due _____

File Code _____

CHECK FOR CHANGE OF ADDRESS BELOW

License # _____

Check if out of business
Last day of business: _____

SALES TAX CALCULATIONS	GROSS	TAXABLE	RATE	TAX DUE
1. Gross Sales	\$6,500.00			
2. Use Taxable				
3. Non-Taxable Sales	\$500.00			
4. Special Jurisdiction Sales (Detail in City Section)	\$1,000.00			
5. Net State Sales Taxable (Line 1 plus Line 2, minus Line 3, minus Line 4)		\$5,000.00	x 4%	\$200.00
6. City & Special Jurisdiction Tax Calculation Detail:				
7. City/Special Jurisdiction Name	Code	Taxable	Rate	Tax Due
8. Mission	239-2	\$1,000.00	2.00	20.00
9. RBST-ST	412-4	\$1,000.00	4.00	40.00
10. Pierre	284-2	\$5,000.00	2.00	100.00
11.				0.00
12.				0.00
13.				0.00
14.				0.00
15.				0.00
16.				0.00
17.				0.00
18.				0.00
19.				0.00
20.				0.00
21.				0.00
22. Total City/Special Jurisdiction Tax (Add Lines 8 through 21)				\$160.00
23. Total Tax Due (Line 5 plus Line 22)				\$360.00
24. Penalty/Interest				
25. Adjustment (Previous Credit/Balance Due)				
26. Total Due (Line 23 plus Line 24 plus Line 25)				\$360.00
27. Amount Remitted				

I declare under the penalties of perjury this return has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

Date _____ Preparer _____

Date _____ Licensee _____

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How To Report Contractors' Excise Tax for Special Jurisdictions

Contractors' excise tax and use tax is reported on the state contractors' excise tax return. Includes all receipts for projects in Special Jurisdictions.

- Include all receipts on Line 1 Gross Receipts.
- Deduct taxable receipts for projects within the Special Jurisdictions on Line 4, Special Jurisdiction Receipts.

Under City and Special Jurisdiction Tax Calculation Detail

- Report gross receipts, including the value of owner furnished material and the use tax on the material, for projects within Special Jurisdictions using the Code assigned to the Special Jurisdiction the project was located in. (The code will include the name of the Tribe that controls the Indian country where the sale was made.)
- Report use tax due on materials purchased without tax and on materials furnished by the owner (if sales tax was not paid by the owner) using the Special Jurisdiction Code based on where the materials were installed. Do not report use tax for these items on Line 6.

- Report sales or purchases subject to city sales or use tax under appropriate city code and rate.

See Special Jurisdiction Codes and Rates Chart. (See page 3.)

Return Example

Payment of \$5,000 is received by a contractor for installation of windows for the Standing Rock Tribal Government office building. The Tribe furnished new windows at a cost of \$3,000.00.

Tax Due: 4% use tax on the \$3,000 paid for the windows (plus any delivery charges) is reported using the Standing Rock Special Jurisdiction code for 4% as possession is on the Standing Rock Indian Reservation.

2% contractors' excise tax on \$8,120 is reported using the Standing Rock Special Jurisdiction excise tax code because the project is on the Standing Rock Indian Reservation. The \$8,120 includes the \$5,000 received in payment plus the \$3,000 owner furnished materials and the \$120 use tax on the materials.



CONTRACTORS' EXCISE TAX RETURN

Reporting Period _____
 Return Due _____
 File Code _____

CHECK FOR CHANGE OF ADDRESS BELOW

Check if out of business
 Last day of business: _____

License # _____

EXCISE TAX CALCULATIONS	GROSS	TAXABLE	RATE	TAX DUE
1. Gross Receipts	\$5,000.00			
2. Owner-Furnished Materials	\$3,120.00			
3. Deductions (Subcontractors Receipts, Out-of-state)				
4. Special Jurisdiction Receipts (Detail in City Section)	\$8,120.00			
5. Net State Excise Taxable (Line 1 plus Line 2, minus Line 3, minus Line 4)		\$0.00	x 2%	\$0.00
6. Net Sales and/or Use Taxable			x 4%	\$0.00
7. Total State Tax Due (Line 5 plus Line 6)				\$0.00
8. City & Special Jurisdiction Tax Calculation Detail:				
9. City/Special Jurisdiction Name	Code	Taxable	Rate	Tax Due
10. SRST-ST	413-4	\$3,000.00	4.00	\$120.00
11. SRST-ET	413-2	\$8,120.00	2.00	\$162.40
12.				\$0.00
13.				\$0.00
14.				\$0.00
15.				\$0.00
16.				\$0.00
17.				\$0.00
18.				\$0.00
19.				\$0.00
20.				\$0.00
21.				\$0.00
22. Total City/Special Jurisdiction Tax (Add Lines 10 through 21)				\$282.40
23. Total Tax Due (Line 7 plus Line 22)				\$282.40
24. Penalty/Interest				
25. Adjustment (Previous Credit/Balance Due)				
26. Total Due (Line 23 plus Line 24 plus Line 25)				\$282.40
27. Amount Remitted				\$282.40

I declare under the penalties of perjury this return has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

Date

Preparer

Date

Licensee

RV-011 12/05

Tribal Governments Without Tax Collection Agreements

The State of South Dakota does not have sales, use, or contractors' excise tax collection agreements with the following Indian Tribes: Flandreau, and Lower Brule. The Yankton and Sisseton-Wahpeton Oyate limited tax collection agreements do not include sales tax and do not include contractors' excise tax or use tax in areas not defined in the agreements. Before making sales or entering into a contract to provide construction services or realty improvements on Indian country controlled by these Tribes, you should contact the tribe to obtain information on taxes the tribe may impose.

Sales and Use Tax

Sales of products or services delivered in Indian country controlled by an Indian tribe that does not have a tax collection agreement are subject to the 4% state sales tax. Sales of products or services delivered off Indian country to tribal members and non-Indians are subject to the 4% state sales tax plus applicable municipal tax based on where the items are received by the customer, even if the item is taken by the customer to use on Indian Country.

Sales made by a business that is wholly owned by an enrolled tribal member or members on Indian country controlled by that member's tribe are not subject to the state sales tax when the tribe does not have a sales tax collection agreement with the state. These enrolled tribal member retailers, however, are required to collect the 4% state use tax on sales made to non-members of the tribe and send these funds to the state.

Enrolled tribal member retailers who sell outside Indian country that is controlled by the member's tribe owe the 4% state sales tax and applicable municipal tax on their receipts.

Sales of products or services to an Indian tribe are exempt from sales tax.

Example

1) An enrolled member of the Lower Brule Sioux Tribe purchases a refrigerator from a business in Chamberlain. The Chamberlain business delivers the product to the customer's residence on the Lower Brule Reservation.

The 4% state sales tax is due on this transaction. The retailer is responsible for remitting the sales tax because the retailer is not an enrolled member of Lower Brule Reservation.

2) A convenience store is located on Indian country controlled by Lower Brule Sioux Tribe. The store is not 100% owned by the tribal government or 100% owned by members of the Lower Brule Sioux Tribe. Sales made by this store are subject to the 4% state sales tax. There is no exemption for sales made to tribal members. Sales made directly to and paid by the Tribal Government are exempt.

Reporting Sales

Gross receipts received from sales to enrolled members on non agreement Indian country areas are included on Line 1 of the state sales tax return.

If an enrolled tribal member retailer makes a sale in Indian country controlled by their tribe to a non-member, the sale is not subject to the state sales tax but the retailer must still collect the state use tax on the sale to the non-member. The enrolled tribal member retailer in this instance should include the gross receipts for sales made to enrolled members in line 1 of the state sales tax return, deduct these receipts on line 3, non-taxable sales, and report the receipts for sales made to non-members on line 2, use taxable.

Contractors' Excise Tax

Contractors doing construction services or realty improvements on Indian country controlled by an Indian tribe that does not have a tax collection agreement are subject to the state contractors' excise tax. State sales or use tax also applies to materials purchased for these projects.

An enrolled tribal member contractor providing construction services or realty improvements on Indian country controlled by the member's tribe does not owe state contractors' excise tax when the tribe does not have a tax collection agreement with the state. The enrolled tribal member contractor does not owe use tax on materials when the materials are delivered by an unlicensed retailer to the contractor in Indian country controlled by his tribe.

An unlicensed tribal member contractor performing a construction service in Indian country controlled by the member's tribe cannot issue a prime contractors exemption certificate to subcontractors for the projects on Indian country controlled by the members tribe. Subcontractors, who are not enrolled tribal members, are then subject to the contractors' excise tax.

No contractors' excise, sales or use tax is due from any contractor working on Indian Use Projects, described below, if the construction project is performed for a Tribe that does not have a tax collection agreement with the state. No sales or use tax is due on materials used for these projects. The contractor must provide material suppliers documentation stating the materials will be used in an Indian Use Project,

along with the name and location of the project.

The prime contractor must submit a “Request for Consideration of Indian Use Project” or the form provided by the Department. The Department will provide the contractor with a signed document indicating if the project is approved as an Indian Use Project. The contractor can provide that documentation to their subcontractors and suppliers of material that will be incorporated into the project.

Examples of Indian Use Projects are tribal hospitals, tribal housing projects, tribal schools, and tribal offices located on Indian country. Receipts received for work on an Indian Use Project are reported on the excise tax return on line 1 and are deducted on line 3. Contractors are responsible for maintaining documentation indicating the name and location of the project.

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:

If you have any questions concerning whether or not a business or customer is located in a Special Jurisdiction set forth above, please contact the Department at 1-800-829-9188.

Please be sure to contact the appropriate Tribal Tax Office whenever doing business in Indian country regarding additional licensing requirements that may be imposed by the tribe.

**South Dakota
Department of
Revenue
445 East Capitol Ave.
Pierre, SD 57501-3185**

Cheyenne River Sioux Tribe
Revenue Office
PO Box 590
Eagle Butte, SD 57625-0690
Phone: (605) 964-7071

Rosebud Sioux Tribe
Revenue Office
PO Box 367
Rosebud, SD 57570-0430
Phone: (605) 747-5045

Oglala Sioux Tribe
Revenue Office
PO Box 363
Pine Ridge, SD 57770-0363
Phone: (605) 867-5821 option 7

Standing Rock Sioux Tribe
South Dakota Revenue Office
PO Box 500
McLaughlin, SD 57642
Phone: (605) 823-2290

Standing Rock Sioux Tribe
Revenue Office
PO Box D
Ft. Yates, ND 58538
Phone: (605) 854-7340

Sisseton Wahpeton Oyate
Revenue Office
PO Box 776
Agency Village, SD 57262
(605) 698-3541

Yankton Sioux Tribe
YST Tax Office
PO Box 248
Marty, SD 57361
(605) 384-3804