South Dakota
Department of Revenue
445 East Capitol Avenue
Pierre, South Dakota 57501

Lease and Rental

April 2013

This Tax Fact Sheet is designed to explain to the lease and rental business how sales and use tax applies to items and services they sell or lease. If your specific question is not answered in this Tax Fact Sheet, please call our toll-free helpline at 1-800-829-9188 weekdays from 8-5 CT.

Information found in this document rescinds and replaces all previous, written information on this subject. All readers and users of this publication are responsible for keeping informed about changes in tax laws and regulations by reading the Department of Revenue newsletters, press releases, Tax Facts, and other documents published by the department.

Taxes and Rates that may apply to a retail business.

State Sales and Use Tax..... 4%
Tourism Tax.....1.5%
Municipal Sales and Use Tax ..... 1 to 2%
Municipal Gross Receipts Tax 1%
Motor Vehicle Gross Receipts or Leasing Tax ..... 4 ½%
Wireless Gross Receipts Tax 4%

Lease and Rental Services

Gross receipts from the lease or rental of tangible personal property are subject to the state sales tax, plus applicable municipal sales tax. Sales tax also applies to any buy-out payments at the end of a lease.

The lease or rental of farm machinery, attachment units and irrigation equipment used exclusively for agricultural purposes is subject to state tax, no municipal tax.

Lease or rental means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. Lease or rental does not include:

- A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
- A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or
- Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. An operator shall do more than maintain, inspect, or set-up the tangible personal property.

Contracts that contain purchase options that do not exceed the greater of one hundred dollars or one percent of the total required payments are considered sales of tangible personal property. Any sale made under a contract where payment of the principal sum is extended for more than 60 days from the date of sale, only the portion of the sale amount that has actually been received by the retailer during each reporting period is subject to sales tax.

A lease or rental that requires recurring periodic payments is subject to sales tax as follows:

1. The first periodic payment is subject to state and municipal sales tax where the lessee receives the product.

2. If the product is moved to a new location and the lessor has been notified of the new location, sales tax will apply to subsequent payments based on the new location. If lessor does not receive notice of a change of location sales tax will continue to apply based on where the lessee received the product.

The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

Examples

1. Able Leasing leases a backhoe to Ace Construction. Able delivers the equipment to Ace in Sioux Falls on January 15. Two months later Ace moves to Aberdeen. On March 10 Ace informs Able Leasing that the backhoe is in Aberdeen. Able Leasing owes the state and Sioux Falls sales tax on the lease payment for January and February. Able also owes the state and Aberdeen sales tax on the lease payment for March.

2. Able Leasing leases a backhoe for six months to Ridge Construction to use at a construction site in South Dakota. Ridge Construction picks the backhoe up at Able Leasing's location in Minnesota and takes the backhoe to their jobsite in South Dakota. Because the lessee receives the equipment in Minnesota, the first payment is subject to Minnesota sales tax. Because the equipment is located in SD and Able Leasing has this information, the remaining lease payments are subject to South Dakota sales tax.

3. Comp Leasing leases a computer to John Smith for six months for $200 a month. The contract states that John Smith may purchase the computer for $100.00 at the end of the lease. Because the buyout option is less than 1% of the total required payments of $1,200, this is a sale of tangible personal property, not a lease. The sales tax applies based on where John Smith receives the computer. Sales tax may be paid on the payments as they are received, because the payments are extended over a period greater than 60 days.

4. Comp Leasing leases a computer to a print shop for six months for $500 a month, with a buyout option of $1,500 at the end of the lease. Because the buyout option is greater than 1% of the total required payments of $3,000, this is a lease. Each payment is subject to state and municipal tax. If the buyout option is taken, state and municipal tax applies to the $1,500 also.

Lease of Equipment with Operator

If an operator is provided to operate the equipment being furnished, the contract is for a service and does not meet the definition of a lease. The type of service provided in this contract determines the tax application. Construction services as defined in Division C of the 1987 Standard Industrial Classification manual are subject to contractors' excise tax. All other services are subject to sales tax, unless they are specifically exempt.

As a service provider, sales or use tax is due on all material or equipment used in providing the service.

Examples

1. A car leased with a driver is performing a transportation service subject to the 4% state sales tax. No municipal tax applies to transportation services until January 1, 2006, when transportation that begins and ends within the same municipality will be subject to that municipal tax.

2. A backhoe leased with an operator to dig a trench is performing construction service subject to the 2% contractors' excise tax.

Purchases Exempt from Sales Tax

A business that buys property to lease to others may purchase that property exempt from sales tax. The business purchasing the property must provide the seller with a complete exemption certificate at the time of purchase. A business that leases property with the intent of subleasing the same property must provide an exemption certificate to the business from whom the property is originally leased.

The business that is subleasing the property is responsible for remitting sales tax on the lease payments. State law requires exemption certificates to be complete and accurate. The buyer will be held responsible for properly completing an exemption certificate.

Exemption certificates may be obtained from the department's website, http://dor.sd.gov, or by calling 1-800-829-9188.

Sales for Resale

A lease and rental business may sell 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. The seller is responsible for maintaining a complete exemption certificate. For more information on sales for resale, view the Exemption Certificate Tax Fact on our website at http://dor.sd.gov or request a copy by calling the department at 1-800-829-9188.

Repair and Replacement Parts

A lease or rental business owes sales or use tax on all replacement parts, repair parts or maintenance items installed in its rental inventory.

Repair and parts for farm machinery, attachment units and irrigation equipment used primarily for agricultural purposes are exempt from sales or use tax.

Lease of Real Property

The lease or rental of real property is exempt from sales tax. However, leased or rented tangible personal property installed into real property may be subject to contractors' excise tax. Contractors' excise tax applies to lease payments when the contractor that installs the property is also receiving lease payments on the property. Examples of leased or rented tangible personal property that become real property subject to contractors' excise tax include burglar alarms, irrigation systems, restaurant equipment, security systems and signs.

Example

A leasing company installs and leases a burglar alarm system. The lessor will owe use tax on the cost of the materials and contractors' excise tax on each lease payment.

A contractor sells and installs the property for a leasing company. The contractor is liable for use tax on the material and contractors' excise tax on their receipts. The leasing company will not owe sales or contractors' excise tax on the lease payments, because the tax has been paid by the contractor.

Warehousing and Storage

Warehousing and storage, with services, is subject to the state sales tax plus applicable municipal sales tax where the storage or warehouse is located.

Examples of services that may be provided with storage and warehousing are inventory, insurance, handling, packing or repacking, security guards, climate or temperature controls, and inventory retrieval.

Cold or refrigerated storage or warehousing including food lockers, frozen food lockers, cold or refrigerated warehousing.

Airport hangar rental including aircraft storage at airports.

Deposits for taxable services, such as a security deposit, are subject to sales tax. The sales tax on deposits may be refunded to the customer when the deposit is refunded.

Exceptions:

Storage provided as part of a moving service is not subject to sales tax.

Storage or warehouse space leased for office use is not subject to sales tax. If office space is leased along with taxable mini-storage

or warehousing, the charge for the office space must be separately stated. If not separately stated, the entire charge is subject to sales tax.

For further information review Tax Facts Storage available online at http://dor.sd.gov or by calling 1-800-829-9188.

Sale/Leaseback

Lease or rental payments from a sale and leaseback contract are subject to sales tax. Tangible personal property purchased with the intent of entering into a sale and leaseback contract is exempt from sales tax. A complete resale certificate must be provided by the purchaser and retained by the seller.

Example

Company B buys a bulldozer from Company A. Company B sells it to Company C. Company B then leases the bulldozer from Company C.

- The first transaction is exempt from sales tax if Company B gives a valid exemption certificate to Company A.
- The second transaction is exempt from sales tax if Company C gives a valid exemption certificate to Company B and signs a contract showing the sale/leaseback intent.
- Company C is responsible for sales tax on the gross receipts from the leaseback to Company B.

Recreational Equipment

Tourism tax applies to rentals of recreation equipment when rented for 28 or fewer days. The tourism tax is in addition to any state and municipal sales tax that applies to the rental.

Recreational Equipment includes:

- All-Terrain Vehicles
- Beach Chairs
- Bicycles
- Bumper Boats
- Bumper Cars
- Campers
- Firearms
- Fishing Equipment
- Floatation Devices
- Go-Carts
- Golf Clubs
- Hunting Dogs
- Hunting Equipment
- Mopeds
- Motor Coaches
- Motorcycles
- Recreational Gold Mining Equipment
- Recreational Vehicles
- Recreational Water Equipment
- Rock Climbing Gear
- Rollerblades
- Saddle Horses
- Skis
- Snowboards
- Snowmobiles
- Snowmobile trailers
- Snowshoes
- Watercraft
- Watercraft Trailers

Motor Vehicle Lease & Rental

For more information on application sales tax, tourism tax, motor vehicle gross receipts tax, and the 3% motor vehicle excise tax on motor vehicles that are leased or rented please review the Motor Vehicle Sales and Repair Tax facts online at http://dor.sd.gov or by calling 1-800-829-9188.

Exemptions to Sales Tax on Lease/ Rentals

The following transactions are exempt from sales and use tax:

- Lease or rental of tangible personal property between telephone companies
- Lease or rental of mobile homes
- Lease or rental of real property
- Lease or rental of registered motor vehicles for more than 28 consecutive days
- Lease or rental of motel, hotel, campground site or other accommodations for more than 28 consecutive days
- Leases or rentals to exempt entities (Proper documentation must be on file to support this exemption.)

Use Tax

Supplies, materials, or services purchased without an exemption certificate are subject to use tax, if appropriate sales tax was not paid at the time of purchase. The state use tax, plus applicable municipal use tax, is payable to the department in the filing period in which the lease and rental business receives the supplies or services.

Tangible personal property **delivered into South Dakota** by the supplier or transportation company hired by the customer is subject to the South Dakota sales or use tax, even if the supplier charges another state's sales tax. When a purchase is made out of state and possession is taken out of state the supplier may charge you that state's sales tax. If the rate of the other state's sales tax is the same or more than South Dakota's tax rate, you do not owe any South Dakota use tax. If it is less than South Dakota's, you pay the difference in use tax. Add the state and any applicable city rates together to determine if you owe additional use tax.

Use tax is also due on supplies taken out of retail inventory for the business' use. Use tax is due on these items in the filing period they are taken out of inventory. Additional use tax is due on the lease or rental payment if the item is used at a location that imposes a higher use tax rate than is being charged by the lessor. Please contact the department at 1-800-829-9188 for help in determining the use tax due.

Credit for tax paid in another state

When leased equipment is delivered to a customer in a state that imposes sales tax on all future payments of the lease, South Dakota will allow credit for the sales tax paid up to the amount of use tax due.

Municipal Tax

Many municipalities in South Dakota have a sales and use tax in addition to the state sales tax. If the customer receives a product or service in one of these municipalities, the product or service is subject to that municipality's sales tax. A list of municipal tax rates is available on our website at http://dor.sd.gov or by calling 1-800-829-9188.

Exempt Entities

Accredited schools, non-profit hospitals, approved relief agencies and government entities are exempt from sales and use tax.

Lease and rental businesses are required to keep proof of payment from the exempt purchaser. Accredited schools and relief agencies have numbers assigned by the department that should be provided to the lease and rental business.

Required Records

Lease and rental businesses must have a South Dakota sales tax license for each place of business within the state. Records, such as purchase and sales invoices, bills of lading, 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

For more information please visit us on the web at http://dor.sd.gov or call our toll-free tax helpline at 1-800-829-9188.

South Dakota
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Business Tax Division
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Example

A contractor rents a backhoe from a supplier. The supplier delivers the backhoe to the contractors' location outside Sioux Falls. The supplier charges 4% state sales tax because the delivery is outside municipal limits. The contractor uses the backhoe at a jobsite in Sioux Falls, which imposes a 2% municipal tax. Because the total use tax rate in Sioux Falls is 6%, the contractor owes an additional 2% municipal tax on the lease payment for the month the equipment is used in Sioux Falls.