

# **Professional Employer Organization Request** for Approval

https://dor.sd.gov/

1-800-829-9188

The purpose of this tax fact is to provide general guidelines on how tax applies to a Professional Employer Organization in South Dakota. It is not intended to answer all questions that may arise. The information contained in this fact sheet is current as of the date of publication.

March 2024

South Dakota Applicable Laws and Administrative Regulations:

SDCL <u>10-45-96</u>, <u>10-45-97</u>, and <u>10-45-98</u>

### **Professional Employer Organization**

A professional employer organization is a firm which meets all of the following criteria:

ARSD <u>64:06:02:89</u> and <u>60:06:02:89.01</u> Enters into a contractual agreement with a client company to create a

- co-employment relationship for the provision of payroll, benefits, and other human resources functions; Covers at least seventy-five percent of the client company's full-time or full-time equivalent employees domiciled in South Dakota; and
- Maintains separate books and records of account for each client company.

Co-employees create physical nexus for the professional employer organization. The gross receipts of a professional employer organization are subject to state and city sales tax. However, a professional employer organization may deduct from its taxable gross receipts its actual disbursements to the employee or for employee expenses (see examples box for more information).

Each professional employer organization doing business in South Dakota must be approved by the Department of Revenue as a professional employer organization as defined by South Dakota state law. To request approval from the Department of Revenue, please complete the Request for Approval document on pages 2 and 3.

Any organization not approved as a professional employer organization may be a temporary help agency or a payroll processing company.

Sourcing: Sales tax applies to professional employer organization services based on the location of the company that contracts with the professional employer organization. If this is a corporation with multiple business locations, the headquarters is the location that determines the sales tax.

Businesses owing use tax on a professional employer organization service will owe use tax on the total charge for the services. They may deduct actual disbursements to employees or for employee expenses including wages, salaries, payroll taxes, payroll deductions, worker's compensation costs, insurance premiums, welfare benefits and retirement benefits. Use tax is due where the employees are located.

### Payroll Processing Services

The gross receipts for payroll processing services, performed for a separate company, are subject to sales tax. The payroll company may receive payment for their service and reimbursements for payments made on behalf of their client.

The payment received for the payroll processing services itself is subject to sales tax. Any services provided in addition to the payroll processing are also subject to sales tax, such as accounting, training, processing of employment applications, background checks, drug testing, and dispute resolution services.

The payroll company may deduct receipts for amounts paid on behalf of their client provided the charges for those items are separately stated on the invoice, bill of sale, or similar document given to the client (see examples box for more information).

When a charge is for taxable and nontaxable services and the charge for each service is not separately stated on the invoice, bill of sale or similar document given to the client, the entire charge is subject to sales tax.

**Examples of Deductible Expenses for Professional Employer** Organizations and **Payroll Processing** Services:

- Wages
- **Salaries**
- **Payroll Taxes**
- Payroll deductions
- compensation costs
- Insurance premiums
- Welfare benefits

#### Temporary Help Agencies

A temporary help agency hires employees who are available to work for any client of the agency on a day-to-day basis.

A temporary help agency is required to pay sales tax on all fees charged to the client with no deduction for actual disbursements to the employee or for employee expenses unlike professional employee organizations and payroll processing

Retirement benefits

## South Dakota Department of Revenue Request for Approval as a Professional Employer Organization

To apply for approval as a Professional Employer Organization (PEO):

- Complete an application for a sales tax license at <a href="http://sd.gov/taxapp">http://sd.gov/taxapp</a>. PEO status will not be considered if the sales tax application has not been submitted. A license will not be issued if it is determined you do not owe SD Sales Tax.
- Complete the Request for Approval, pages 2 and 3 of this document.
- Send the following to the Department of Revenue:
  - **⇒** The completed Request for Approval
  - ⇒ A copy of the *signed* contract between the organization and the client (*a sample contract is not acceptable*)

South Dakota Department of Revenue Business Tax Division 445 East Capitol Ave Pierre, SD 57501

Email: <a href="mailto:bustax@state.sd.us">bustax@state.sd.us</a> Fax: 605-773-6729

## **Employer Organization Information** PROFESSIONAL EMPLOYER ORGANIZATION'S NAME FEIN **ADDRESS** CITY STATE ZIP CONTACT PERSON PHONE NUMBER **EMAIL ADDRESS** SD SALES TAX APPLICATION CONFIRMATION # OR SD SALES TAX LICENSE # (IF YOU HAVE AN ACTIVE LICENSE) **Client Information CLIENT'S NAME** FEIN PHONE NUMBER **ADDRESS** CITY STATE ZIP LOCATION IN SD OF CLIENT'S FULL-TIME EMPLOYEES NUMBER OF CLIENT'S FULL-TIME EMPLOYEES IN SD **CONTRACT START DATE CONTRACT END DATE DATE CO-EMPLOYMENT BEGINS** DATE CO-EMPLOYMENT ENDED (IF APPLICABLE)

## South Dakota Department of Revenue Request for Approval as a Professional Employer Organization

The following six items <u>must</u> be stated in your contract. Please indicate the section in your contract that covers each item. Send a copy of the signed contract with this request for approval.

Each contract is subject to review and if it does not meet the criteria as a Professional Employer Organization, you may have additional tax liabilities to the state.

	Contract Section:
6.	The professional employment organization does not manage or direct the operation of the client company's business.
	Contract Section:
5.	If a co-employee leaves the employment of the client company, that co-employee's employment is terminated with the professional employer organization.
	Contract Section:
4.	If the contractual relationship between the professional employer organization and the client company is terminated, then the co-employees' employment with the professional employer organization is also terminated.
	Contract Section:
3.	The client company retains primary control over the hiring, firing, wage rates, salary increases, training, and directing the day-to-day activities of the co-employees.
	Contract Section:
2.	The client company must be the employer to any existing employees prior to the contractual relationship with the professional employment organization.
	Contract Section:
1.	The professional employer organization assumes the responsibilities listed in this subdivision, including the payment of wages, salaries, payroll taxes, payroll deductions, workers compensation costs, insurance premiums, welfare benefits, and retirement benefits, and preparing and filing necessary tax returns and other documents as required by state or federal law.

#### **Contact Us**

If you have any questions, please contact the South Dakota Department of Revenue.

Call toll-free: 1-800-829-9188

**Business Tax Division Email:** <u>bustax@state.sd.us</u>

Website: https://dor.sd.gov/

Mailing address and office location: South Dakota Department of Revenue

> 445 East Capitol Ave Pierre, SD 57501