

July 2013

This fact sheet is designed to explain to auctioneers, auction clerks and related businesses how tax applies to items and services they sell. If this Tax Facts does not answer your specific question, please call the department's toll-free helpline at 1-800-TAX-9188 between 8:00 AM - 5:00 PM CST, Monday through Friday.

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

## Auction Sales

Except as otherwise provided in this tax fact sheet, tangible personal property and services sold at auction are subject to the 4% state sales tax, plus applicable municipal sales tax.

The **auction clerk** is responsible for remitting the sales tax on the gross receipts from each auction, after deducting allowable direct expense charges. However, the **auctioneer** is responsible for payment of the sales tax on the auction receipts if:

- The auction clerk is an employee of the auctioneer; *or*
- The auction clerk does not have a South Dakota sales tax permit.

## **Tax Rates**

- Farm machinery, attachment units, and irrigation equipment sold at auction is subject to 4% state tax, no municipal tax, regardless of the intended use.
- Parts that replace farm machinery or irrigation equipment parts that are assigned a specific or generic part number by the manufacturer are exempt from sales and use tax.
- Parts for machinery and irrigation equipment that is not used for agricultural purposes are subject to the 4% state sales tax, plus municipal tax.

## **Exceptions**

The sale of the following are exempt from sales tax:

- livestock
- real estate
- titled motor vehicles

Inventory and equipment sold with the land at auction as a complete package for one price to a single buyer, are not subject to sales tax. Any tangible personal property sold separately is subject to sales tax.

## **Example**

Ms. James is selling her farm by auction. The land, house, farm buildings, tractors and some field equipment are sold for one bid. This sale is not subject to sales tax. However, any tangible personal property sold separately are subject to state, plus applicable municipal sales tax. The auctioneer's entire commission is subject to state sales tax based on where the land is located

## Benefit Auctions

A benefit auction is an auction organized by a religious, benevolent, fraternal organization, youth association or charitable activity to raise money for a religious, benevolent, youth or charitable purpose. A charitable purpose includes raising money for a family in need, such as a home destroyed by fire or flood, or a person with large medical bills.

If all the items are donated, the gross receipts from a benefit auction are not subject to sales tax. Retailers owe use tax on the cost of donated items that are taken from tax unpaid inventory. Items donated directly to exempt entities are not subject to use tax. Clerking and auctioneer services provided at no charge are not subject to sales tax.

## Direct Expense Charges

The auction clerk or auctioneer may deduct from the auction's taxable gross receipts the cost of tangible personal property or services purchased, if the following criteria are met:

1. The purchase is on behalf of a specific client;
2. Sales tax is paid when the purchase is made;
3. There is no mark-up in the amount charged to the client; and
4. The item or service is itemized on the client's invoice.

If sales tax is not paid on the purchase, the amount charged to the client for the direct expense is taxable. However, services or items exempt from sales tax, such as advertising services (creating and placing an ad in the newspaper, TV or radio), may be deducted as a direct expense provided criteria 1, 3 and 4 are met.

If the auction clerk or auctioneer charges more for the item or service than the amount the auction clerk or auctioneer paid for the item or service, the entire receipts are subject to sales tax, even if sales tax was paid on the purchase.

Examples of direct expenses are:

## Auctioneers, Auction Clerks and Auction Services

- Sale bill printing charges by a printer
- Casual labor (runners, mowing services, etc.)
- Clerking services
- Attorney fees
- Replacement or repair parts for items being sold at auction
- Surveyor fees on land sales
- Portable toilet rentals
- Advertising charges
- Auctioneer services

Examples of items that may not be taken as direct expenses are:

- W2 employee salaries
- In-house copying charges
- Purchases of services and equipment for use in running the daily operation of an auctioneer's office and business, such as computers, office supplies, legal services, janitorial services, accounting services, telephone charges, etc.

Clerking is a service that an auctioneer may purchase on behalf of a specific client. The auctioneer may deduct the clerking fees as a direct expense. To do so, the auctioneer must pay sales tax to the auction clerk on the purchase and cannot mark-up the price to the client. The charge to the client must be itemized on the invoice. These charges should not be included on the gross receipts line of the tax return.

### Example

An auction clerk or auctioneer purchases a battery for \$100 plus \$6 sales tax for a tractor that will be sold at auction. The auction clerk or auctioneer can itemize the \$106 paid for the battery on the invoice to the client. The \$106 may be excluded from the auction's gross receipts as a direct expense. However, if the auction clerk or auctioneer charged the client \$150 for the battery, the \$150 cannot be deducted from the auction's gross receipts.

## Auction Sales of Motor Vehicles or Boats

Vehicles and boats without a South Dakota title cannot be sold at auction in South Dakota.

### Exceptions:

- A vehicle, with an out-of-state title, that is at least 20 years old.
- A motorcycle, with an out-of-state title, that is at least 30 years old, provided the out-of-state title is issued in the name of the seller and is in the possession of the auctioneer at the time of sale.

An auctioneer may not sell a vehicle or boat that has a title with a lien on it for less than the full amount of the lien, without the advance written consent of the lienholder. An auctioneer may not release the proceeds from the sale of a vehicle or boat with a lien until the lienholder signs a release of the lien.

For more information on motor vehicles or boats sold at auction contact the Division of Motor Vehicles at 605-773-3541 or email [MotorV@rev.state.sd.us](mailto:MotorV@rev.state.sd.us)

## Auctioneer Services

Auctioneer services are subject to the 4% state sales tax, plus applicable municipal sales tax. Sales tax is based on where the auctioneer service is performed. At real estate auctions, the auctioneer's service is taxed where the real estate is located.

An auctioneer typically charges a commission or percentage of the sale for their services. They may also charge the buyer or seller additional fees such as administrative or buyer's fees. These fees are also subject to sales tax.

The auctioneer's fees are subject to sales tax regardless if the product sold is taxable or exempt.

Fees for online auction services are subject to sales tax. This may include listing fees, selling fees, buyers fees, fees to post pictures, and any other fees used to run the auction.

### Livestock Auctioneer Services

Independent auctioneer services contracted by livestock auction markets are subject to the 4% state sales tax, plus applicable municipal tax. Auctioneer services for private livestock auctions are subject to the 4% state sales tax, plus applicable municipal tax.

Fees charged by the livestock auction market are not subject to sales tax. The livestock auction market cannot purchase the auctioneer's services for resale.

## Internet Auction Services

Products sold by vendors using an Internet auction site are subject to state and applicable municipal sales tax if the products are delivered to locations in South Dakota. The person that collects from the sale is responsible for the sales tax.

Fees charged by Internet auction sites are subject to state and applicable municipal tax based on where the user of the auction site is located. This includes fees to list products and commissions paid to the auction site when products are sold. Internet auction companies are required to have a sales tax license if they have a location, representative, or agent in South Dakota. However, if the Internet auction company is not licensed, the purchaser of these services is responsible for remitting use tax directly to the state.

Companies providing money transmission between buyers and sellers may charge a fee. Fees for money transmission are subject to state and applicable municipal sales tax based on the customer's address.

## Auction Clerk Services

Auction clerk services are subject to the 4% state sales tax, plus applicable municipal sales tax. Sales tax is based on where the auction clerk service is performed. At real estate auctions, the auction

clerk's service is taxed where the real estate is located.

### Sales for Resale

Tangible personal property or services purchased at auction may be purchased for resale if the buyer provides an exemption certificate.

An auctioneer may sell his or her services to another auction clerk or auctioneer for resale if the auction clerk or auctioneer provides an exemption certificate. If the auctioneer purchases the clerk's services for resale, the clerk's fees charged to the client must be included in the auctioneer's total receipts. 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.

### Purchases for Resale

Auction clerks or auctioneers must give an exemption certificate to their suppliers in order to purchase services and supplies exempt from sales tax. Supplies or services purchased for resale may not be deducted from the auction's gross receipts as direct expenses.

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, [www.state.sd.us/drr](http://www.state.sd.us/drr), or by calling 1-800-TAX-9188.

### Multi-State Transactions

Items sold at auction in South Dakota are subject to South Dakota sales tax when the customer takes possession of the property in this state. This includes tangible personal property bought by out-of-state customers.

If the tangible personal property is **delivered** to a customer in another state, the sale may not be subject to South Dakota sales tax.

### Use Tax

Supplies, materials, or services purchased without an exemption certificate are subject to use tax, if sales tax was not paid at the time of purchase. The state use tax rate is 4%, plus applicable municipal use tax, and is payable to the Department of Revenue in the filing period in which the auction clerk or auctioneer receives the supplies or services.

Tangible personal property **delivered into South Dakota by the supplier** 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 that state's sales tax. If the other state's sales tax is the same or more than South Dakota's tax, there is no South Dakota tax owed. If it is less than South Dakota's, the difference must be paid to South Dakota. The state plus applicable

municipal taxes must be added together to determine if additional tax is owed.

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.

### 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 [www.state.us.sd/drr](http://www.state.us.sd/drr) or by calling 1-800-TAX-9188.

Farm machinery, attachment units, and irrigation equipment used exclusively for agricultural purposes is subject to 4% state tax, no municipal tax.

### Exempt Entities

Accredited schools, non-profit hospitals, approved relief agencies and government entities are exempt from sales and use tax. Items sold FOR an exempt entity at auction are subject to sales tax. Just because an exempt entity is paying the auction clerk does not mean the items sold at the auction are also exempt from sales tax. If the auction clerk or auctioneer is paid by an exempt entity, their services are exempt from sales or use tax.

The auction clerk or auctioneer is 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 auction clerk or auctioneer.

### Required Records

Auction clerks or auctioneers 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.

The auction clerk or auctioneer must keep records that identify the owner of the property sold at auction and the auctioneer who conducts the sale of that property.

A record must be kept on every vehicle or boat offered for sale, including the serial number of the vehicle or boat, a description of the vehicle or boat, and the name and address of the owner and upon sale of the vehicle or boat, the name and address of the person purchasing it and the price for which it is sold. The auctioneer must

**Talk to Us!**

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

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