Contractors' Excise Tax Guide

Tax Help That Works!
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Email: bustax@state.sd.us

Website: dor.sd.gov

E-file: http://dor.sd.gov/EPath

October 2013

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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 **dor.sd.gov** email us at **bustax@state.sd.us** or write us:

Visit one of our Tax Offices:
South Dakota Department of Revenue
Business Tax Division | 445 East Capitol Avenue | Pierre, SD 57501-3100

Aberdeen Area Office
419 Moccasin Drive
Aberdeen, SD 57401-5085

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

Rapid City Area Office
1520 Haines Avenue, Suite 3
Rapid City, SD 57702-1889

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

Watertown Area Office
715 S Maple
Watertown, SD 57201-5300

Yankton Area Office
1900 Summit Street
Yankton, SD 57078-1951

Online resource provides tools and information to taxpayers

Our website is located at dor.sd.gov, and features:

Tax License Application: Apply online for the following types of tax licenses: Contractors' Excise, Manufacturer, Sales, Use, Wholesaler, and all Motor Fuel tax types.

EPath: Sales, Use, and Contractors' Excise Taxes, 911 Surcharges and certain Motor Fuel taxes.

Tax Match: A tool to look up state and municipal sales or use tax rates for any location within the State of South Dakota.

Business Education: Go to http://dor.sd.gov to register for an in-person seminar.

Industry Specific Guides: To help you better understand the tax obligations for specific industries, we've created many online guides.

State law allows contractors to list the contractors' excise tax and any use tax imposed under chapters 10-45, 10-46 or 10-52 as a separate line item on all contracts and bills, both for public and private entities. The excise and use taxes are a part of the contractor's total bill and are collectible from all entities. (SDCL 10-46B-10, SDCL 10-46A-11)

Contractors' Excise Tax

Any person entering into a contract for construction services enumerated in Division C of the Standard Industrial Classification Manual of 1987 or engaging in services that include the construction, building, installation, or repair of a fixture to real property must have a South Dakota contractors' excise tax license. This includes repair or remodeling of existing real property or the construction of a new project.

A 2% excise tax is imposed on the gross receipts of all prime contractors engaged in construction services or realty improvement projects in South Dakota (SDCL 10-46A).

A 2% excise tax is imposed on the gross receipts of all prime and subcontractors engaged in construction services or realty improvement projects for the following types of utility companies (SDCL 10-46B, the alternative contractors' excise tax).

- Electric, Heating, Power, Water, and Gas Companies subject to tax under SDCL 10-35
- Railroads subject to tax under SDCL 10-28
- Rural Electric Companies subject to tax under SDCL 10-36
- Telephone Companies, including Rural Telephone Companies, subject to tax under SDCL 10-33
- Municipal Telephone Systems
- Rural Water Systems

The work must be for the utility company and the prime contractor must receive payment directly from the utility to be taxed under SDCL 10-46B. If a prime contractor receives payment directly from an entity that is not the utility company, the project is not a qualified utility project and is subject to contractors' excise tax under SDCL 10-46A. If the utility company receives funding from an outside source and the utility company pays the prime contractor, the project is taxed as a qualified utility project.

Tax Application

The prime and subcontractors' tax liability under SDCL 10-46A and SDCL 10-46B are as follows.

Projects that are not qualified utility projects
Tax applies under 10-46A

Prime Contractors:

- Owe 2% contractors' excise tax on their gross receipts.
- Include the value of material furnished by the owner in their gross receipts subject to the contractors' excise tax.
- Owe 4% state, plus applicable municipal use tax on materials furnished by the owner if the owner does not document sales or use tax was previously paid
- Owe 4% state, plus applicable municipal use tax on material they furnish for the contract if sales or use tax was not previously paid.
- Must issue prime contractor exemption certificates to all subcontractors.
- Cannot deduct amounts paid to subcontractors in determining gross receipts subject to the contractors' excise tax.

Subcontractors:

- Do not owe the 2% contractors' excise tax IF a prime contractors' exemption certificate is received for the project.
- Owe 4% state and applicable municipal sales or use tax on material the subcontractor furnishes for the contract.

Qualified Utility Projects
Tax applies under 10-46B

Prime Contractors:

- Owe 2% contractors' excise tax on their gross receipts.
- Do not include the value of the owner furnished material in their gross receipts subject to the contractors' excise tax.
- Owe 4% state and applicable municipal use tax on materials furnished by the owner if the owner does not document sales or use tax was previously paid.
- Owe 4% state and applicable municipal sales or use tax on material they furnish for the contract.
- Cannot issue prime contractor exemption certificates to subcontractors for a qualified utility project.
- Cannot deduct amounts paid to subcontractors in determining gross receipts subject to the contractors' excise tax.

Subcontractors:

- Owe 2% contractors' excise tax on their gross receipts.
- Owe 4% state and applicable municipal sales or use tax on material the subcontractor furnishes for the contract.
- Cannot accept a prime contractors' exemption certificate for a qualified utility project.

The prime contractor's contract determines the tax application for all subcontractors. If the prime's contract is for a qualified utility construction project subject to tax under 10-46B, the subcontractor's contracts are also subject to tax under 10-46B.

The contractors' excise tax that applies to the original contract applies to all change orders to that contract.

General Information

Prime Contractor

A "prime contractor" is anyone entering into a contract for construction services or a realty improvement. A prime contractor is any person providing construction services or realty improvement for another person that has not been issued a prime contractor's exemption certificate.

Subcontractor

A "subcontractor" is a person contracting to perform all or part of the construction services or realty improvement for a prime contractor and that has received a prime contractors' exemption certificate from the prime contractor.

Prime Contractors' Exemption Certificates

Except for projects for a qualified utility, it is the prime contractor's responsibility to issue prime contractor exemption certificates to all subcontractors for each project. If a subcontractor hires another subcontractor, the prime contractor must issue the exemption certificate.

Prime contractor exemption certificates cannot be issued to subcontractors on contracts for qualifying utilities (SDCL 10-46B).

The exemption certificate must show the prime contractor's excise tax license number, the project location and description. A blanket certificate cannot be issued to a subcontractor, it must list the specific project.

Subcontractors that do not have a certificate on file for a project, are considered prime contractors and are subject to the 2% contractors' excise tax. The department recommends obtaining a prime contractors' exemption certificate prior to starting work.

Certificates may not be issued by:

- United States Government, the State of South Dakota, or any other state, public or municipal corporation.
- The owner of a project. (Exception: an owner is a prime contractor if they are building or remodeling with the intention of selling the property or building property to lease.)

Anyone, other than the prime contractor who provides a prime contractors' exemption certificate is liable for the contractors' excise tax not paid, plus a 10% penalty.

Gross Receipts

Contractors' excise tax is calculated on the total gross receipts.

Gross receipts include the full amount received directly or indirectly in money, credits, property, liquidated damages, or other money's worth in consideration for performing construction services or realty improvements in South Dakota.

Gross receipts also include the greater of the cost or fair market value of materials furnished by the owner for the contractor to install. Gross receipts for qualified utility projects do not include owner-furnished 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, taxes, or any other expenses or losses.

Owner-Furnished Material

The prime contractor owes contractors' excise tax on the value of material furnished by the owner of the construction project, except for qualified utility projects. The fair market value of the owner-furnished materials includes sales or use tax on the material.

Contractors also owe state and applicable municipal use tax on all material furnished for a construction project if they do not have documentation showing sales or use tax was paid. Documentation may include a copy of the invoice showing tax or a written statement from the owner that sales or use tax was paid. Contractors will owe use tax on material furnished by a government or other sales tax exempt entity, because the government will not have paid sales tax at the time of purchase.

Contractors' excise tax and use tax due on owner-furnished material is reported during the reporting period the material is furnished for the contractor's use.

Subcontractor Work

The prime contractor cannot deduct amounts paid to subcontractors.

The subcontractor reports all receipts as gross receipts. Receipts from projects that they have a prime contractor's exemption certificate for are deducted as Subcontractor's Receipts. Subcontractors cannot deduct receipts for projects for qualified utility projects.

Liquidated Damages, Penalties - Interest, penalties or liquidated damages paid by the contractor may not be deducted from gross receipts.

Building Permit Fees - Include amounts received for all licenses or permits required for a project.

Bonus - Include amounts received for bonus, for example, payments for early completion.

Indirect Payments - Amounts paid to others, material suppliers or subcontractors, on behalf of the prime contractor are considered gross receipts of the prime, even if payment is made directly by the person the realty improvement is for.

Barter - When equipment, supplies, or services are exchanged for labor, the value of the item received is reported as gross receipts on the contractors' excise tax return.

Sweat Equity - Homeowners who provide part of the construction in exchange for a reduction in the amount due the contractor are providing "sweat equity". The prime contractor cannot make a deduction for the amounts allowed the homeowner for their portion of the work. The homeowner that does part of the construction work is a contractor. The prime contractor should give the owner a Prime Contractors' Exemption Certificate.

Undue enrichment - overcollection of tax. If more tax is collected than is actually due, the additional tax must be remitted to the Department or refunded to the customer.

Include all Sales, Use, and Contractors' Excise Tax collected in your gross receipts, even if the tax is separately listed in the contract. Taxes may not be deducted in determining taxable receipts.

Bid Factor

Because contractors' excise tax is owed on your gross receipts, which include any taxes collected from the customer, a bid factor of 2.041% may be used to calculate the excise tax when preparing a bid or bill. This allows you to collect the full amount of excise tax due.

Only use this factor to prepare a bid. A straight 2% is used when calculating tax due on the excise tax return.

A Bid Factor Calculator is available online at dor.sd.gov. This form calculates the tax to include on your bid or invoice based on amounts you enter.

Sales and Use Tax

64:09:01:16 states, "General contractors are liable for use tax due on all items of tangible personal property used, stored or consumed in the performance of their contract including those portions of the contract performed by subcontractors."

All contractors are responsible for paying sales or use tax on all purchases of products or services. This includes materials installed in construction projects and all equipment, tools, and supplies used by the contractor.

Licensed suppliers are responsible for collecting sales tax based on where the contractor receives the product. If the contractor picks products up at the store, state and city sales tax applies at the store's location. Products delivered are subject to state and city tax where delivered.

State and municipal use tax applies if the supplier does not charge the applicable sales tax. Use tax is reported on the excise tax return when the contractor receives the product and is based on the location the product is received. If the contractor later uses that material inside a city that imposes a higher sales tax rate, the contractor must pay the additional city use tax in the reporting period the contractor uses that material.

Use tax applies to the cost of the material including delivery and handling charges. If a contractor marks up the price of the material when billing for a construction project, the markup is not subject to sales or use tax.

Out-of-State Purchases

Material and equipment delivered into South Dakota are subject to South Dakota sales or use tax even if the supplier charges another state's sales tax. South Dakota will not give a credit for taxes paid to another state if the material is delivered into South Dakota.

South Dakota allows credit for state or local sales tax legally required to be paid to another state or locality. Credit is applied towards the state use tax first, then against the municipal use tax. No credit is given for amounts paid another state that is more than the use tax due South Dakota.

If a contractor takes receipt of property at an out-of-state location, the supplier may be required to charge that state's sales tax. If the contractor is charged less tax in the other state than what applies in South Dakota, the contractor will owe the difference in use tax to South Dakota. To calculate use tax due, total the state and municipal use tax due in South Dakota and subtract the sales or use tax legally required to be paid the other state, the difference is due South Dakota.

Examples

1. A contractor bought and picked up material in Minnesota

and paid Minnesota sales tax. The contractor then uses the material in Clark. If the use tax due in Clark is higher than the sales tax paid to the Minnesota supplier, the contractor will owe additional use tax.

2. A contractor purchases material without tax from a business in Ohio. The material is shipped by common carrier to Aberdeen where it is used in a project. Because the supplier did not charge sales tax the contractor owes the 4% state use tax plus the Aberdeen use tax. The tax applies to the total paid for the material including delivery and handling charged by the supplier.

Material Removed from Retail Inventory

Some businesses have both a sales tax license and a contractors' excise tax license, such as a lumber yard. These businesses may use their sales tax license to purchase inventory for resale, without sales tax.

When this business takes material out of its tax unpaid inventory to use in a construction project the business is the consumer of the material. The contractor is responsible for the state use tax plus city use tax at the time the material is removed from inventory. Use tax is owed based on where the material is taken out of inventory.

A contractor will owe additional use tax if the contractor removes material from inventory in one city and uses, stores, or consumes that material in another city that imposes a higher city tax.

Use tax due for a construction project must be reported on the contractors' excise tax return.

Examples:

1. A-P Plumbing purchases pipe without sales tax as part of its retail inventory. The pipes are kept at its store in Brandon. A-P has a contract to install plumbing in a Sioux Falls home. A-P, as a contractor, is the consumer of the pipe removed from the tax unpaid inventory and must pay the 4% state use tax plus Brandon's city use tax. There is no additional tax owed even though the material is used in Sioux Falls because Sioux Falls' city use tax is equal to Brandon's.

2. While completing the project in Sioux Falls, A-P purchases additional pipe from a supplier in Sioux Falls. Because A-P has a sales tax license it may purchase this pipe for resale. Because A-P did not pay sales tax it owes the state 4% use tax and Sioux Falls use tax on the pipe used in the project in Sioux Falls. If A-P bought more than it needed for the Sioux Falls project, the remaining pipe could be placed in inventory for sale at A-P's store and would not be subject to tax until sold or removed from inventory for another project.

Fabricators – Out-of-State Project - Refunds

A contractor that fabricates tangible personal property for use in projects outside SD may be entitled to a refund of the sales or use tax that was paid on the material if the fabricated tangible personal property is exempt from sales or use tax in the state where the contract is performed. Please contact the Department at 1-800-829-9188 for further information.

Services

South Dakota's sales and use tax applies to all services unless state law specifically exempts the service. Examples of sales or use taxable services include engineering, accounting, computer services, business consulting, surveying or staking, architectural planning, testing, rock crushing, carpet laying, locksmiths, inspecting and snow removal.

Contractors cannot purchase services for resale.

The service provider is responsible for state and municipal sales tax on services based on where the contractor receives the service. If the contractor receives the service at the seller's location, sales tax applies at that location. Services delivered to the contractor are taxed where delivered. If the delivery address is not known, then sales tax applies based on the contractor's address.

- **Services performed on tangible personal property** are subject to sales tax where the property is delivered to the customer. This includes services such as repairs, rag cleaning, fabrication and millwork finishing.

- **Services to real property** are subject to sales tax at the property location where the service is performed. This includes services such as carpet installation, surveying or staking, pest control, lawn care, and security services.

- **Other services** are subject to sales tax where the customer receives the service. This includes services such as consulting, architecture, engineering, legal, third party administrative, and accounting.

Use tax is based on where the product or service is used.

Because services may be used at locations other than where the service was originally received, the contractor must be aware of the tax rates in each location they work. For example, a repaired item is delivered to a contractor in rural Hyde County where 4% state sales or use tax applies, but then used in Miller, where additional city use tax applies.

If the contractor includes the cost of a service in the amount billed for the construction contract the service cost becomes part of the amount subject to contractors' excise tax.

Examples:

1. An architect completes plans and sends them to the contractor in Nebraska. The plans are for a building to be built in Yankton. Because the plans are used to construct a building in Yankton, the value of the plans are subject to

the 4% state use tax plus Yankton municipal use tax. The contractor will owe the use tax if the architect did not collect sales or use tax.

2. A contractor hires ABC Custom Door to stain doors for a home in Rapid City. The contractor picks up the stained doors at ABC's location outside Rapid City. ABC charges the 4% state sales tax on their service because the contractor received the stained doors outside city limits. The contractor will owe additional Rapid City use tax because the service is used in Rapid City.

Construction Equipment

New equipment purchased for use in South Dakota is subject to the South Dakota sales or use tax.

If used equipment is brought into the state by a contractor who originally purchased the equipment for use in another state and the equipment is seven years old or less, use tax must be paid on the fair market value of equipment. The amount of use tax on the equipment will be reduced by the amount of sales or use tax previously paid. The age of the equipment is based on the manufacture date if available; if not available, age is based on the purchase date.

Leases or Rentals of Equipment

Rental payments on construction equipment without an operator or rental of other tangible personal property or products transferred electronically are subject to the South Dakota sales or use tax.

Contractors will owe additional use tax on the rental or lease payment if they use the equipment at a location that imposes a higher use tax rate than is collected by the lessor. Repair parts and service and maintenance to leased or rented equipment are subject to sales and use tax.

For more information review the Lease and Rental Tax Facts.

Municipal Sales and Use Tax

Municipal sales and use tax is in addition to the state tax and is reported on the state tax return forms.

The municipal sales or use tax applies when the purchaser takes receipt of tangible personal property, products transferred electronically, or service within a municipality imposing a tax.

Contractors will owe additional municipal tax if products are used or consumed in a city that imposes a higher tax rate than was paid on the purchase.

For municipal tax rates view the Municipal Tax Rates online at dor.sd.gov or call 1-800-829-9188.

Tax on Indian Country

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.

Reporting of tax due in a Special Jurisdiction is in the City and Special Jurisdiction section on the state sales tax return using the code assigned to that Special Jurisdiction.

Special Jurisdictions

The Special Jurisdictions for the five tax collection agreements with sales, use, and contractors' excise tax are as follows:

- Cheyenne River Special Jurisdiction
- Crow Creek Special Jurisdiction
- Oglala Special Jurisdiction
- Rosebud Special Jurisdiction
- Standing Rock Special Jurisdiction

The Special Jurisdictions for the limited tax collection agreements for use and contractors' excise tax are as follows:

- Yankton Sioux Special Jurisdiction
- Sisseton-Wahpeton Special Jurisdiction

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.

For information on tax rates and reporting of taxes for Special Jurisdictions and Indian Country that does not have agreements, review the Tribal Tax Facts.

Highway Contractor License

In addition to the contractors' excise tax license, a highway contractor's license is required for all prime or subcontractors who perform highway construction work on public roads. Highway construction means all work performed by vehicles, machinery or equipment within the right-of-way in the construction, reconstruction, repair or maintenance of public highways. Highway construction includes snow removal and blading.

"Public highways or roads" are any way or place, including waterways and snowmobile trails, open to the use of the public for vehicular, snowmobile or watercraft travel. This definition includes those ways or places temporarily closed for construction, reconstruction, maintenance or repair.

Political subdivisions will contact the Department to verify the contractor is properly licensed prior to awarding a bid and will verify the contractor has filed and paid all tax liabilities prior to issuing the final payment.

Diesel Fuel

All undyed diesel fuel purchased in South Dakota includes state fuel tax. All dyed diesel fuel purchased for commercial use is subject to sales or use tax. It is recommended that you dispense dyed diesel fuel in all of your unlicensed equipment/machinery. If you choose to dispense the undyed fuel in your equipment/machinery, you will not be eligible to receive a refund of the state fuel tax.

The South Dakota Highway Patrol conducts fuel inspections to ensure dyed diesel fuel is not being utilized in licensed vehicles. If dyed fuel is detected in a licensed vehicle, the owner will be subject to both state and federal fines and penalties.

For additional information review the Highway Contractors' Fuel Tax Manual online at www.state.sd.us/drr2/motorvehicle or by calling 605-773-5408.

Project Examples

Speculative Building

•Buildings Built for Lease
Anyone constructing a building for lease to others is liable for the 2% contractors' excise tax based upon the fair market value of the building if the value is greater than $100,000.

•Operative (Speculative) Builder *(Also known as "Flipping")*
A person who owns land and builds with the intent of selling the building once it is complete is an operative (speculative) builder and is a prime contractor. This includes new construction or remodeling of existing structures. This person must have a contractors' excise tax license whether they do the construction themselves or hire someone else.

For more information review the Specialty Builders and the $100,000 Rule Tax Facts.

Communication System Projects

Contractors installing or performing repairs to communication systems are subject to contractors' excise tax.

For more information review the Communications Equipment - Installation and Repair Tax Facts.

Gravel Crushing and Selling

The sale of gravel and the crushing of gravel is subject to sales tax.

For more information review the Gravel Tax Facts.

Highway Construction Subcontractors

Prime contractors bidding on highway construction contracts can provide prime contractor exemption certificates to subcontractors performing the following services: traffic control, striping, flagging, operation of pilot cars, signing, landscaping, seeding, sodding, mulching and erosion control.

Trucking

Intrastate transportation of products by trucking companies or delivery companies is exempt from sales tax. Garbage hauling is subject to sales tax.

Irrigation Projects

Installation of irrigation systems is subject to contractors' excise tax.

For more information review the Agricultural Equipment and Services Tax Facts.

Satellite Dishes

Charges for connection of a satellite system for a homeowner's use are subject to sales tax. The cost of installing poles or lines between the satellite dish and the building is subject to the contractors' excise tax. Contractors' excise tax must be remitted on all charges for the connection of a commercial system.

For more information review the Communications Equipment - Installation and Repair Tax Facts.

Leasing

•Leasing Equipment With an Operator - If construction machinery, such as a crane, backhoe or grader, is leased with an operator to perform a portion of a realty improvement, this is a construction service subject to contractors' excise tax

When the lease of equipment with an operator is not used on a realty improvement project, the service is subject to sales tax.

•Leasing Equipment Without An Operator - Rental payments on construction equipment without an operator are subject to sales or use tax

•Leasing of Installed Systems - The tax liability for leasing of systems which fall under the contractors' excise tax law depends on the situation. Examples include burglar alarms, communication systems, electronic control systems, fire alarms, irrigation systems, and monitoring systems.

For more information review the Lease and Rental Tax Facts.

Landscaping – Lawn Care

Services subject to sales tax: Landscape designing, lawn mowing, spraying, and fertilizing, ornamental shrub and tree planting, trimming and removal, including stump removal and grinding, pruning, utility line tree trimming, seeding or laying sod, and mowing highway edges.
Note: Seeding/sodding public road right of way as part of a highway construction project is subject to contractors' excise tax.

Services subject to contractors' excise tax: Laying bricks, whether around a flower bed, for a retaining wall, patio, walkway or driveway, installation of a lawn sprinkler system and installation of fountains and ponds that contain heaters or flowing water, and brush or timber clearing services, such as for a shelter belt, and stump removal in fields.

When a job includes some services that, if performed separately, are subject to contractors' excise tax and some services that are subject to sales tax, the primary purpose of the job determines which tax applies.

When the primary purpose is not clear you may apply tax in one of the following ways.

1. Itemize the services on the invoice, applying sales tax to the sales taxable services and contractors' excise tax to those subject to contractors' excise tax; or

2. If 25% or more of the dollar value of the contract is for excise taxable work, charge contractors' excise tax on the entire contract. If the excise taxable work is less than 25% of the dollar value of the contract, charge sales tax on the entire contract.

For more information, review the Landscaping and Lawn Care Tax Facts.

Carpet Laying

Gross receipts resulting from the sales and service of installing most floor covering are subject to sales or use tax, not contractors' excise tax. Flooring subject to sales tax includes:

- •access flooring
- •asphalt tile installation
- •carpet laying or removal service
- •duraceramic and durastone
- •fireproof flooring construction
- •floor laying, scraping, finishing and refinishing
- •hardwood flooring
- •linoleum installation
- •parquet flooring
- •resilient floor laying
- •vinyl floor tile and sheet installation
- •wood flooring

All other types of flooring, such as ceramic tile, terrazzo work, and Epoxy flooring are subject to contractors' excise tax.

For more information review the Carpet and Flooring Tax Facts.

Roto-Rooting Service

The total charge made for cleaning sewer pipes with a roto-rooter is subject to sales tax. Inspection of sewer pipes is also subject to sales tax.

Snow Removal

Gross receipts resulting from snow removal services are subject to sales tax. When such service is rendered for a political subdivision, such as a county, the receipts are not taxable but a tax license is still needed.

Drapery Installation

The installation of or replacement of curtains on stages in auditoriums, theaters, schools is subject to contractors' excise tax. Use tax is due on the cost of the curtains.

The sale and installation of draperies or window coverings in homes and offices is subject to sales tax.

Locksmiths and Locksmith Shops

Gross receipts from the sales and services of locksmiths and locksmith shops are subject to sales tax. Locks, lock parts and other materials that is sold to the customer can be purchased for resale.

Occasional Retail Sales of Materials

If a contractor occasionally sells material or supplies they previously paid sales or use tax on, they are responsible for remitting additional sales tax on the difference between the sale price and the amount sales or use tax was previously paid on.

Construction Management

Construction managers hired to manage construction projects are subject to sales tax. Construction managers may provide services such as reviewing and selecting contractors, reviewing purchase invoices, selecting material and overseeing construction progress. Construction managers do not have

contracts where payment is received for construction services or realty improvement work. Managers who have contracts or receive payment for construction services are prime contractors subject to the contractors' excise tax.

Cleaning and Adjustments

Cleaning, calibration and adjustments to real property that does not include the repair to or replacing of parts are subject to sales tax.

Examples:

1. Cleaning a furnace and replacing a filter are subject to sales tax.

2. Replacing the furnace motor is subject to contractors' excise tax.

Contractors: Display Your License Number

All contractors must display their contractors' excise tax license numbers with their building permits. This does not mean that the contractors' excise tax license itself must be displayed but that the license number should be written on or near the building permit.

Account Changes

Cancel your Account

You must cancel your license within 15 days and immediately file a final return and pay all tax due if:

1. **You close your business;**
2. **You sell your business; or**
3. **The ownership of the business changes.** Sales or contractors' excise tax licenses are NOT transferable.

A change in ownership or legal organization, such as from one sole proprietor to another, from sole proprietor to a partnership, a change from proprietor to a corporation, or a merger, requires a new tax license.

Partnerships: Information on any change in partners must be sent in writing to the Department and must be signed by all partners, including those leaving, entering, and staying in the partnership. Information must include:

- The name, social security number, personal address, phone number and effective date of change for any new partner.
- The name and effective date of separation for any partner leaving.

Corporations, LLC, or LLP: Information on any change in corporate officers or members must be sent to the Department. A change in corporate officers or members does not require a change in the tax license.

Address Change

Notify the Department in writing if your mailing address or your business location changes. Include the new address information, effective date of the change, your taxpayer number, and business name.

Send changes in account information to:

South Dakota Department of Revenue
Business Tax Division
445 East Capitol Avenue
Pierre, SD 57501-3100

Email address changes to: bustax@state.sd.us

Filing and Paying Your Tax Return

Your business must file a tax return each reporting period even if you did not conduct business or receive income.

Electronic Filing and Paying
Electronic filing is the preferred method for filing your tax return. It is a free and secure service that lets you prepare and file your tax return electronically from anywhere with an Internet connection.

•**EPath** – File and pay Sales, Use, and Contractors' Excise Taxes and 911 Emergency Surcharge. For more information on EPath go to: http://dor.sd.gov/EPath/

Paper Returns
Businesses filing paper returns are sent a tax return and worksheet for each reporting period.

It is your responsibility to contact the Department if you do not receive a return.

If you file electronically, you will not receive a paper return.

Filing an Amended Return
If you have an EPath account you may amended your returns one time through EPath. If you file by paper or are not able to amend the return through EPath, please call 1-800-829-9188 for amended return information.

Late Filing and Paying
A penalty of 10% (.10) of the tax liability is assessed if a return is not received within 30 days following the month the return is due. The minimum penalty is $10 and is assessed even if no tax is due.

Interest of 1.25% (.0125) of the tax liability is assessed each month or part thereof for any tax unpaid after the due date. The minimum interest assessed the first month is $5.

Due Dates for Returns and Payments

All Electronic returns are due the 23rd of the month.

All Electronic payments are due the 2nd to last working day of the month.

ACH Debit payments are transferred from your account on the 2nd to last working day of the month.
ACH Credit payments must be sent from your bank to the Department by the 2nd to last working day of the month.

If you do not file or pay electronically, the due date changes to the due date for the paper return and payment.

Paper Returns and Payments
Filing once a month – returns and payments are due the 20th of the following month.

All other filers - filing every other month, semi-annually, or on a seasonal basis – returns and payments are due the last day of the month following the reporting period.

If a due date falls on a Saturday, Sunday or legal holiday, the next business day is the due date.

Mail returns and payments to the:
Remittance Center
PO Box 5055
Sioux Falls, SD 57117

Collection Allowance

Beginning January 1, 2014, if you file and pay your sales tax return electronically and on time, you will receive a collection allowance. The filing allowance will be 1.5% of the tax due on the sales tax return, not to exceed $70 for each reporting period. **No allowance is provided for contractors' excise tax returns** or for licensees that have any past due return or amount due on their sales tax, contractors' excise tax, motor fuel tax, or 911 Surcharge account, or if they file or pay by paper.

Accounting Methods

When using the **accrual method,** taxes must be paid on all sales made during the reporting period, even if you have not received payment.

An exception is a **conditional sale.** When payments for the principal sum is extended over a period longer than 60 days from the date of the sale, only the payment received during each reporting period is subject to sales tax.

When you report using the accrual method, you may take credit for **bad debts** during the reporting period in which you write the bad debt off as uncollectible in your books and records and it is eligible to be deducted for federal income tax purposes.

When you use the **cash method** of accounting, you report gross receipts and pay tax as you receive payments. No bad debts are allowed on the cash basis.

Changes in accounting methods must be requested in writing.

Record Keeping

Record keeping is a responsibility of not only those paying sales tax or contractors' excise tax but also individuals paying use tax and any person purchasing products or services for storage, use or other consumption in the state.

Keeping accurate and complete records makes the job easier when it is time to fill out tax returns and other reports. It also helps us correctly determine your tax liabilities during an audit of business income, purchases, exemptions, and deductions. We may use the records to determine if you reported and paid your taxes correctly.

You must keep your records for a minimum of three years or longer if you are depreciating capital assets. This includes both paper and electronic records.

Records supporting the following are to be kept and presented upon request of the Department of Revenue:
1. The amount of gross receipts and sales from all sources, including barter.
2. The amount of all deductions, exemptions, or credits claimed.

Businesses should keep the following books and records:

- South Dakota sales, use, and contractors' excise tax returns and work papers
- Federal income tax returns for the business
- Summary accounting records and source journals, such as the check register, general ledger, sales journal, general journal, cash receipts journal, and any other records you use to record income and expenses
- Sales invoices
- Purchase invoices (accounts payable, receipts)
- Beginning and ending inventories
- Bills of lading
- Canceled checks
- Contracts
- Depreciation schedules listing all assets acquired or disposed of during the audit period along with purchase or sales invoices for those assets
- Exemption certificates for any sales for resale, sales to exempt entities, or other exemptions claimed
- Prime Contractor exemption certificates
- Supporting documentation for all deductions and exemptions.

Audits and Reviews

Any business, whether licensed or unlicensed, may be selected for an audit or review. Audits and reviews are a routine procedure used to determine if taxes were correctly reported and paid.

Our auditors and agents will do their best to minimize any disruption of your business during the audit or review.

Prior to the audit or review, an auditor or agent will contact you to set up a time to check your books and records. You will need records to allow the auditor or agent to confirm the accuracy of your tax returns.

If, after reviewing your books, an auditor determines that taxes are due, you will be assessed the additional tax and interest. The auditor will discuss both the procedures used and the differences identified. You will have an opportunity to review the results and discuss them with the auditor before any assessment is issued.

In occasional cases where the errors in filing a return were fraudulent, returns were not filed, no taxes were paid, or the law was otherwise broken, criminal charges may be filed in addition to the interest and penalties assessed.

Collections

What happens if you do not file returns due or pay the amount due?

1. Penalties and interest accrue on the unpaid tax until you pay the balance in full.
2. Any tax, penalty or interest due from a taxpayer is a lien in favor of the state on all real or personal property and rights to property belonging to the taxpayer. The Department may file a notice of the tax lien with the Register of Deeds in any county to preserve the State's lien priority against other creditors or entities. The tax lien is against real and personal property. The tax lien may affect your credit rating since most credit reporting agencies obtain this information from the Register of Deeds office.*
3. If you do not respond to notices and your account continues to be delinquent, it will be assigned to a Revenue Agent for collection. The Revenue Agent will attempt to contact you to resolve the delinquency.

What happens if you do not respond or resolve the delinquency?

- The Department may issue an assessment of the estimated tax, penalty or interest, and demand payment from the taxpayer and then file a tax lien.
- The Department may issue a distress warrant directing the sheriff to seize property (bank accounts and personal property) to pay the debt.*
- The Department may refer any amount due to the State's collection agency for collection.*
- The Department may revoke the tax license. A business must have a tax license to operate legally in South Dakota. It is a Class 6 felony to engage in business after the Secretary of Revenue has revoked a tax license.
- The Department may file a criminal complaint. Failing to file and/or pay one return within sixty days of the due date is a Class 1 misdemeanor. Failing to do so twice within a twelve-month period is a Class 6 felony.*

The sentence for a Class 6 felony may be up to two years in prison and/or a $2,000 fine.

***If the business ownership is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership, the Department may take these actions against any of the corporate officers, member-managers or managers of limited liability companies, or partners of partnerships.**

What can you do to avoid becoming delinquent?

- Know your tax responsibilities and plan for them.
- File electronically. Electronic filing reduces errors, saving you time and money.
- Pay careful attention to the due date on your tax return.
- Respond promptly to any Notice of Balance Due or Delinquency Notice sent to you.
- Open and read Department of Revenue correspondence sent to you; it may contain reporting instructions, due dates, changes in laws or tax rates or other important information that may affect your tax responsibilities.
- Set up a separate bank account and regularly deposit collected retail sales tax or other taxes you may owe. Withdraw the funds only when you pay the taxes.
- Promptly notify the Department of Revenue if your address and/or phone number changes.

Taxpayer's Bill of Rights

1. You have the right to confidentiality.
2. You have the right to tax information written in plain language.
3. You have the right of appeal.
4. You have the right to courteous, prompt, and accurate answers to your questions.
5. You have the right to be certain that performance goals or quotas do not influence collection procedures or assessments.
6. You have the right to rely on the written advice given to you by the Department of Revenue.
7. You have the right to be notified before the Department audits your records unless the Secretary of Revenue determines that a delay will jeopardize the collection of tax.
8. You have the right to clear and consistent policy regarding the deadlines for filing tax returns and making payments.
9. You have the right to seek a refund of any taxes you believe that you have overpaid within the last three years.
10. You have the right to a process requiring a person no lower in authority than the division director approve the seizure of your property for taxes.
11. You have the right to expect that a good-faith effort to comply with tax laws will be given consideration in disputed cases.
12. You have the right to a tax credit of interest or penalties that are determined to have been inappropriately levied.
13. You have the right to the removal of a lien on your property within 30 days after you have paid all tax, penalty and interest due.
14. You have the right to have the South Dakota Department of Revenue correct the public record.

CONTRACTORS' EXCISE TAX RETURN

Reporting Period
Return
Return Due

☐ CHECK FOR CHANGE OF ADDRESS BELOW

_____

License #

☐ Check if out of business
Last day of business: _____

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

RV-011 12/05

RV-068
Revised
04/04

Prime Contractors' Exemption Certificate

South Dakota Department of Revenue & Regulation

445 E. Capitol Avenue | Pierre, SD 57501-3185 | 1-800-TAX-9188 | E-mail: bustax@state.sd.us

Instructions

- An exemption certificate may not be issued by an owner of a project or a government entity. Improper issuance of this certificate by anyone that is not a prime contractor will incur a penalty of 10% of the tax due.
- A prime contractor may not issue a prime contractors' exemption certificate for a qualified utility (QU) project. On a QU project, the prime contractor and all subcontractors owe the 2% contractors' excise tax on their gross receipts.
- An exemption certificate may not be given for a sales taxable service. Prime contractors **must pay sales tax** to the service provider on sales taxable services. Examples of sales taxable services are: engineering, architecture, surveying, gravel crushing, snow removal, drapery installation, roto-rooting, locksmith, construction management, cleaning & calibration, and installation of flooring. The installation of tile, terrazzo & marble is subject to contractors' excise tax.

RETENTION OF THIS CERTIFICATE RELIEVES THE SUBCONTRACTOR FROM LIABILITY FOR CONTRACTORS' EXCISE TAX FOR THE PROJECT LISTED.

PRIME CONTRACTOR NAME	EXCISE TAX LICENSE NUMBER
STREET ADDRESS	CITY / STATE / ZIP CODE
SUBCONTRACTOR NAME	EXCISE TAX LICENSE NUMBER
STREET ADDRESS	CITY / STATE / ZIP CODE
PROJECT DESCRIPTION AND LOCATION	
PRIME CONTRACTOR'S SIGNATURE	**DATE**

South Dakota
Department of
Revenue
445 EAST CAPITOL AVENUE
PIERRE, SD 57501-3185