

July 2013

This Tax Fact Sheet is designed to explain how sales, use, and contractors' excise tax applies to the sale of gravel and gravel related services. If this Tax Facts does not answer your specific question, please call the department's toll-free helpline at 1-800-TAX-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's newsletters, press releases, Tax Facts, and other documents published by the Department of Revenue.

Gravel industry covered in this Tax Facts

- Gravel Processing
- Gravel Supplying
- Gravel Crushing
- Gravel Leveling

The processing, selling or crushing of gravel, without performing any other work, is subject to the 4% state sales tax, plus applicable municipal tax.

Contractors and businesses that process, sell or crush gravel, without performing any other work, are subject to the 4% state sales tax, plus applicable municipal tax.

Contractors that contract to perform work on a highway or other project, such as blading, packing, or scraping, are subject to contractors' excise tax.

Your contract determines whether sales tax or the contractors' excise and use tax applies to your receipts. Persons who sell gravel or contract to perform gravel related services normally find themselves in one of the three scenarios described below.

Have you contracted to only process, supply or crush gravel?

If you process, supply or crush gravel without performing any work on the highway or other project, either before or after the gravel is dumped, you must have a South Dakota sales tax license and pay sales tax. A prime contractors' exemption certificate cannot be used to exempt the processing, selling or crushing of gravel from sales or use tax.

Example

Sam's Highway Construction contracts with Quick Ready Mix to supply the gravel for a highway project. Quick Ready Mix hauls the gravel to the job site and dumps the gravel as they drive down the highway. Quick Ready Mix is selling gravel and owes sales tax on their charge to Sam's Highway Construction. A prime contractors' exemption certificate does not exempt the gravel from sales tax.

Have you contracted to do construction work other than just processing, supplying, or crushing gravel?

When your contract includes performing work, such as blading, packing, or scraping, you are subject to contractors' excise tax and you must have a South Dakota contractors' excise tax license.

You owe contractors' excise tax on your receipts unless you receive a prime contractors' exemption certificate from the prime contractor. The contractors' excise tax also applies to the fair market value of any material furnished to you by the project owner. The fair market value of the owner-furnished materials includes sales or use tax on the material. In addition, you will owe sales or use tax on all material you furnish for the project and may owe use tax on material furnished to you by the project owner.

Example

Davison County contracts with Best Construction to blade gravel that the County has previously dumped on the highway. Blading is a service subject to contractors' excise tax. Best Construction must have a South Dakota contractors' excise tax license and will owe 2% contractors' excise tax on their receipts. Best Construction also owes 2% contractors' excise tax on the value of the gravel furnished by the county. Best Construction also owes the 4% state use tax on the gravel the county provides.

Have you contracted to do construction work along with processing, selling or crushing gravel?

When your contract includes performing work, such as blading, packing, or scraping, and you also process, supply, crush, or haul the gravel, you are subject to contractors' excise tax and you must have a South Dakota contractors' excise tax license.

You owe contractors' excise tax on your receipts unless you receive a prime contractors' exemption certificate from the prime contractor. The contractors' excise tax also applies to the fair market value of any material furnished to you by the project owner. The fair market value of the owner-furnished materials includes sales or use tax on the material. In addition, you will owe sales or use tax on all material you furnish for the project and may owe use tax on material furnished to you by the project owner.

Example

Best Construction has a contract with Pennington County to supply and level gravel on a county road. Because Best Construction's contract is to supply and level the gravel, Best Construction is subject to the contractors' excise tax. Best Construction also owes sales or use tax on their cost of the gravel they supply.

Sales Tax Projects

Gravel Sales

If your contract is to supply gravel without performing any work on the highway or other project you must have a South Dakota sales tax license.

The sale of gravel, including any delivery charge, is subject to the 4% state sales tax, plus applicable municipal tax, whether the gravel is put in a stockpile or dumped directly on the highway. If you sell and deliver gravel, tax applies where the gravel is delivered.

If gravel is hauled by a trucker hired by the purchaser, sales tax applies based on the delivery address if known by the seller. If the seller does not know the delivery address, sales tax applies where the gravel is picked up by the trucker.

When gravel is bought exempt from municipal tax, and then used in a municipality that imposes a municipal use tax, the contractor owes that municipality's use tax.

If possession of the gravel is taken in a municipality, both state and that municipality's sales tax are due, even if the gravel is used outside the municipality's limits.

If a contractor is not charged sales tax when buying gravel, the contractor owes use tax on the amount paid for the gravel, including delivery charges.

Examples

1. Quick Ready Mix sells gravel to Sam's Highway Construction. Quick Ready Mix hauls the gravel to the job site in Huron and dumps the gravel as he drives through the lot. Quick Ready Mix is selling gravel and owes the 4% state sales tax, plus Huron municipal tax on their charge to Sam's Highway Construction.
2. Quick Ready Mix sells gravel to Sam's Highway Construction for \$10,000 plus \$1,000 for delivery. Quick Ready Mix stockpiles the gravel at Sam's Highway Construction's job site outside Mitchell municipal limits. Quick Ready Mix owes the 4% state sales tax on \$11,000.
3. Quick Ready Mix sells gravel to Sam's Highway Construction. Sam's Highway Construction picks the gravel up at Quick Ready Mix's site in Ft. Pierre and hauls the gravel to their job site in Pierre. Quick Ready Mix owes the 4% state sales tax plus Ft. Pierre municipal sales tax on the gravel.

Royalty Fees

Fees paid to the landowner for rock or gravel, commonly called royalty fees, are subject to the 4% state sales or use tax, plus applicable municipal tax. If the seller does not charge sales tax, you owe the 4% state use tax, plus applicable municipal tax.

If your contract is to only supply gravel, you can purchase rock or gravel for resale.

Crushing

If your contract is to crush rock without performing any work on the highway or other project you must have a sales tax license. Crushing services are subject to the 4% South Dakota state sales or use tax, plus applicable municipal tax based on where the crushing is performed.

If your contract is to only supply gravel, you can purchase crushing services for resale.

Examples

1. Quick Ready Mix has a contract to supply gravel for a highway project in Hughes County. Quick Ready Mix contracts with Quality Crushing to crush the rock. Quick Ready Mix can purchase the crushing service for resale, provided an exemption certificate is furnished to Quality Crushing.
2. Sam's Highway Construction has a contract to build a highway. Sam's Highway Construction contracts with Quality Crushing to crush the rock. Quality Crushing owes 4% sales tax on the charge for crushing the rock. Because Sam's Highway Construction's contract is subject to contractors' excise tax, Sam's Highway Construction cannot issue an exemption certificate to Quality Crushing.

Hauling gravel that you have sold

If your contract is to sell gravel, the delivery fee (if any) is also subject to the 4% state sales tax, plus applicable municipal tax based on where the gravel is delivered.

Example

Quick Ready Mix has a contract to sell gravel to Sam's Highway Construction for use on a street in Pierre. Quick Ready Mix delivers the gravel. The total charge for the gravel and the delivery is subject to the 4% state sales tax plus Pierre municipal sales tax.

If the gravel or rock is sold for resale, no sales tax is due on the rock or delivery fee.

Example

Quick Ready Mix sells rock to a lawn and garden center that will be resold to customers. The lawn and garden center issues Quick Ready Mix an exemption certificate for the rock. No sales tax is due.

Using someone else to deliver gravel that you sold

If your contract is to sell gravel and you contract with another trucker to deliver the gravel, that trucker does not owe sales tax on their charge.

Sales for Resale

A gravel supplier, rock crusher, or rock quarry may sell their services or products for resale if the buyer provides an exemption certificate. It is the buyer's responsibility to know when a service or product qualifies as a sale for resale. State law requires exemption certificates to be complete and accurate. The buyer will be held responsible for properly completing an exemption certificate.

The seller must keep all exemption certificates in their records. For more information on sales for resale view the Exemptions Tax Fact Sheet on our website at www.state.sd.us/drr or request a copy by calling 1-800-TAX-9188.

Exempt Entities

Accredited schools, non-profit hospitals, approved relief agencies and government entities are exempt from sales and use tax. This exemption applies to the purchase of gravel and the purchase of crushing and hauling of gravel. These organizations are not exempt from contracts that are subject to the contractors' excise tax.

When a government or sales tax exempt entity furnishes gravel for your contract, you owe the 4% state use tax, plus applicable municipal tax, on the value of the gravel. You may list the contractor's excise tax and any use tax you owe as a separate line item on all contracts and bills, both for public and private entities. The contractors' excise and use taxes are part of the contractor's total bill and is collectible from all entities, both public and private.

The contractor must keep copies of payment documents received from the exempt purchaser in their records. Accredited schools and relief agencies have license numbers assigned by the department that should be provided to the seller.

Contractors' Excise Tax Projects

When your contract includes performing work on a highway or other project, such as blading, packing, or scraping, you are subject to contractors' excise tax and you must have a South Dakota contractors' excise tax license. Contractors' excise tax applies to your contract even if your contract includes processing, supplying, crushing, or hauling the gravel.

Contractors' excise tax applies to the total contract price, including all labor and material.

Prime Contractors

You are a prime contractor if your contract is with the owner of the property. As a prime contractor, you owe 2% contractors' excise tax on your total receipts and 2% contractors' excise tax on the fair market value of materials the owner has furnished for the project.

Subcontractors

You are a subcontractor if your contract is with another contractor to complete part or all of a construction project and you receive a prime contractor's exemption certificate. A subcontractor's gross receipts are not subject to the 2% tax if the prime contractor furnishes the subcontractor with a completed prime contractor's exemption certificate for each project, unless the work is for a qualifying utility. In addition you owe use tax on your cost of all material you furnish for the project if sales or use tax was not previously paid.

You do not owe contractors' excise tax or use tax if your contract is just to process, sell, crush, or haul the gravel and you do not perform other work on the project. Processing, selling and crushing gravel is subject to sales tax. A prime contractor's exemption certificate cannot be used to exempt the processing, selling or crushing of gravel from sales or use tax.

If the work is for a qualifying utility then the prime and all subcontractors will owe the 2% contractors' excise tax on their gross receipts.

Prime Contractors' Exemption Certificate

The prime contractor's exemption certificate must show the prime contractor's valid excise tax license number and the project location. Prime contractor's exemption certificates cannot be issued to subcontractors on contracts for qualifying utilities. Subcontractors must retain the prime contractor's exemption certificates in their records.

Any subcontractor who fails to retain a prime contractor's exemption certificate for each project is considered to be a prime contractor and is subject to the 2% contractors' excise tax.

Gross Receipts

"Gross receipts" means the amount received directly or indirectly in money, credits, property, interest charges, penalties, liquidated damages, or other money's worth in consideration of the performance of a contract subject to tax. Gross receipts also include the cost or fair market value of materials provided by the owner for the contractor to install. The fair market value of the owner-furnished materials includes sales or use tax on the material. A contractor cannot take a deduction for the cost of the property sold, cost of the materials used, the cost of services or labor purchased, amounts paid for interest or discounts, or any other expenses or losses.

Owner-Furnished Material

The prime contractor owes 2% contractors' excise tax on the value of gravel furnished by the owner for highway or other construction projects. The fair market value of the owner-furnished materials includes sales or use tax on the material.

When a government or sales tax exempt entity furnishes gravel for your contract, you owe the 4% state use tax, plus applicable municipal tax, on the value of the gravel. The value of the gravel includes the amount the owner paid for royalty fees, crushing and hauling the gravel.

You may list the contractor's excise tax and any use tax you owe as a separate line item on all contracts and bills, both for public and private entities. The contractors' excise and use taxes are part of the contractor's total bill and is collectible from all entities, both public and private.

Examples

- A. A landowner buys gravel for \$5,000 plus \$200 sales tax. The total value of the gravel is \$5,200. The landowner hires a contractor to build a driveway. The contractor receives \$10,000 for the packing and blading of the gravel. The contractor is liable for contractors' excise tax on \$15,200 (the contractor's bid of \$10,000 plus \$5,200 gravel value).
- B. The State of South Dakota bought gravel for \$10,000. The state did not pay any sales tax. The state then contracts with Ted's Trucking to haul the gravel to a highway and blade the highway. Ted's receives \$5,000 for their work. Ted's Trucking owes 4% use tax on the owner-furnished materials (\$10,000 x 4% = \$400 use tax). Ted's Trucking also owes contractors' excise tax on \$15,400. (\$10,400 owner-furnished materials which includes use tax plus \$5,000 receipts for the labor).

Sales or Use Tax

Contractors must pay the 4% state sales or use tax, plus applicable municipal tax, on all material and sales taxable services they purchase. The contractor also owes the 4% state sales or use tax, plus applicable municipal tax, on all owner-furnished material, if the sales or use tax has not been paid on the material.

You may list the contractor's excise tax and any use tax contractors owed as a separate line item on all contracts and bills, both for public and private entities. The contractors' excise and use taxes are part of the contractor's total bill and is collectible from all entities, both public and private.

The following are examples of purchases subject to sales or use tax:

- Royalty Fees
- Gravel
- Gravel Processing
- Gravel Crushing

Additional municipal use tax may be due when the gravel is used. If the contractor paid 4% state sales or use tax on the gravel when it was delivered, the contractor owes the municipal use tax if the gravel is used inside municipal limits. The municipal use tax is due on the cost of the gravel, including delivery charges, that is used in the municipality's limits.

Example

Sam's Highway Construction bought gravel and stockpiled it at their location outside Pierre. Sam's Highway Construction paid 4% state sales tax on the gravel at the time of purchase. Sam's Highway Construction uses some of this gravel on a street in Pierre municipal limits. Sam owes Pierre's municipal use tax on the cost of the gravel used in Pierre municipal limits.

Department of Transportation (DOT) Projects

DOT may negotiate with landowners to have the rock removed from the land. If the gravel is included in the contract amount, DOT will deduct the gravel costs from the amount paid to the contractor and will pay the landowner directly. The contractor will owe use tax on the amounts paid to the landowner for the rock. The value of the rock, including use tax, is owner-furnished material and must be included in the receipts subject to the contractors' excise tax.

Required Records

Records, such as contracts, prime contractors' exemption certificates, 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.

Talk to Us!

If you have a tax problem or question, call the South Dakota Department of Revenue toll-free at **1-800-TAX-9188**. Visit us on the web at www.state.sd.us/drr, email us at bustax@state.sd.us or write us:

SD Department of Revenue
445 East Capitol Ave.
Pierre, SD 57501-3100

Aberdeen

14 South Main, Suite 1-C
 Aberdeen, SD 57401-5085

Mitchell

417 N. Main, Suite 112
 Mitchell, SD 57301-2600

Rapid City

1520 Haines Avenue, Suite 3
 Rapid City, SD 57701

Sioux Falls

300 S. Sycamore, Suite 102
 Sioux Falls, SD 57110

Watertown

715 S Maple
 Watertown, SD 57201

Yankton

1900 Summit Street
 Yankton, SD 57078-1951