



**Division of Motor Vehicles
Highway Contractor Fuel Tax Manual
2016**

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South Dakota's Fuel Tax System

South Dakota's 8,000 mile network of roads and highways, waterways, snowmobile trails, airport facilities and runways are essential to the state's economy and its citizens' quality of life. Through the taxation of motor fuels, the costs associated with creating and maintaining this transportation infrastructure are distributed proportionately to the individuals and businesses that use this transportation system.

Tax Rates

The chart below shows the South Dakota tax rate charged for the following types of fuel:

FUEL TYPE	TAX RATE
Gasoline	\$0.28per gallon
100% Ethyl Alcohol & 100% Methyl Alcohol	\$0.14 per gallon
Clear (Undyed) Diesel Fuel	\$0.28 per gallon (Including K1 & K2 Kerosene)
Clear (Undyed) Biodiesel Fuel	\$0.28 per gallon
Liquid Petroleum Gas (LPG)	\$0.20 per gallon

***In addition to the above taxes, there is a \$0.02 per gallon Tank Inspection Fee.**

***As of June 1st 2016, the South Dakota Sales Tax rate has changed to 4.5 percent.**

Taxpayer Bill of Rights

The Taxpayer' Bill of Rights has formalized the fundamental principles that have guided the South Dakota Department of Revenue since 1986.

- 1. You have the right to confidentiality.**
- 2. You have the right to tax information that is written in plain English.**
- 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 collection procedures or assessments are not influenced by performance goals or quotas.**
- 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 deadline for filing tax returns and making payments.**
- 9. You have the right to seek a refund of any taxes you believe you have overpaid within the last three years.**
- 10. You have the right to a process requiring that the seizure of your property for taxes be approved by a person no lower in authority than the division director.**
- 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.**

Definitions

The following definitions are intended to help identify some of the terms commonly used by industry and the South Dakota Department of Revenue when referring to the Highway Contractor profession:

- A Highway Contractor is defined as, “any person engaged in the activity of highway construction work in this state. The term includes any person paid by public funds who performs seeding, re-seeding, fencing or other maintenance or construction work within the right-of-way. The term does not include any person who only owns and operates motor vehicles within the right-of-way hauling gravel or concrete and does not own or operate off-road machinery in the highway construction work.”
- Public Roads & Highways are defined as, “any way or place of whatever nature, including waterways and snowmobile trails, which are open to the use of the public as a matter of right for the purpose of vehicular, snowmobile or watercraft travel, even if the way or place is temporarily closed for the purpose of construction, reconstruction, maintenance or repair.”
- The Road Right-of-Way is defined as, “a strip of land over which a public road is built. The boundaries for public highways and township roads are from fence post to fence post, while city streets are from curb to curb. Storm sewers, ditches and gutters are included within the road right-of-way.”
- Highway Construction Work is defined as, “all work which is performed in any capacity to propel vehicles, machinery, or equipment within the right-of-way in the construction, reconstruction, repair or maintenance of public roads & highways.” Maintenance includes, but is not limited to road grading and snow removal.

The Highway Contractor License

The effectiveness of the fuel tax system in South Dakota depends on license holders at every level within the fuel distribution system. Each license grants certain privileges and carries specific responsibilities. An individual or business may hold one or several licenses, depending upon the kind of business transacted.

Any person engaged in highway construction work in this state is required to become licensed as a Highway Contractor before performing this work. In order to be awarded a public highway or street contract from the State of South Dakota, or from any county, township or municipality within the state, a bidder must be licensed as a Highway Contractor. The state, counties, townships and municipalities have access to the Department’s Highway Contractor Verification System and will check on-line to verify that a company is properly licensed and not delinquent in filing tax returns or paying taxes prior to awarding a bid or making the final payment on a highway contract.

A Highway Contractor, who has been issued a Highway Contractor’s fuel tax license, may also operate as a licensed Liquid Petroleum Gas User without obtaining a separate license.

How and Where to Apply for a License

There are different ways to obtain a motor fuel Highway Contractor's tax license. You may complete an on line application at

<https://apps.sd.gov/applications/rv23cedar/main/main.aspx>. Or you can log onto the web at www.state.sd.us/drr2/motorvehicle/motorfuel/highway_contractor1.htm and click on Motor Fuel Tax License Application. You may also visit our Pierre, Rapid City, or Sioux Falls office. If you are completing a paper application form, return it to the Division of Motor Vehicles in Pierre. You will receive your license(s) approximately 10 working days after the receipt of your application. No fees are charged for fuel tax licenses and there are no bonding requirements (except for individuals who are delinquent in reporting and remitting fuel tax, and to reinstate a revoked license). Once a license card is received, it should be prominently displayed at the place of business, for which it was issued, within the public's view.

Other Licenses

Some other license types that might relate to you as a Highway Contractor are as follows:

- An Importer's License - is required if you purchase and bring fuel into South Dakota by truck or railcar.
- An Exporter's License - is required if you export or remove fuel from South Dakota by truck or railcar.
- A Transporter's License - is required if you transport fuel in or out of South Dakota in quantities greater than 4,200 gallons.
- A Contractor's Excise Tax License - is required if you are entering into a contract for construction services which may be listed in Division C of the Standard Industrial Classification Manual of 1987. You can find the manual online at http://www.osha.gov/pls/imis/sic_manual.html. To obtain this license, please contact the Business Tax Division toll free at 1-800-TAX-9188 or fill out a license application online at http://www.state.sd.us/_drr.

NOTE: If importing, exporting and transporting activities are a required part of a Highway Contractor's work, the contractor need only file a Highway Contractor's tax return. If these activities are not directly related to contracting work, a contractor must file separate returns for each activity.

Refusals to Issue or Reinstate a License

The Secretary of Revenue may refuse to issue or reinstate a license for any of the following reasons:

- The application is filed by a person whose license has been cancelled for cause by the Secretary.
- The applicant has made false or misleading statements on the application.
- The application is filed by a person as a subterfuge for another person whose license has been cancelled for cause by the Secretary.
- At the time of application for license reinstatement, the person is found to have been delinquent in the filing of tax returns or the payment of taxes two or more times during the preceding license year.

- The applicant was convicted of a crime involving fuel tax or owes fuel tax, penalty or interest to South Dakota or another state.

If your license application is refused, you may request an administrative hearing before the Secretary to review the application. Your request must be submitted within 15 days of the date of notification of refusal.

License Revocations

If you fail to file a report or remit a tax payment when due, the Secretary of Revenue may immediately schedule a license revocation hearing. If your license is revoked, you may not engage in any business activity authorized by the license. Written notice of the revocation will be given to you and all other current license holders.

Cancelling Your License

In order to properly cancel your license, a written request must be submitted indicating the reason and the requested date of cancellation. Before your license is cancelled, all returns and taxes must be filed and paid up to the date of cancellation. Your Highway Contractor License card must be returned with your cancellation request.

Changes in Ownership or Address

If your business ownership changes, for instance; from a sole proprietor to a corporation or there are changes in corporate officers, you must contact the Department. A new license will be issued in certain situations.

If your mailing address or business location changes, please notify the Department in writing immediately.

Taxation & Fuel Usage

Fuel is only subject to either sales/use tax or fuel excise tax in South Dakota. The tax that applies is based on how and where the fuel is consumed.

Dyed Fuel

Under the dyed fuel program, diesel & biodiesel fuel that is used for off-road purposes will have dye added to it at the refinery or at the fuel terminal. Fuel Marketers (retail stations, convenience stores or bulk fuel distributors) must charge sales tax to Highway Contractors when the contractor purchases dyed fuel.

- Dyed fuel used for **off-road** construction (for example, in the pit area or on private property), is subject to sales tax;
- Dyed fuel used in **stationary equipment** within the road right-of-way during road construction, repair or maintenance is subject to sales tax; and
- Dyed fuel that is **used within the road right-of-way** in self-propelled movable machinery and equipment is subject to South Dakota's fuel excise tax.

It is important that the Highway Contractor examine fuel purchase invoices to ensure the sales tax was charged. If no sales tax has been charged, the Highway Contractor needs to pay the appropriated sales tax when sending in their quarterly Highway Contractor's Tax Return or report the sales tax on line 6 of the Contractor's Excise Tax Return. If sales tax was charged and the fuel is used in a fuel taxable manner, a credit for the state sales tax is taken on the Highway Contractor's Tax Return and the fuel excise tax would be due. The city tax credit must be taken on lines 10 through 21 on the Contractor's Excise Tax Return.

No refund of fuel excise taxes will be paid for undyed (clear) diesel or biodiesel fuel used in movable machinery or equipment. For this reason, contractors are encouraged to use dyed diesel fuel in their equipment or machinery. Also, no refund will be paid for undyed fuel (gasoline, ethanolblend, undyed diesel, undyed biodiesel or any other undyed fuel) used in licensed vehicles, for any reason, in highway construction.

Penalties for Illegal Use of Dyed Fuel

Penalties apply to anyone who uses dyed diesel or dyed biodiesel in a licensed motor vehicle operating on South Dakota roads and highways. Authorized personnel of the Department of Revenue, the Internal Revenue Service, and the Highway Patrol may withdraw fuel from licensed motor vehicles, machinery, equipment and storage facilities in sufficient quantities to test for compliance with the law. **Any person who refuses to allow an inspection of equipment or fuel as authorized by SDCL 10-47B-189 is guilty of a Class 2 misdemeanor.**

Penalties differ for qualified and unqualified licensed vehicles. A qualified vehicle is used, designed, or maintained for transportation of persons or property, and:

- Has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 lbs.; or
- Has three or more axles regardless of weight; or
- Is used in combination when the weight of such combination exceeds 26,000 lbs.

Persons using dyed diesel or dyed biodiesel in a qualified vehicle, such as a semi-truck and similar large truck, are subject to the following penalties:

- \$500 for the first violation
- \$1,000 for each subsequent violation

Persons using dyed diesel or dyed biodiesel in vehicles other than qualified vehicles, such as cars or pickup trucks, are subject to these penalties:

- \$250 for the first violation
- \$500 for each subsequent violation

The first violation of the dyed-fuel law is a Class 2 misdemeanor; any subsequent violation is a Class 6 felony.

The information in this section also applies to any other type of fuel that has had dyed added to it such as kerosene and biodiesel.

Undyed Fuel

When you purchase undyed fuel from a retail fuel station, convenience store or bulk fuel distributor in South Dakota, they will charge you the fuel excise tax. Undyed fuel purchased outside of South Dakota and imported into the state is subject to fuel excise tax. This tax must be remitted with the Highway Contractor's Tax Return.

Highway Contractors may only use undyed fuel in licensed vehicles, regardless of how or where the fuel is to be used. Undyed fuel is gasoline, 100% ethyl alcohol, clear diesel & clear biodiesel, and liquid propane gas (LPG).

- Undyed diesel or biodiesel fuel consumed in stationary equipment **within** the road right-of-way or in other equipment **outside** of the road right-of-way is not subject to a refund of fuel excise taxes. For this reason, a Highway Contractor should use **dyed** diesel or biodiesel fuel for these purposes;
- Gasoline, ethanol blend, and LPG that is consumed in licensed vehicles, machinery or movable equipment **within** the road right-of-way is subject to the fuel excise tax.
- No refund or credit of fuel excise taxes will be allowed for gasoline, ethanol blend, undyed diesel, undyed biodiesel or any other undyed fuel that is used **outside** of the road right-of-way, in license vehicles, for highway construction purposes.

Refund for Accidental Mixing of Undyed Fuel with Dyed Fuel

A refund may be claimed for fuel excise taxes paid when undyed fuel is accidentally mixed with dyed fuel when the following conditions are met:

- The amount of undyed fuel accidentally mixed with dyed fuel equals 500 gallons or more;
- The claimant notifies the Department of the accidental mixing within five days of the incident through an Affidavit of Accidental Mixing of Undyed Fuel with Dyed Fuel (see appendix);
- The Department can determine with reasonable certainty the amount of taxed and tax-exempt fuel involved; and
- The mixed fuel is dyed by the Department to legal specifications if deemed necessary by the Secretary.

Instances When Refunds Are Not Available

No refunds of fuel excise taxes will be given in any of the following cases:

- Fuel used in licensed motor vehicles, self-propelled machinery and equipment operated on South Dakota's public highways;
- Fuel used on the highway in any licensed motor vehicles, machinery or equipment engaged in highway construction or maintenance work that is paid for, wholly or in part, by public moneys;
- Undyed diesel & biodiesel fuel that is used in off-road machinery or equipment;
- Fuel used by a motor vehicle while it is idling;
- Undyed diesel & biodiesel fuel that is consumed in licensed vehicles **outside** of the road right-of-way for commercial purposes; and

- Gasoline and ethanol blend that is consumed in licensed vehicles and stationary equipment **within** the road right-of-way or in licensed vehicles and other equipment **outside** of the road right-of-way.

Equipment Used For Multiple Purposes

Only one type of tax (fuel excise or sales/use tax) is due on fuel when it is purchased. How and where the fuel is consumed ultimately determines which type of tax is due.

Examples of How and Where Fuel is Consumed*

The following examples are intended to assist you in determining the type of tax that applies based on how and where the fuel is consumed:

- A scraper may extract dirt from outside the road right-of-way. The scraper could then transport the dirt to a location inside the road right-of-way for distribution. When the scraper is outside of the road right-of-way, the dyed fuel used is subject to sales/use tax. The dyed fuel that is used inside of the road right-of-way is subject to fuel excise tax.
- A bulldozer might be used for ripping out the road surface on one project and then used for pushing a scraper outside of the road right-of-way to extract more dirt for road fill on another project. The dyed fuel used on the first project would be subject to fuel excise tax, while the dyed fuel used for the second project would be subject to sales/use tax. On such occasions, records based on each type of use need to be maintained on the bulldozer.

Project managers and foremen should be able to identify a percentage of time when equipment is used inside the road right-of-way versus outside the road right-of-way. Percentages will vary, depending on how and where the equipment is used. The percentage of usage will be acceptable as long as it can be verified. This information will be necessary when completing the Highway Contractor's Fuel Tax Return.

Examples of Construction Projects*

Questions have arisen over the years on whether certain projects are considered highway construction work. Listed below are some examples of how to classify different construction projects:

- Construction or maintenance of storm sewers, ditches or gutters is considered highway construction work since they direct water and debris away from the road or highway. If a subcontractor is hired for the sole purpose of installing water or sewer mains, the subcontractor's work is not considered highway construction. Utility work performed in ditches would not be highway construction work either because it has nothing to do with maintenance of the actual roadway.
- Boring under the road to install utilities is not considered highway construction work because it does not involve the tearing up of the road.
- Construction of airport runways is not highway construction because while the runway may be open for private aircraft usage, they are not open for general public use.
- The paving of private parking lots and driveways are not considered highway construction because they are not within the road right-of-way.
- Annexation work is not highway construction if it is privately funded. If publicly funded, it is highway construction work.

- Grading and snow removal performed on state, city, county, township and municipal roads are considered highway construction. When this work is billed to a city or township, it is exempt from sales tax, but the dyed diesel or biodiesel fuel used in the equipment is subject to the fuel excise tax. The best way to report these gallons is to identify the average gallons per hour used in the equipment and take the gallons times the number of hours the equipment was used.
- Mowing ditches, seeding and laying sod within the road right-of-way are considered highway work. These activities help maintain and improve the road right-of-way.
- Light pole installation and road painting are also considered highway construction work. They are both considered maintenance of the road right-of-way.
- Installing a culvert through an approach is highway construction work. The culvert helps divert water in the ditches and the approach is located inside the road right-of-way.
- Construction of or maintenance on boat ramps and boat ramp parking is considered highway construction. Boat ramps are comparable to access ramps to a road and considered part of the right-of-way.
- Dredging of rivers and lakes is also considered highway construction. This process clears waterways, which are considered highways for watercraft travel.

**These are just examples and do not cover every situation.*

Record Keeping/Acceptable Records

To ensure that the correct amount of fuel excise tax and sales/use tax is collected on all fuel used on South Dakota road and highway projects, the law requires Highway Contractors to keep detailed records of all fuel purchases and fuel usage, as well as machinery and equipment used on highway construction projects. License holders need to maintain these records to accurately complete tax returns and must present them to Department personnel if they are audited or have their licenses reviewed. Records are to be maintained for a period of at least 30 days at the business or delivery location or at a location approved by the Secretary. **All records must be preserved for the current year and the three preceding calendar years.**

Fuel Purchases and Deliveries

Highway Contractors must keep all bills-of-lading and purchase invoices for fuel received for use in highway construction projects. These records must be kept for both bulk and retail transactions including credit card receipts and statements from unattended automated pump facilities. Contractors need to ensure that their receipts for fuel include the following information:

- The Suppliers' or fuel Marketers' name and address (must be machine printed or rubber stamped on the invoice);
- The license number of the Supplier or fuel Marketer from whom they purchased the fuel;
- The Highway Contractor's name and address;
- The sale and delivery date of the fuel;
- The type of fuel and number of gallons purchased, and in the case of diesel or biodiesel fuel, if it was dyed or undyed;
- Ethanol blend invoices must list gasoline gallons & 100% ethyl alcohol gallons separately;
- The price charged per gallon for the fuel;

- The amount of fuel excise tax or sales tax paid for the fuel. Either the fuel excise tax or sales tax must be listed separately on the purchase invoice or a statement by the Supplier or Marketer must be included in your records that says the price per gallon includes South Dakota fuel tax; and
- The total cost of the fuel.

Sales and Purchase Records

Licensed Highway Contractors must keep all sales and or purchase invoices. A copy of the invoice must be maintained in the records of both the seller and the purchaser. The invoices must be serially numbered and must contain the following information:

- The seller's name and address;
- The seller's supplier's license number issued by the department, if the fuel was sold at the pipeline or the seller's marketer's number if not sold at a pipeline;
- The purchaser's name and address;
- The date of sale and delivery of the fuel;
- The number of gallons of fuel sold and delivered to the purchaser, the type of fuel and if diesel whether it was dyed or not;
- The price charged per gallon of fuel;
- If charged, the amount of fuel tax or sales tax. Fuel tax must either be listed separately or as a statement by the marketer that the price per gallon required by law includes the South Dakota fuel tax; and
- The total amount of the sales invoice

Licensed Highway Contractors must also maintain all fuel shipping documents in their records. These records must be retained at the place of business for at least 30 days. They may then be transferred to an off-site location.

Fuel Consumption and Usage

Highway Contractors are also required to keep records of the following:

- All fuel consumption records to support statements of fuel used in self-propelled motor vehicles, and equipment within the road right-of-way;
- All fuel consumption records to support statements of fuel used in stationary equipment or in self-propelled motor vehicles, machinery and equipment used outside of the road right-of-way; and
- The serial number and year of manufacture for all motor vehicles, machinery and equipment used to complete the project or contract.

Any of the following records may also be used to substantiate fuel usage and time spent on projects:

- Machine hour listings;
- Time Sheets;
- Mileage records;
- Average gallons per hour as furnished by the manufacturer;

The Secretary of Revenue may require other pertinent records and papers necessary for the enforcement of fuel tax laws, including journals, ledgers, bank deposits and statements, and checking account records. The Department of Revenue reserves the right to determine if these records will be considered valid or not. **The Department will not accept a deduction of fuel used while vehicles, equipment, or machinery are idling.**

Licensee and Compliance Reviews

There are two programs designed to both help taxpayers with the proper maintenance of fuel tax records and ensure that the appropriate amount of taxes are being reported and paid. These programs are the Licensee Review and the Compliance Review.

The Licensee Review

The Licensee Review is an educational tool that was developed by the Department to help educate taxpayers on the proper procedures to follow in keeping and maintaining fuel tax records. This review can take anywhere between a half an hour and three working days to complete. This will generally depend on the size of the company being reviewed and the amount of records that are being maintained. No assessments will result from this type of review and the taxpayer is given an opportunity to correct errors, usually by amending tax returns. Penalties and interest are assessed if it is found that additional tax is owed and amended tax returns have to be filed. Recommendations are also given on how to correct any minor errors that are found. Business, company or corporate officer and license information is also updated. If major problems are found during a licensee review, the agent has the option of recommending the business for an audit.

The Compliance Review

The Compliance Review is a tool that is used in place of an audit to correct known problems that have been discovered with a business. This type of review can take between 1 working day and a working week to complete. During the review, records are inspected in order to determine if the problem is a valid one. Again, problems can be corrected by amending tax returns but the general solution to these types of problems is to schedule the company for an audit.

Audits

The Department of Revenue routinely audits taxpayers required to pay fuel taxes. The purpose of an audit is to verify the accuracy of reported fuel purchases, usage, deductions, credits and refunds.

Notice of Intent to Audit

The audit process begins when the Department mails a “Notice of Intent to Audit” to the taxpayer. Taxpayers are normally notified at least 30 days prior to the audit date (unless the Department Secretary determines that a delay would jeopardize the collection of tax).

At the opening conference the taxpayer must supply all records of fuel purchases and sales, including tax-unpaid sales of special fuel and sales on which sales tax was charged; all distribution records; and all fuel inventory records.

Within 60 days after the beginning of the audit, the taxpayer must provide the auditor with all records supporting deductions and exemptions. If the taxpayer fails to present documentation to the auditor within the 60-day period, the auditor may disallow the claimed exemption or deduction, resulting in an assessment of additional taxes and interest. If the taxpayer’s records are not complete enough to show the true liability, the auditor may estimate the taxable receipts.

Certificate of Assessment

After all records have been analyzed, the auditor will explain their findings to the taxpayer. The taxpayer will have an opportunity to comment on those findings. The auditor will then finalize the findings and mail the taxpayer a “Certificate of Assessment”. The certificate identifies the tax and interest due, if any, and the South Dakota law that applies to the assessment. The taxpayer has 60 days from the date of the certificate to take the following action:

1. Pay the assessment, including accrued interest, or
2. Request a hearing (in writing) before the Secretary of Revenue.

Appealing an Audit Assessment

A request for hearing is the taxpayer’s only way of contesting an audit assessment. If a taxpayer decides to appeal the assessment, he or she must submit a “Request for Hearing” within the 60-day time limitation. The request, submitted in letter form, must specifically identify the issues being contested. If it does not, the administrative hearing could be denied. The request for hearing must state:

1. The portion of the assessment being contested, and
2. The mistake of fact or error of law the taxpayer believes resulted in an invalid assessment.

Once a proper request for hearing has been filed, the matter becomes a contested case and falls within the scope of the Administrative Procedures Act (SDCL 1-26). The South Dakota Office of Hearing Examiners schedules the matter for hearing and serves the taxpayer with a “Notice of Hearing.”

Notice of Hearing

The notice of hearing informs the taxpayer of the time and place of hearing, the name and address of the hearing examiner, and sets forth the issues to be considered. The notice of hearing must be served on the taxpayer at least 10 days prior to the hearing to allow time for “discovery proceedings,” which may include a pre-hearing conference involving the Department’s attorney, the taxpayer and his or her representative, and the Hearing Examiner.

The Administrative Hearing

The administrative hearing is conducted according to the provisions of the Administrative Procedures Act (SDCL 1-26) and the rules set forth by the Office of Hearing Examiners. The taxpayer may be represented by an attorney. Essentially, the taxpayer is a plaintiff in a civil matter. Consequently, he or she must prove that the assessment is invalid because it is based on a mistake of fact or error of law. In most cases, the administrative hearing is the taxpayer’s only opportunity to present testimony and evidence.

At the conclusion of the hearing, the hearing examiner may request briefs on the legal issues. Following the submission of briefs, the hearing examiner prepares proposed findings of fact and conclusions of law for the Secretary of Revenue to consider.

Findings of Fact, Conclusions of Law, and Order

The Secretary may adopt the proposals of the hearing examiner or, after reviewing the record, may submit their own findings, conclusions and decision. Copies of the findings of fact, the conclusions of law and the order are sent to the taxpayer.

If the taxpayer is ordered to pay additional fees and/or tax and desires to appeal the decision to the circuit court, they must:

1. Pay the amounts ordered to be paid, or
2. File a bond with the Department to insure payment.

The South Dakota Supreme Court has ruled that if payment is not made, or a bond posted, the circuit court cannot hear an appeal.

Notice of Appeal

After the taxpayer has paid the fees and/or tax or filed a bond, the appeal to the circuit court is governed by the Administrative Procedures Act. The taxpayer must serve their notice of appeal upon the Department of Revenue and file it, along with proof of service, with the clerk of courts of the appropriate county. This notice of appeal must be filed within 30 days of the date the Secretary of Revenue serves the taxpayer notice of their decision.

When the court hears the appeal, it will base its review of the Department Secretary's decision upon the administrative record. With regard to the questions of fact, the Secretary's findings will be upheld unless "clearly erroneous." Questions of law are fully reviewable by the court.

The decision of the circuit court may be appealed to The South Dakota Supreme Court. The Supreme Court will review the Secretary's decision on the record, under the same standards of review employed by the Circuit Court.

Collections

If a taxpayer fails to pay taxes, penalties, and interest, the Department of Revenue may begin a civil suit against the taxpayer for recovery of the debt. If successful, the Department becomes a judgment creditor and can use the normal collection procedures open to such a creditor.

Notice of Jeopardy Assessment

In some cases, the Department may bypass the formal audit procedure in determining if taxes are due. If the Secretary of Revenue finds that the assessment or collection of any tax is jeopardized by delay, they may immediately make an assessment of the estimated tax, penalty or interest and demand payment from the taxpayer. Thus, when confronted with an uncooperative taxpayer who fails to file required returns or report taxable transactions, the Secretary may estimate the amounts due based upon available records or sources and issue the "Notice of Jeopardy Assessment."

If a taxpayer fails to pay the amounts noted in the jeopardy assessment and is a resident of South Dakota, the Department will file appropriate liens and request the issuance of distress warrants.

Notice of Tax Lien

Any tax, penalty or interest due from a taxpayer results in an automatic lien on their real or personal property. To preserve the state's lien priority against other creditors, the Department files a "Notice of Tax Lien" with the Register of Deeds of the county in which the taxpayer's property is located.

Distress Warrant

If the taxpayer still fails to make payment, the Department requests the County Treasurer to issue a distress warrant to the County Sheriff. The distress warrant directs the Sheriff to proceed to collect the delinquent taxes by seizing and selling the taxpayer's property.

License Revocations

If the holder of a Highway Contractor's license fails to file a report or remit a tax payment when due, the Secretary of Revenue may immediately schedule a license revocation hearing. If your license is revoked, you may not engage in any business activity authorized by the license. Written notice of the revocation will be given to you and all other current license holders.

A Hearing Examiner conducts the revocation hearing. The Department presents evidence to prove the failure to file or pay taxes. The taxpayer then submits their evidence or testimony to show compliance with the tax statutes. Following the hearing, the Hearing Examiner prepares minutes and a decision for the Secretary of Revenue to consider. The Secretary will then issue their order, which may include an assessment of additional taxes, penalty and interest.

The Department and the taxpayer have the right of judicial review of the Secretary's order. The procedure for judicial review is essentially the same as that described in the previous section on audit appeals.

Declaratory Rulings

If a taxpayer believes that an error has been made in determining their liability, they may ask the Secretary of Revenue to render a formal opinion regarding the application or interpretation of a tax statute. This opinion is called a declaratory ruling and is made according to specific rules and procedures set forth in SDCL 1-26-15.

A taxpayer who wants a declaratory ruling from the Department Secretary must submit a verified petition. The petition must present the specific question on which they are requesting a ruling and the factual basis for the question. Typically, the petition will include a request for a refund of taxes. If the Secretary determines that additional facts or information are needed, they may call for a hearing on the petition. The Secretary must notify the taxpayer of the hearing at least ten days prior to the hearing date.

The Secretary may decline to render a decision if it is determined that a ruling will not settle the controversy. If a ruling is made, the Secretary will include findings of fact and conclusions of law.

The Secretary's ruling is subject to appeal to the courts. The appeal is the same as an appeal of any other agency decision in a contested case.

Highway Contractor Tax Return

A tax return MUST be filed even if no activity has occurred during the reporting period!

All fuel excise tax due from a Highway Contractor must be paid to the Department of Revenue on a quarterly basis by filing a Highway Contractor's Tax Return. The tax is due on the last day of the month following the end of the quarter. If the due date falls on a Saturday, Sunday, legal holiday or on a day that the Federal Reserve Bank is closed, the tax is due on the next day that is not a Saturday, Sunday, legal holiday or day that the Federal Reserve Bank is closed.

The return periods and due dates are as listed below:

<u>Tax Period</u>	<u>Tax Return & Payment Due Date</u>
January - March	April 30 th
April - June	July 31 st
July - September	October 31 st
October - December	January 31 st

Highway Contractor Tax Return Instructions

When completing the Highway Contractor's Tax Return, please start on Line 1 on the back of the return.

Fuel Usage - Lines 1 - 3

This section is used to report where the fuel was consumed.

- Line 1 - Enter total gallons of fuel used within the road right-of-way in Movable Equipment and Licensed Vehicles (Subject to Fuel Excise Tax).
- Line 2 - Enter total gallons of fuel used in Stationary Equipment and in off-road Machinery and Equipment (Subject to Sales Tax).
- Line 3 - Enter the total of Lines 1 & 2.

Fuel Inventory Reconciliation - Lines 4 - 12

This section is used to report any fuel purchases or consumption as well as fuel remaining in inventory at the end of the reporting period. Any fuel that was imported and/or exported during the reporting period is also recorded here.

- Line 4 - Enter the total amount of fuel in your inventory at the beginning of the reporting period (This total should match the total fuel in your inventory at the end of the prior reporting period).
- Line 5 - Enter the total amount of **bulk** fuel brought into South Dakota (imported), during the reporting period, on which South Dakota Fuel Excise Tax **has** been paid (Attach Uniform Schedule of Receipts - Type 1a).
- Line 6 - Enter the total amount of **bulk** fuel brought into South Dakota (imported), during the reporting period, on which South Dakota Fuel Excise Tax **has not** been paid (Attach Uniform Schedule of Receipts - Type 2a).
- Line 7 - Enter the total gallons of fuel purchased in South Dakota during the reporting period.
- Line 8 - Enter the subtotal of fuel in your inventory (Add lines 4, 5, 6 & 7).
- Line 9 - Enter the total gallons of fuel used during this reporting period (record amount from line 3 here).
- Line 10 - Enter the total amount of **bulk** fuel taken out of South Dakota (exported) during this reporting period (Attach Uniform Schedule of Disbursements - Type 7)
- Line 11 - Enter the total amount of gallons used and exported during this reporting period (Add lines 9 & 10).
- Line 12 - Enter total amount of fuel remaining in your inventory at the end of the reporting period (Ending Inventory) - (Subtract line 11 from line 8).

Tax Computations - Lines 13 - 19

This section is used to calculate fuel excise tax liability and/or fuel excise tax credit. Dyed diesel fuel and LPG that has been used within the road right-of-way and is subject to the fuel excise tax will be computed in this section. Any sales tax paid on this fuel will be credited on the Sales Tax Worksheet portion of the return (Lines 29 - 37).

- Line 13 - Enter the total gallons reported on line 1, columns A, C and F (These gallons are subject to Fuel Excise Tax upon use).
- Line 14 - Enter the total gallons reported on line 6, columns B, D, E and G (These gallons are subject to tax upon import).
- Line 15 - Enter the total gallons reported on line 10 (bulk gallons that were exported).
- Line 16 - Enter the subtotal of gallons that are subject to tax (Add lines 13 and 14 and subtract line 15).

- Line 17 - South Dakota Tax Rates.
- Line 18 - Enter the Fuel Excise Tax that is due per type of fuel (Debit or [Credit]) - Multiply the amounts on line 16 by the Tax Rates on line 17.
- Line 19 - Enter the total Fuel Excise Tax that is due (Add columns A - G, line 18).

Sales Tax Worksheet - Lines 27 - 33 (Front of the Return, Bottom Section)

This section is used to calculate any sales tax liability and/or credit due. Before completing this section, you will need to calculate your average fuel cost per gallon for each type of fuel that you are reporting.

If sales tax was paid on dyed fuel or LPG that was used in a fuel taxable manner, the sales tax paid can be taken as a credit in this section. Any city tax due or city tax credit must be paid or taken on your Contractor's Excise Tax Return.

- Line 27 - Enter the total gallons that were **used**, on which South Dakota Sales Tax has been paid (Do not include gallons still in your inventory).
- Line 28 - Enter the total gallons that are subject to Sales Tax from line 2 on the reverse side of this return.
- Line 29 - Enter the net gallons that are subject to Sales Tax (Debit or [Credit]) by subtracting line 27 from line 28.
- Line 30 - Enter the Average Fuel Cost per Gallon (determine this from your records -- Federal Taxes, if charged at the time of purchase, must be included here).
- Line 31 - Enter the Total Fuel Cost (Multiply line 29 by line 30).
- Line 32 - Enter the Net Sales Tax Due (Debit or [Credit]) by multiplying each column on line 31 by \$0.045 cents.
- Line 33 - Enter the total Sales Tax Due (Add columns A - C, line 32).

Tax Computations - Lines 20 - 26 (Front of the Return, Top Section)

This section is used to record the total tax liability due or tax credit. If the return is being filed late, interest and/or penalty must be calculated on Line 24 (refer to the section on Interest and Penalties in this manual for more information).

Bills-of-lading, fuel and equipment usage records and purchase invoices must be maintained for audit purposes or reviews by the Department of Revenue.

If a fuel tax credit occurs, the Department will apply the credit to any further tax liability. If the credit exceeds \$25, contact the Department for a refund.

- Line 20 - Enter the Fuel Excise Tax that is due (Record the amount entered on line 19 on the reverse side of this return).
- Line 21 - Check the box that applies and if your answer is YES enter your Contractors Excise Tax License number.
- Line 22 - Enter the amount listed on line 33 here (NOTE: Sales Tax may be remitted on either your Contractors Excise Tax Return or on this return. If City Tax is due, it must be reported on your Contractors Excise Tax Return).
- Line 23 - Enter the total Fuel Excise Tax and Sales Tax liability here (Add lines 20 and 22).
- Line 24 - Enter any Interest and Penalty that is due (if filing after the due date of the return).
- Line 25 - Enter the any balance due or credit from prior reporting periods (see the computer generated notice if you received one for this).
- Line 26 - Enter the total amount to be remitted with this return (Add lines 23 and 24, and then add or subtract the amount on line 25 if any).
- Sign the return, enter your title and the date of the return, and then mail the return to the address indicated in the top, right hand corner of the return. Do not mail to this address if this is an amended return, instead see the section on amending a Tax Return that follows.

Uniform Schedules of Receipts and Disbursements

As a Highway Contractor that is required to file reports with the Department you are also required to file Uniform Schedules of Receipts and/or Disbursements if you import and/or export fuel for Highway Construction in bulk quantities. These schedules must identify each transaction that takes place during a reporting period.

- The Uniform Schedule of Receipts is used to show fuel products that are imported into the state for use. The only Schedule Types that are to be entered on this form are Schedule Type 1a, for gallons imported in bulk on a tax-paid basis and Schedule Type 2a, for gallons imported in bulk on a tax-unpaid basis. These gallons are reported on lines 5 and/or 6 of the Highway Contractor tax return as indicated above.
- The Uniform Schedule of Disbursements is used to show fuel products that are exported in bulk from the state. These gallons are reported as Schedule Type 7 and entered on line 10 of the Highway Contractor tax return.
- All fuel that is imported or exported is to be reported using the Product Types as listed on the form for the fuel.

Amending a Tax Return

If the taxpayer discovers an error in the number of gallons of fuel reported on a previous return, the taxpayer will need to file an amended return. The correction cannot be made on a subsequent return. To file an amended return, make a copy of the original return that was filed, check the amended return box (located on the back of the return), cross out the incorrect figure(s) and report the correct figure(s). The return must indicate what the correct figures are, not just the difference between what was originally reported and what is correct. Interest will be due if additional tax is owed.

A Summary for Amending Motor Fuel Tax Returns (see Appendix), must also be completed and sent in with the amended return. The return and Summary, also with any tax payment, must be sent to the following address (not the address indicated on the return):

Department of Revenue
Motor Fuel Tax Section
445 East Capitol Avenue
Pierre, SD 57501-3185

Appendix of Forms

- Highway Contractor's Tax Return
 - Uniform Schedule of Receipts
 - Uniform Schedule of Disbursements
- Summary for Amending Motor Fuel Tax Returns
- Affidavit of Accidental Mixing of Undyed Fuel with Dyed Fuel



Highway Contractor's Tax Return

License Number:
Return Period:
Return Due Date:

Mail Remittance Center
Return to: P.O. Box 3055
SIOUX FALLS, SD 57117-3055

STOP Complete Reverse Side of this Return First.

TAX COMPUTATIONS (continued from reverse side)

20 Total Fuel Tax Due - Excess amount from Line 19 on reverse side		20 \$
21 Do you have an excise tax license? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," Excess License number is	21	
Total Sales Tax Due - Complete Sales Tax Worksheet (tab) on Lines 27 through 33 and record amount on Line 33 here (NOTE: Sales tax may be assumed on your vehicle tax license return on this return. If not, this item should be reported on your sales tax return.)		22 \$
23 Total Fuel and Sales Tax Liability - Add Lines 20 and 22		23 \$
24 Interest and Penalty (if filing after due date)		24 \$
25 Balance Due or Credit from Prior Reporting Period (See Component 16 also)		25 \$
26 Total Remittance - Add Lines 23 and 24, and add or subtract Line 25 (Depending on balance due or credit)		26 \$

I declare under penalty of perjury that this report has been examined by me, and to the best of my knowledge and belief is in all things true and correct.

Signature: _____ Title: _____ Date: _____

Sales Tax Worksheet

Report in Whole Gross Gallons Only

	Column A Dyed Diesel	Column B LPG	Column C Dyed Biodiesel Blend
27 Gallons used on which South Dakota Sales Tax has been paid -- Do not include gallons still in inventory			
28 Gallons subject to sales tax -- Excess amount from Line 2 on reverse			
29 Net Gallons subject to sales tax (Credit or Debit) - Subtract Line 27 from Line 28			
30 Average Fuel Cost per Gallon (Determine this from your records -- Federal Taxes, if charged at time of purchase, must be included here)			
31 Total Fuel Cost - Multiply Line 29 by Line 30			
32 Net Sales Tax Due (Credit or Debit) - Multiply each column on Line 31 by 50.04%			
33 Total Sales Tax Due - Add Columns A through C on Line 32			

Complete This Side First

Check here if this is an amended return

Report in Whole Gross Gallons Only

	Column A 100% Ethanol Diesel	Column B Undyed Diesel	Column C LPG	Column D Gasoline	Column E 100% Ethanol Alcohol	Column F 100% Biodiesel Blend	Column G Undyed Bioethanol Blend
1 Total gallons used within the road right-of-way in movable equipment and licensed vehicles -- (Subject to fuel tax)							
2 Total gallons used in stationary equipment and in off-road machinery and equipment							
3 Total gallons used within this reporting period -- Add Lines 1 and 2							

FUEL INVENTORY RECONCILIATION

4 Beginning Fuel Inventory (from your records)							
5 Total gallons brought into South Dakota from another state during this reporting period upon which South Dakota fuel taxes have been paid -- Attach Uniform Schedule of Receipts - Type 1a (but only if gallons imported in bulk)							
6 Total gallons brought into South Dakota from another state during this reporting period upon which South Dakota fuel taxes have not been paid -- Attach Uniform Schedule of Receipts - Type 2a (but only if gallons imported in bulk)							
7 Total gallons purchased in South Dakota during this reporting period							
8 Subtotal Fuel Inventory -- Add Lines 4, 5, 6, and 7							
9 Total gallons used during this reporting period -- Record Amounts from Line 3 here							
10 Total gallons exported from SD during this reporting period -- Attach Uniform Schedule of Disbursements-Type 7 (but only if gallons exported in bulk)							
11 Total gallons used and exported during this period -- Add Lines 9 and 10							
12 Ending Fuel Inventory -- Subtract Line 11 from Line 8							

TAX COMPUTATIONS

13 Total Gallons Reported on Line 1 for Columns A,C and F -- (Only subject to tax upon use)							
14 Total Gallons Reported on Line 6 for Columns B, D, E, and G -- (Only subject to tax upon import)							
15 Total Gallons Reported on Line 10 (Bulk Gallons Exported)							
16 Total Gallons Subject to Tax -- Add Lines 13 and 14 and subtract Line 15							
17 Tax Rates	X \$0.28	X \$0.28	X \$0.20	X \$0.28	X \$0.14	X \$0.28	X \$0.28
18 Fuel Tax Due (Debit or Credit) -- Multiply Amounts in Line 16 by Tax Rate in Line 17	\$	\$	\$	\$	\$	\$	\$
19 Total Fuel Tax Due -- Combine Columns A through G on Line 18							19 \$

Continue Return on Front



Department of Revenue
Motor Fuel Tax
445 East Capitol Avenue
Pierre, SD 57501-3100

SUMMARY FOR AMENDING
MOTOR FUEL TAX RETURNS

Please Type or Print:

1. License Number: _____

2. Federal ID or Social Security Number: _____

3. Business Name: _____

4. Mailing Address: _____

5. City: _____ State: _____ Zip _____

6. Amount overpaid/underpaid: \$ _____

7. For the period(s) of: _____

8. State full and complete reasons for the error(s) in reporting which resulted in the above listed over/under payment:

These figures are provided to the best of my knowledge and I understand that this form does not restrict the Department of Revenue from performing an audit of my records.

Name (Please Print): _____

Signature: _____ Date: _____

Title: _____ Telephone Number: _____

(For Department Use Only)

DOR Comments: _____

Postmark: _____

Reviewed By: _____ Date: _____

MF056 07/11

All amended returns covering the periods indicated above must accompany this form



Affidavit of Accidental Mixing of Undyed Fuel With Dyed Fuel

Reference SDCL 10-47B-132

Explanation

Any business or person may collect a refund of fuel taxes on undyed fuel that is accidentally mixed with dyed fuel. However, to qualify for this refund, the amount of undyed fuel accidentally mixed must exceed 500 gallons and the claimant must notify the Department of Revenue within 5 days of the accidental mixture.

Claimant Information

Claimant Name	License Number (If Applicable)
Address	Phone Number

Attach copies of all fuel invoices related to this accidental mixture.

1 Total gallons of undyed diesel fuel accidentally mixed with dyed diesel fuel - Obtain from sales invoice	1	
2 Fuel Tax Rate	2	\$0.28
3 Total Fuel Tax Due - Multiply Line 1 by Line 2	3	\$
4 Total Fuel Cost - Obtain from invoice	4	
5 Net Fuel Cost - Subtract Line 3 from Line 4	5	\$
6 Sales Tax Due - Multiply amount on Line 5 by \$0.045	6	\$
7 Refund Amount - Subtract Line 6 from Line 3	7	\$

Claimant and/or Marketer/Retailer Signature

<p>I/we declare and affirm under the penalty of perjury that _____ gallons of undyed (taxed) fuel were accidentally mixed with _____ gallons of dyed fuel on _____, 20____. I/we understand that the mixed fuel may be dyed by the Department of Revenue to the specifications set forth by law if deemed necessary by the Secretary of Revenue. I/we further declare that this dyed fuel will be used for the purpose stated below.</p>		
<p>Explain Purpose for Dyed Fuel</p>		
Claimant Signature	Title	Date
Marketer/Retailer Signature	Title	Date

Notarization

<p>Affix Seal Here</p>	<p style="text-align: center;">Subscribed and sworn before me this __ _____ day of _____, 20____.</p> <p style="text-align: center;">_____ Notary Public My commission expires on _____</p>
------------------------	---