

This Tax Facts Sheet is to explain how sales and use tax applies to products transferred electronically. If your specific question is not answered in this Tax Fact Sheet, please call our toll-free helpline at 1-800-TAX-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.

In South Dakota the receipts from the sale of tangible personal property have been subject to sales tax since 1935. Since that time methods of delivering products has expanded to include transferring products electronically. Products transferred electronically are taxed as a sale of tangible personal property. However some states do not tax products transferred electronically which creates confusion as to whether or not these products are tangible personal property. To remove any confusion as to whether or not products transferred electronically are taxable, South Dakota has defined products transferred electronically and created a specific statute imposing tax on these products.

The new law and definition of products transferred electronically does not change any tax liability. Sellers that sell products transferred electronically will continue to owe sales tax on receipts of products delivered to customers in South Dakota. Consumers using products delivered electronically will continue to owe use tax on their cost of the products, if sales tax was not collected by the seller.

Products Transferred Electronically

A product transferred electronically is any product obtained by the purchaser by means other than tangible storage media such as a cd, dvd, disk or tape. A product transferred electronically does not include any intangible such as a patent, stock, bond, goodwill, trademark, franchise, or copyright.

Temporary or Permanent Use

Sales tax applies to products transferred electronically when the purchaser has temporary use of the product and when the purchaser has permanent use of the product. Example: Access to a downloaded movie for three days is a temporary use of a product and is subject to sales tax. Purchasing a movie that is downloaded to a computer for permanent use is also subject to sales tax.

Exempt Transactions

Products transferred electronically are subject to sales or use tax unless the purchaser has provided an exemption certificate showing they are purchasing the product for resale or are an exempt purchaser.

Digital Codes

The sale of a digital code that may be utilized to obtain a product transferred electronically is subject to the same tax as the product the digital code is for. A digital code is a code that permits a purchaser to obtain at a later date a product transferred electronically. Digital codes are taxed at the time the code is purchased. Example: A gift card is purchased that allows access to downloadable music. The card owner enters a code that allows a set number of songs to be downloaded. The sale of music is subject to sales tax, therefore the code to obtain the music is also subject to sales tax. Unless there is an additional fee when the music is downloaded, no additional tax applies when the card owner receives his or her music.

Where Tax Applies

The sale of tangible personal property, products transferred electronically, and services are subject to sales tax where the customer receives the product or service. The following general rules are used to determine where sales tax applies.

1. Items picked up at the seller's location are subject to sales tax at that location.
2. Items delivered are subject to sales tax at the delivery address. Delivery may be by the seller or by a transportation company hired by the customer.
3. If items are delivered, but the delivery address is unknown, sales tax applies based on the customer's address.
4. If items are delivered, but no delivery address or customer address is on file, then sales tax applies based on the address from which:
 - a. Tangible personal property was shipped;
 - b. The product transferred electronically was first available for transmission by the seller; or
 - c. The service was provided.

Use tax is applied to tangible personal property, products transferred electronically and services where the products are used, stored, or consumed.

Examples of products transferred electronically – this is not an inclusive list: Music, Books, Videos, Movies, Newspapers, Custom computer software, Photos, clip art etc.

Talk to Us!

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