DEPARTMENT OF REVENUE

July 2019

# Sales and Use Tax Guide

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# ONLINE RESOURCES

**Tax License Application:** Apply online for the following types of tax licenses: Contractor's Excise, Manufacturer, Sales, Use, Wholesaler, and all Motor Fuel tax types.

**EPath:** File and pay Sales, Use, and Contractor's Excise Taxes, 911 Surcharges and certain Motor Fuel taxes online.

**Tax Match:** A tool to look up state and municipal sales or use tax rates for any location within South Dakota.

**Business Education:** Go to https://dor.sd.gov to register for a seminar.

**Tax Facts:** Publications to help you better understand the tax obligations for specific industries. Go to https://dor.sd.gov and click on the Publications heading.

**Remote Sellers:** For updates on how South Dakota's remote seller law affects you, visit https://sd.gov/remoteseller.

**Marketplace Providers:** For updates on how South Dakota's marketplace provider law applies to you, visit https://dor.sd.gov/Taxes/Business_Taxes/MarketplaceProvider.aspx.

**Streamlined Sales Tax:** Obtain sales tax licensing with multiple states through the Streamlined system at https://www.streamlinedsalestax.org.

# 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:** bustax@state.sd.us
**Website:** https://dor.sd.gov/
**E-file:** https://sd.gov/EPath
**Mailing address and office location:**
South Dakota Department of Revenue
445 East Capitol Ave
Pierre, SD 57501

**Aberdeen Office**
14 South Main, Suite 1-C
Aberdeen, SD 57401

**Mitchell Office**
417 North Main, Suite 112
Mitchell, SD 57301

**Rapid City Office**
1520 Haines Avenue, Suite 3
Rapid City, SD 57701

**Sioux Falls Office**
300 South Sycamore Avenue, Suite 102
Sioux Falls, SD 57110

**Watertown Office**
715 South Maple
Watertown, SD 57201

**Yankton Office**
1900 Summit Street
Yankton, SD 57078

## Tax Basics

South Dakota does not have a corporate, unitary, or personal income tax; however, businesses may be subject to one or more of the following taxes.

The Department of Revenue administers these taxes. The following sections of this guide are basic descriptions of each tax and information on how to report the tax. This is general information only. For explanations on specific laws and how they apply to your business, refer to South Dakota laws, administrative rules, and publications on our website at https://dor.sd.gov or call 1-800-829-9188.

| South Dakota Taxes and Rates | |
|---|---|
| **State Sales Tax and Use Tax** – Applies to all sales or purchases of taxable products and services. | **4.5%** |
| **Municipal Sales and Use Tax** – Applies to all sales of products and services that are subject to the state sales tax or use tax if the purchaser receives or uses the product or service in a municipality that imposes a sales tax or use tax. | **1 to 2%** |
| **Municipal Gross Receipts Tax (MGRT)** – Imposed on alcoholic beverages, eating establishments, lodging accommodations, admissions to places of amusement, athletic and cultural events. MGRT is in addition to municipal sales tax and use tax. | **1%** |
| **Contractor's Excise Tax** – Imposed on the gross receipts of all prime contractors engaged in construction services or realty improvement projects in South Dakota. The gross receipts include the tax collected from the consumer. | **2%** |
| **Motor Vehicle Excise Tax** – Applies to the purchase of most motor vehicles. | **4%** |
| **Motor Vehicle Gross Receipts Tax** – Applies to the rental of motorcycles, cars, trucks, and vans for less than 28 days, and the rental of certain trailers for 6 months or less. | **4.5%** |
| **Tourism Tax** – Applies to certain lodging and amusement services. The tourism tax is used for the promotion of tourism in South Dakota. Tourism tax does not apply when you are remitting use tax. | **1.5%** |
| **Ag Excise Tax** – Applies to all sales or purchases of farm machinery, attachment units or irrigation equipment *used exclusively* for agricultural purposes. Purchasers are responsible for the ag excise tax if the retailer does not charge the tax.<br>Ag excise tax does not apply to vehicles subject to motor vehicle excise tax. | **4.5%** |
| **Prepaid Wireless 911 Emergency Surcharge** – All sellers and wireless service providers that sell prepaid wireless service are responsible for collecting and remitting the Prepaid Wireless 911 Emergency Surcharge. The surcharge is on the gross receipts from retail sales of all types of prepaid wireless services and applies to sales of goods and services delivered to customers in South Dakota or sold to online customers with a South Dakota address. | **2%** |
| **911 Emergency Surcharge** – All telecommunications service providers, wireless service providers, or Interconnected Voice over Internet Protocol service providers are responsible for collecting and remitting the 911 Emergency Surcharge. | **$1.25 per user line per month** |
| **Wireless Gross Receipts Tax** – Applies to the gross receipts on the retail sale of wireless personal communications service, wireless local loop services, enhanced special mobile radio services, fixed wireless services, and cellular services that provide two-way communication if the customer's place of primary use is located in South Dakota. | **4%** |
| **Amusement Excise Tax** – Applies to the gross receipts from any mechanical or electronic amusement device. The excise tax is reported as sales tax on the sales tax return. (Examples: pinball machines, jukeboxes, pool tables) | **4.5%** |
| **Sioux Falls Lodging Tax** – The City of Sioux Falls imposes a tax on lodging establishment's receipts. Report the Sioux Falls lodging tax in the City and Special Jurisdiction Section on the state sales tax return using code 800-1. | **1%** |

## Sales Tax

The sales tax applies to the gross receipts of all retail sales, including the sale, lease, or rental of personal property or any product transferred electronically, and the sale of services.

A business must report and pay sales tax on its gross receipts from the sale of a product or service unless:

- They receive an exemption certificate from the buyer stating:
  - ⇒ the purchase is intended for resale;
  - ⇒ the purchase is intended for an exempt use; or
  - ⇒ the sale is to an exempt entity, such as South Dakota state or local governments;
- The product or service is specifically exempt by law; or
- The service is a construction service taxed in chapter 10-46A or 10-46B. See the Contractor's Excise Tax Guide for information on tax applied to construction services.

South Dakota law allows the seller to add the tax to the price of the product or service. However, the seller is liable for the sales tax due, whether or not it is collected.

**Determine the location of the sale**

Sales tax applies where the customer receives the product or service.

- Products picked up at the seller's location are subject to sales tax at that location.
- Products delivered are subject to sales tax where delivered. Delivery may be by the seller or by a transportation company hired by the customer.
- If the product is delivered, but the delivery address is unknown, sales tax applies based on the customer's address.
- For products transferred electronically, if there is no delivery or customer address on file, sales tax applies based on where the product is first available for transmission by the seller.
- Products delivered to a location outside South Dakota are not subject to South Dakota sales tax, but may be subject to that state's tax.

### Location of Sale Examples

- **Personal care services** are taxed at the location the service is performed, which is the same location where the customer receives the service. This includes any service performed on the physical human body, such as haircuts or massages.
- **Services performed on products** are taxed at the location the product is delivered to the customer. This includes services such as repair services.
- **Lease or rental of products** is taxed where the customer receives the product. However, if the product is moved to another location, sales tax on future payments applies at that location.

## Remote Sellers

As of November 1, 2018, remote sellers who meet certain thresholds must obtain a South Dakota sales tax license and pay applicable sales tax.

***For more information on South Dakota's remote seller law, including Frequently Asked Questions, litigation history, and more, visit https://sd.gov/remoteseller.***

**Who this impacts**

South Dakota law requires any business without a physical presence in South Dakota to obtain a South Dakota sales tax license and pay applicable sales tax if the business meets one or both of the following criteria in the previous or current calendar year:

- Your business's gross revenue from sales into South Dakota exceeded $100,000; or
- Your business made sales for delivery into South Dakota in 200 or more separate transactions.

* Gross sales or transactions including selling, renting, or leasing products or services (including products delivered electronically) into South Dakota. (SDCL ch. 10-64)

**Note: Any business with a physical presence in South Dakota is required to be licensed for sales tax collection. These minimum thresholds do not apply to any business with a physical presence in South Dakota.**

**South Dakota Retailers**

Each state's remote seller taxation laws are different. If you sell products or services to be used in other states, you may be required to pay sales tax in that state. You can access more information on other states' laws and contact information by visiting https://sd.gov/remoteseller.

We also encourage you to visit the https://www.streamlinedsalestax.org/ to view collection requirements from the 24 member states. You can also register for tax collection through the Streamlined Sales Tax Project.

## Marketplace Providers

As of March 1, 2019, marketplace providers who meet certain thresholds must obtain a South Dakota sales tax license and pay applicable sales tax on behalf of their marketplace sellers.

***For more information on types of marketplace providers, frequently asked questions, and more, visit https://dor.sd.gov/Taxes/Business_Taxes/MarketplaceProvider.aspx***

**Who this impacts**

Marketplace providers are required to remit sales tax on all sales it facilitates into South Dakota if it meets one or both of the following criteria in the previous or current calendar year:

- Your business's gross revenue from sales into South Dakota exceeded $100,000; or
- Your business made sales for delivery into South Dakota in 200 or more separate transactions.

* Gross sales or transactions including selling, renting, or leasing products or services (including products delivered electronically) into South Dakota. (SDCL ch. 10-64)

**Note: Any business with a physical presence in South Dakota is required to be licensed for sales tax collection. These minimum thresholds do not apply to any business with a physical presence in South Dakota.**

**South Dakota Retailers**

The marketplace will remit sales tax if any of the thresholds are met. If a marketplace is remitting the sales tax, the SD business will not be responsible for sales tax remittance on sales through that marketplace.

## Use Tax

State use tax applies to all products and services when the applicable sales tax is not collected.

- The use tax rate is the same as the sales tax rate. The use tax is due on the purchase price, including freight and handling charges.
- Use tax is due in the filing period in which the product or service is received.
- Use tax is also due on supplies taken out of retail inventory for the business's use.
- The tax rate is based on the location where the product or service is used.

When you purchase a product or service out-of-state, the seller may legally charge the state's sales tax. You will receive credit for tax legally due in another state when you bring the product or service back to South Dakota.

- If the other state's sales tax is the same or more than South Dakota's tax, there is no South Dakota use 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 due.

### Examples of Use Taxable Items

- Computers
- Demonstration and sample items
- Donations
- Equipment brought into South Dakota from another state
- Farm equipment
- Office supplies
- Leases of equipment
- Manufacturing equipment
- Meals furnished for employees
- Promotional gifts
- Services
- Software & support
- Snow removal
- Tools

### Examples of when South Dakota sales tax may not have been charged and use tax is due

- When items are purchased from an out-of-state seller
- When untaxed retail inventory is removed for the business's or personal use
- When a product purchased from an out-of-state seller is delivered in South Dakota, but the other state's tax is incorrectly charged
- When a purchase is made in another state then brought into South Dakota and the product was not taxed or was taxed at a lower tax rate than applies in South Dakota, you owe use tax

## Gross Receipts

Gross receipts means the total amount of money or other consideration the seller receives for products or services sold, leased, or rented. Consideration may include cash, credit, property, or services.

More information is available in the Gross Receipts Tax Fact.

Visit our Tax Facts for more information on various topics.

Go to https://dor.sd.gov and click on Publications and then Tax Facts.

**A seller may not deduct the following from their gross receipts:**

- The seller's cost of the product or service sold;
- The seller's expenses such as the cost of materials, labor, interest, losses, transportation, or taxes imposed on the seller; and
- Charges by the seller for services necessary to complete the sale, including delivery charges. Construction services taxed in chapter 10-46A or 10-46B are not subject to sales tax.

**Gross receipts include consideration received from third parties if the following four criteria are met:**

A. The seller actually receives consideration from a third party that is directly related to a discount on the sale;
B. The seller has an obligation to pass the discount through to the purchaser;
C. The amount of consideration on the sale is set by the seller at the time of the sale to the purchaser; and
D. One of the following criteria is met:
   - The purchaser provides a coupon, certificate, or other document to the seller to claim the discount and the document is authorized, distributed, or granted by a third party with the understanding the third party will reimburse the seller for the coupon;
   - The purchaser provides documentation that he is a member of a group entitled to a discount; or
   - The discount is identified as a third party discount on the invoice given to the purchaser or on the documentation presented by the purchaser.

**Gross receipts do not include:**

- Discounts that are not reimbursed by a third party. This may include cash discounts, early payment discounts, or store coupons;
- The sale price of property returned by purchaser if the full sale price is refunded in cash or by credit; and
- Credit allowed for products taken in trade as a part payment of a taxable retail sale when the product taken in trade is subject to sales tax.

**The following are not included in the gross receipts when separately stated on the invoice or documentation provided the purchaser:**

- Interest, financing, and carrying charges from credit extended on the sale of products or services;
- Any taxes legally imposed directly on the purchaser; and
- Any fees or other interest imposed for late charges on overdue accounts, no account, or insufficient funds checks.

### Examples

1. *If a business collects $100 plus $4.50 in sales tax.*
   - The business reports $100 gross receipts and owes $4.50 sales tax.
2. *If a business collects $100 and the document says tax is included.*
   - The business reports $95.69 as gross receipts and owes $4.31 sales tax.

Sales tax is not included in the gross receipts if itemized or documentation shows the tax is included in the sales price.

**Returned Merchandise**

The amount credited to the customer for returned merchandise is reported as a non-taxable sale on the tax return during the reporting period the item is credited.

### Delivery Charges

Delivery charges are the charges by the seller for preparation and delivery to a location designated by the purchaser of product or services. Delivery charges include shipping, postage, handling, crating, packing, and fuel surcharge.

Delivery charges are included in the gross receipts and are subject to the same sales or use tax rate as the product or service. If the product or service is not taxable, the delivery charge is not taxable.

## Municipal Tax

Municipal sales tax applies when the customer purchases or receives the products or services within a city that imposes a tax.

Municipal use tax applies to all products or services when the applicable sales tax is not collected within a city that imposes a tax.

- The municipal use tax rate is based on the location where the product or service is used.
- Additional municipal use tax may be due if a product or service is used in a different city that imposes a higher rate than was previously paid.

**Municipal Gross Receipts Tax**

The municipal gross receipts tax (MGRT) is in addition to the municipal sales tax. The MGRT can be imposed on alcoholic beverages, eating establishments, lodging accommodations, admissions to places of amusement, athletic, and cultural events.

To ensure local governments receive the correct amount of tax money, retailers must report their sales accurately.

Report the municipal taxes in the City and Special Jurisdiction Section on the sales tax return using the code designated for that city and tax. Each tax must be reported separately, using the designated code for that tax. Do not combine taxes or report all tax under one code.

**Sioux Falls Lodging Tax**

The City of Sioux Falls imposes a tax on lodging establishment's receipts. Report the Sioux Falls lodging tax in the City and Special Jurisdiction Section on the sales tax return using code 800-1.

### Examples of Municipal Tax Exceptions

- Transportation of passengers is subject to municipal tax only if the trip begins and ends in the same city.
- Farm machinery and irrigation equipment for exclusive agricultural use are subject to state tax - no municipal tax.
- Receipts from amusement devices are subject to state tax - no municipal tax.

City tax rates vary across the state. You can find state, municipal, and special jurisdiction tax rates using the Tax Match lookup tool on our website at https://dor.sd.gov.You may also view the Municipal Tax Guide that lists all municipal sales, use, and gross receipts taxes.

Changes are effective January 1 and July 1.

## Tourism Tax

The tourism tax on certain lodging and amusement services is for tourism promotion.

Report the tourism tax in the City and Special Jurisdiction Section on the sales tax return using the code 700-1.

For listings of specific products and services subject to tourism tax, review the Tourism Tax Fact.

### Examples of items Tourism Tax applies to the gross receipts of

- Hotels and Lodging Establishments
- Campgrounds
- Motor Vehicle Rentals
- Recreational Equipment Rentals
- Recreational Services
- Spectator Events
- Visitor Attractions
- Visitor-Intensive Businesses

### Example

An Aberdeen motel has $10,000 in receipts from room rentals.

Motel rooms rented in July 2018 in Aberdeen are subject to state sales tax, municipal sales tax, municipal gross receipts tax, and tourism tax.

The municipal and tourism taxes are reported under the City and Special Jurisdiction Section of the tax return.

### Municipal Tax Charts

| MUNICIPAL SALES TAX | | | GROSS RECEIPTS TAX (IN ADDITION TO MUNICIPAL SALES TAX) | | | | | |
|---|---|---|---|---|---|---|---|---|
| City | July 2019 Rate | General Code | July 2019 MGRT Rate | Tax Code | Lodging | Easting Establishments | Alcohol | Admissions |
| Aberdeen | 2.00% | 001-2 | 1.00% | 001-1 | X | X | X | X |

| SALES TAX CALCULATIONS | GROSS | TAXABLE | RATE | TAX DUE |
|---|---|---|---|---|
| 1. Gross Sales | $10,000.00 | | | |
| 2. Use Taxable | | | | |
| 3. Non-Taxable Sales | | | | |
| 4. Special Jurisdiction Sales (Detail in City Section) | | | | |
| 5. Net State Sales Taxable (Line 1 plus Line 2, minus Line 3, minus Line 4) | | $10,000.00 | x 4.5% | $450.00 |
| 6. City & Special Jurisdiction Tax Calculation Detail: | | | | |
| 7. City/Special Jurisdiction Name | Code | Taxable | Rate | Tax Due |
| 8. Aberdeen - Municipal Tax | 001-2 | $10,000.00 | 2.00 | $200.00 |
| 9. Aberdeen Municipal Gross Receipts Tax | 001-1 | $10,000.00 | 1.00 | $100.00 |
| 10. Tourism Tax | 700-1 | $10,000.00 | 1.50 | $150.00 |

## Motor Vehicle Lease and Rentals

| Motor Vehicle Lease and Rentals - Applicable Taxes | | | | | |
|---|---|---|---|---|---|
| | Taxes that apply to the Lease or Rental Payments | | | | |
| **Vehicle** | **Sales or Use Tax** | **Municipal Sales or Use Tax** | **Tourism Tax** | **Motor Vehicle Gross Receipts Tax** | **Motor Vehicle Excise Tax** |
| **Automobiles, Pickups, Vans, and Motorcycles** | | | | | |
| • Leased or rented under a single contract for 28 days or less | Yes | Yes | Yes | Yes | No |
| • Leased or rented under a single contract for more than 28 days<br>*If this same vehicle is later rented for 28 days or less, the receipts from that rental are subject to the state and applicable municipal sales tax, motor vehicle gross receipts tax, and tourism tax.* | No | No | No | No | Yes |
| **Trailers with a trailer ID plate under SDCL 32-5-8.1 that have an unladen weight of 9,000 pounds or more** | | | | | |
| • Leased or rented under a single contract for 28 days or less | Yes | Yes | No | Yes | No |
| • Rented under a single contract for more than 28 days but less than 6 months | No | No | No | Yes | No |
| • Rented for more than 6 months | No | No | No | No | Yes |
| **Recreational Equipment that are motor vehicles under SDCL 32-5-1** | | | | | |
| • Leased or rented under a single contract for 28 days or less | Yes | Yes | Yes | No | No |
| • Leased or rented under a single contract for more than 28 days<br>Includes:<br>ATVs, Snowmobiles, Campers, Snowmobile trailers, Camping trailers, Watercraft trailers, Mopeds*, Watercraft (Boats), Motor coaches<br>*Mopeds are subject to sales tax and may be purchased for resale or rent to others. | No | No | No | No | Yes |

Report the motor vehicle gross receipts tax in the City and Special Jurisdiction section on the state sales tax return using code 600-1.

For listings of all recreational equipment subject to tourism tax, view the Tourism Tax Fact.

More information available in the Motor Vehicle Lease & Rentals Tax Fact.

Visit our Tax Facts for more information on various topics.

Go to https://dor.sd.gov and click on Publications and then Tax Facts.

## Wireless Gross Receipts Tax

The telecommunications gross receipts tax applies to the retail sale of wireless intrastate and interstate telecommunications services if the customer's place of primary use is in South Dakota.

Wireless telecommunications services include wireless personal communications services, wireless local loop services, enhanced special mobile radio services, fixed wireless services, and cellular services that provide two-way communication.

Report the wireless gross receipts tax in the City and Special Jurisdiction Section on the state sales tax return using code 900-1.

More information available in the Telecommunication Services Tax Fact.

## 911 Emergency Surcharge

All telecommunications service providers, wireless service providers, and Interconnected Voice over Internet Protocol service providers are responsible for collecting and remitting the 911 Emergency Surcharge.

- The surcharge is $1.25 per service user line per month.
- The $1.25 per service user line surcharge does not apply to prepaid wireless telecommunications service.

911 Emergency Surcharges itemized on the customer's invoice are **NOT** subject to sales tax.

**Prepaid Wireless 911 Emergency Surcharge**

All sellers and wireless service providers that sell prepaid wireless service are responsible for collecting and remitting the Prepaid Wireless 911 Emergency Surcharge. Prepaid wireless service includes:

- prepaid wireless airtime cards
- prepaid wireless plans
- prepaid wireless minutes

- The surcharge is on the gross receipts from retail sales of prepaid wireless service made in South Dakota, delivered to customers in South Dakota, or sold to online customers with a South Dakota address.
- The surcharge applies to the sale of all prepaid wireless services; however, a seller may elect not to collect the surcharge on any sale of a prepaid wireless device (a prepaid wireless phone) that is bundled with prepaid wireless service denominated as 10 minutes or less or as five dollars or less.

**Registration:** All sellers and providers that collect and remit the 911 Emergency Surcharges are required to register with the Department of Revenue, even if the provider has a sales tax license.

**Reporting:** All 911 surcharges are electronically reported and paid to the Department of Revenue using EPath.

**Administrative Fee:** All providers and sellers may keep 2% or $25, whichever amount is greater, of the total surcharge collected each month as an allowance for the cost of collecting and remitting the 911 Emergency Surcharge. The administrative fee cannot exceed the amount of surcharge collected. Returns and payments must be filed and paid timely by electronic means to receive the administrative fee.

More information available in the 911 Emergency Surcharge Tax Fact.

## Sales and Use Tax on Indian Country

Currently, five Indian tribes in South Dakota have comprehensive tax collection agreements with the State that include, but are not limited to, sales, use, tourism, and contractor's excise taxes. The five Indian tribes with comprehensive tax collection agreements are Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, and Standing Rock Sioux Tribe. Two Indian tribes have limited tax collection agreements that include, but are not limited to, use tax and contractor's excise tax. The two Indian tribes with limited tax collection agreements are the Sisseton Wahpeton Oyate and the Yankton Sioux Tribe.

The tax collection agreements ensure that all retail transactions or construction services on property included in a tax collection agreement are subject to the same taxes, tax rates, and exemptions as set forth in the agreement.

- All businesses, including those owned by tribal members, are responsible for remitting tax.

Indian country that is part of a tax collection agreement is considered a Special Jurisdiction. All tax due in each Special Jurisdiction is reported on the state tax return using the code assigned to that Special Jurisdiction. The tax remitted is then distributed between the State and Tribal governments based on the tax collection agreements.

If you have any questions concerning whether a business or customer is located in a Special Jurisdiction set forth above, please contact the department at 1-800-829-9188.

For information on tax rates and reporting of taxes for Special Jurisdictions and Indian country not included in agreements, review the Tribal Tax Fact by visiting https://dor.sd.gov and clicking on Publications and then Tax Facts.

# Exemptions

## Sellers

A seller does not have to collect sales tax when a purchaser gives a seller a completed exemption certificate at the time of sale.

The exemption certificate is used to:

- Claim exemption for:
  - ⇒ Products or services intended to be resold; or
  - ⇒ Products or services used for an exempt purpose.
- Document that the purchaser is an exempt entity.

The purchaser can give a "single purchase" certificate for just one transaction or a blanket certificate that applies to future purchases of qualifying exempt items.

Exemption certificates do not expire unless the information on the certificate changes; however, we recommend updating exemption certificates every three to four years.

***South Dakota businesses with permit numbers containing UT (use tax) or ET (contractor's excise tax) cannot buy products or services for resale.***

***Any purchaser that provides an invalid exemption certificate with the intent to evade payment of the tax is guilty of a Class I misdemeanor and may be fined up to 50% of the tax in addition to the tax.***

A purchaser from a state that does not issue sales tax permits may use their FEIN, driver's license number, or state-issued ID number on the exemption certificate.

A business that purchases an item for resale, but later uses that item is responsible for reporting and paying use tax on that item.

Exemption certificates may be obtained on our website at https://dor.sd.gov or by calling 1-800-829-9188.

More information available in the Exemption Certificate Tax Fact.

Visit our Tax Facts for more information on various topics.

Go to https://dor.sd.gov and click on Publications and then Tax Facts.

## Exempt Entities

### Direct Payment Permit

A direct payment permit allows the holder to purchase products and services without sales tax. The holder reports and pays the use tax on their purchases directly to the department.

Only taxpayers with a sales, use, manufacturer, or wholesaler tax license may qualify for a direct payment permit.

For further information, review the direct payment permit application.

### Sales for Resale

A business that purchases items to sell, rent, or lease to others in the normal course of its business may purchase those items exempt from sales tax.

Specific criteria must be met before a business can purchase services for resale. For information on services that can be purchased for resale, view the Exemption Certificate Tax Fact, the tax fact(s) for that service, or call 1-800-829-9188.

### Exempt Entities

State law exempts certain entities from paying South Dakota sales tax or use tax on their purchases. These entities include:

- Indian tribes
- United States government agencies
- South Dakota governments including state, county and municipal
- Municipal or volunteer fire or ambulance departments
- Public schools, including K-12, universities and technical institutes
- Non-profit hospitals
- Relief agencies
- South Dakota religious and private schools

Relief agencies and religious and private schools must apply to the department and be approved for exempt status. Their exemption number must be included on the exemption certificate. The exemption numbers for relief agencies include an "RA"; private schools include an "RS".

### States Exempt from South Dakota Sales Tax

- Alaska
- Colorado
- Delaware
- Indiana
- Montana
- New Hampshire
- North Dakota
- Ohio
- Oregon
- West Virginia
- Iowa (motels and hotels are not exempt)
- Minnesota (motels, hotels, beverages, and meals are not exempt)

**Exempt Entities (cont.)**

Government entities must provide an exemption certificate to the vendor, or the vendor must keep documentation to show the purchase was paid with government funds.

Some government entities are issued exemption numbers that include the letters "RG". These agencies may include their exemption number on the exemption certificate.

The **governments from other states** or the District of Columbia are exempt from sales tax if the law in that state provides a similar exemption for South Dakota governments or does not impose a sales tax.

**Employee Purchases**

The purchase of products or services for the personal use of officials, members, or employees of exempt entities is subject to sales tax.

Employees or representatives of an exempt entity cannot buy products or services without paying sales tax if they use a personal check or personal credit card. This is true even if the exempt entity later reimburses the employee. The exempt entity must pay the vendor from the exempt entity's funds using that entity's check or credit card.

## Exempt Products and Services

State law exempts certain products or services from sales or use tax. Documentation is not required to support these exemptions. However, if there is any doubt as to the intended use of these items, the purchaser should provide an exemption certificate to the seller.

For information on exemptions that apply to specific businesses, review the following tax facts:

- Advertising Agencies
- Agriculture Equipment
- Agriculture Products
- Agriculture Services
- Financial Institutions
- Hospitals – Nonprofit
- Health Services, Drugs, and Medical Devices
- Hotels, Motels and Campgrounds
- Manufactured and Modular Homes
- Motor Vehicles Sales & Purchases
- Motor Vehicles Leases & Rentals
- Motor Vehicles Repair & Services
- Schools
- Telecommunication Services

### Examples of services exempt from sales tax

- Health services
- Educational services
- Social services
- Agricultural services
- Forestry services
- Services provided by certain membership organizations
- Financial services performed by institutions registered under bank franchise
- Commissions paid by an insurance company to an agent for the sale of a policy
- Stock and commodity broker service; services of brokers and agents licensed under Title 47
- Trucking
- Travel agent services
- Construction services (see Contractor's Excise Tax Guide)

## Other Exempt Transactions or Products

**Coin-Operated Washers and Dryers** – Receipts from coin-operated washers and dryers are not subject to sales tax. There is an annual license fee paid in lieu of a sales tax on receipts. Fee amounts are: $20 for each coin-operated washer and dryer located in municipalities having populations greater than 1,000 and a $16 fee for each machine located in municipalities with populations of 1,000 or less.

*The sale of coin-operated washers and dryers is taxable.*

**Controlled Group** - Services between controlled group members are not subject to sales tax if sales tax was paid on the original purchase.

A controlled group is defined as any corporations or other entities eligible to file a consolidated federal income tax return, or entitled to only a single surtax exemption for federal corporate income tax purposes, and includes a controlled group of corporations as defined at 26 U.S.C. § 1563, as of July 1, 2002.

A controlled group also consists of any subchapter S corporation, limited liability company, limited liability partnership, general partnership, or limited partnership with at least eighty percent common ownership as if the entity was converted to or taxed as a subchapter C corporation under the Internal Revenue Code as in effect on January 1, 2002.

Sole proprietors are not part of a controlled group.

Controlled group exemptions do not apply to contractor's excise tax.

# Exemptions (cont.)

## Other Exempt Transactions or Products (cont.)

**Food Stamp Purchases** - All food stamp purchases (SNAP) are not subject to sales tax.

**Gasoline** - Sales of gasoline, diesel fuels, gasohol, alcohol fuels, propane, kerosene, aviation fuel, jet fuel, and other similar combustible fuels are not subject to sales tax as they are subject to South Dakota fuel tax.

Dyed diesel fuel used for agricultural purposes is not subject to sales tax. However, propane and kerosene used for home heating and other purposes would be subject to sales tax.

*Off road use of dyed diesel fuel may be subject to sales tax.*

**Lottery Sales** - South Dakota lottery tickets and video lottery receipts are not subject to sales tax. A $12 amusement device decal must be purchased for each machine and renewed by June 30th of each year.

*The sale of video lottery machines is subject to state sales tax but not municipal tax.*

**Repairs** - Repairs to products in inventory to be sold are not subject to sales tax.

Taxable: Repair and replacement parts for leased products.

**W.I.C.** - Authorized purchases made under the Child Nutrition Act (W.I.C.) are not subject to sales tax.

### Taxable Transactions

**Sales to:**

- Churches
- Membership organizations such as YMCA, YWCA, Boys and Girls Scouts, Lions Club or Jaycees
- Civic and Nonprofit Organizations
- Schools, Colleges, and Religious, Benevolent, Fraternal, and Charitable Organizations for fundraisers

**Sales of:**

- Gifts and Premiums
- Prepared Food, Meals, or Drink
- Repair and Service of Products
- Products Sold at Auction

**Warranty Parts and Service** - Parts and services to fulfill an obligation of the manufacturer, providing no charge is made to the customer are not subject to sales tax.

*Charges to customer for parts, service, or deductibles are taxable.*

**Water** - Bulk water for domestic use, water sold by water supply system for domestic, commercial, and industrial use are not subject to sales tax.

# Tax License Changes

**License Cancellation** - Sales tax licenses are NOT transferable. File a final return and pay all tax due when:

- Business is closed;
- Business is sold; or
- Ownership of the business changes.

A change in ownership or legal organization requires a new tax license (i.e. from one sole proprietor to another, from a sole proprietor to a partnership, a change from sole proprietor to a corporation, or a merger).

**Partnership Changes** - Information on any change in partners must be sent in writing to the department and must be signed by all partners, including those leaving, entering, and staying in the partnership. Information must include:

- The name, social security number, personal address, phone number, and effective date of change for any new partner.
- The name and effective date of separation for any partner leaving.

**Corporations LLC, or LLP Changes** - Information on any change in corporate officers or members must be sent to the department. A change in corporate officers or members does not require a new tax license.

All tax license changes can be completed through an EPath account at https://sd.gov/EPath.

**Address Changes** - Click here to fill out the change of address form online or notify the department in writing if the mailing address or the business location changes. Include the new address information, effective date of the change, tax license number, and business name.

## File and Pay Your Tax Return

**A business must file a tax return each reporting period even if they did not conduct business or receive income.**

### Paper Returns

Businesses filing paper returns are sent a tax return and worksheet for each reporting period.

It is your responsibility to contact the department if you do not receive a return.

If you file electronically, you will not receive a paper return.

### Filing an Amended Return

If you have an EPath account, you may amend your returns one time through EPath. If you file by paper or are not able to amend the return through EPath, please call 1-800-829-9188 for amended return information.

### Late Filing and Paying

**Penalty:** A penalty of 10% (.10) of the tax liability is assessed if a return is not received within 30 days following the month the return is due. The minimum penalty is $10 and is assessed even if no tax is due.

**Interest:** 1% (.01) interest will be assessed each month on any past due tax until the tax is paid in full. (A minimum of $5.00 interest is due the first month).

### Due Dates for Returns and Payments

**Electronic Returns and Payments**

**All electronic returns** are due the 20th of the month.

**All electronic payments** are due the 25th of the month.

**Paper Returns and Payments**

**All paper returns** must be filed and paid by the 20th of the month in which the return is due.

If a due date falls on a Saturday, Sunday, or legal holiday, the next business day is the due date.

**Mail returns and payments to the:**

South Dakota Department of Revenue
Anderson Bldg
Mail Code 5055
445 E Capitol Avenue
Pierre, SD 57501-3100

**File and pay electronically at:** https://sd.gov/EPath.

Receive a collection allowance of 1.5% of the tax due, not to exceed $70, each reporting period, by filing and paying your sales taxes electronically and on time. No allowance given on contractor's excise tax returns or if you have past tax due.

This option allows you to make a single ACH debit or credit card payment on an account without an EPath account or without logging into your EPath account.

Visa, MasterCard, and Discover credit cards may now be used to pay your taxes. A nonrefundable convenience fee of 2.45% of the payment amount is charged on each credit card payment. The convenience fee is automatically calculated and added to your payment amount.

**Pay Online:** Pay by ACH Debit or Credit Card

- Use your *EPath* account or *Make a Payment* if you do not have an EPath account.

**Pay by Phone:** Call 1-800-829-9188 to make a payment by ACH Debit or Credit Card.

**ACH Credit**: Contact your bank to have a payment sent electronically to the department.

**Pay by Check:** Send payment to Department of Revenue, Anderson Bldg, Mail Code 5055, 445 E. Capitol Ave., Pierre, SD 57501-3100

### Collection Allowance

*If you file and pay your sales tax return electronically and on time, you will receive a collection allowance. The allowance will be 1.5% of the tax due on the sales tax return, not to exceed $70 for each reporting period.*

*No allowance is provided for contractor's excise tax returns, returns filed or paid by paper, or for licensees that have any past due return or amount due on a license issued by the Department of Revenue including but not limited to: sales tax, contractor's excise tax, motor fuel tax, 911 surcharge account, bank franchise, and alcohol licenses.*

## Accounting Methods

When using the **accrual method,** taxes must be paid on all sales made during the reporting period, even if you have not received payment.

An exception is a **conditional sale.** When payments for the principal sum are extended over a period longer than 60 days from the date of the sale, only the payment received during each reporting period is subject to sales tax.

When you report using the accrual method, you may take credit for **bad debts** during the reporting period in which you write the bad debt off as uncollectible in your books and records. Bad debts are eligible to be deducted for federal income tax purposes.

When you use the **cash method** of accounting, you report gross receipts and pay tax as you receive payments. No bad debts are allowed on the cash method.

Click here to fill out the changes in accounting method form online or notify the department in writing.

## Record Keeping

Record keeping is a responsibility of not only those paying sales tax or contractor's excise tax, but also individuals paying use tax and any person purchasing products or services for storage, use, or other consumption in the state.

Keeping accurate and complete records makes filling out tax returns and other reports easier. It also helps us correctly determine your tax liabilities during an audit of business income, purchases, exemptions, and deductions.

We may use the records to determine if you reported and paid your taxes correctly.

You must keep your records for a minimum of three years or longer if you are depreciating capital assets. This includes both paper and electronic records.

Records supporting the following are to be kept and presented upon request of the Department of Revenue:

- The amount of gross receipts and sales from all sources, including barter.
- The amount of all deductions, exemptions, or credits claimed.

Businesses should keep the following books and records:

- South Dakota sales, use, and contractor's excise tax returns and work papers
- Federal income tax returns for the business
- Summary accounting records and source journals, such as: the check register, general ledger, sales journal, general journal, cash receipts journal, and any other records you use to record income and expenses
- Sales invoices
- Purchase invoices (accounts payable, receipts)
- Beginning and ending inventories
- Bills of lading
- Cancelled checks
- Contracts
- Exemption certificates for any sales for resale, sales to exempt entities, or other exemptions claimed
- Depreciation schedules listing all assets acquired or disposed of during the audit period along with purchase or sales invoices for those assets
- Prime Contractor’s Exemption Certificates
- Supporting documentation for all deductions and exemptions

## Audits and Reviews

Any business, whether licensed or unlicensed, may be selected for an audit or review. Audits and reviews are routine procedures used to determine if taxes were correctly reported and paid.

Our auditors and agents will do their best to minimize any disruption of your business during the audit or review.

Prior to the audit or review, an auditor or agent will contact you to set up a time to check your books and records. You will need records to allow the auditor or agent to confirm the accuracy of your tax returns.

If, after reviewing your books, an auditor or agent determines that taxes are due, you will be assessed the additional tax and interest. The auditor or agent will discuss both the procedures used and the differences identified. You will have an opportunity to review the results and discuss them with the auditor or agent before any assessment is issued.

In occasional cases where the errors in filing a return were fraudulent, returns were not filed, no taxes were paid, or the law was otherwise broken, criminal charges may be filed in addition to the interest and penalties assessed.

### Taxpayer's Bill of Rights

1. You have the right to confidentiality.
2. You have the right to tax information written in plain language.
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 performance goals or quotas do not influence collection procedures or assessments.
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 deadlines for filing tax returns and making payments.
9. You have the right to seek a refund of any taxes you believe that you have overpaid within the last three years.
10. You have the right to a process requiring a person no lower in authority than the division director approve the seizure of your property for taxes.
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.

## Collections

**What happens if you do not file returns due or pay the amount due?**

1. Penalty applies to returns filed late.
2. Interest applies to the unpaid tax each month until paid in full.
3. A revenue agent will attempt to contact you to resolve the delinquency.
4. The department may:
    - Issue an assessment of the estimated tax, penalty, or interest.
    - File a notice of the tax lien with the register of deeds in any county. Any tax, penalty, or interest due from a taxpayer is a lien in favor of the state on all real or personal property and rights to property belonging to the taxpayer.
    - Issue a distress warrant directing the sheriff to seize your property to pay the debt.
    - Revoke your tax license. It is a Class 6 felony to engage in business after the Secretary of Revenue has revoked a tax license.
    - File a criminal complaint. Failing to file and/or pay one return within sixty days of the due date is a Class 1 misdemeanor. Failing to do so twice within a twelve-month period is a Class 6 felony. The sentence for a Class 6 felony may be up to two years in prison and/or a $2,000 fine.
    - Refer any amount due to the State's collection agency for collection.

∗ **If the business ownership is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership, the department may take these actions against any of the corporate officers, member-managers or managers of limited liability companies, or partners of partnerships.**

**What can you do to avoid becoming delinquent?**

- Know your tax responsibilities and plan for them.
- File electronically. Electronic filing reduces errors, saving you time and money.
- Pay careful attention to the due date on your tax return.
- Respond promptly to any Notice of Balance Due or Delinquency Notice sent to you.
- Open and read Department of Revenue correspondence sent to you; it may contain reporting instructions, due dates, changes in laws or tax rates, or other important information that may affect your tax responsibilities.
- Set up a separate bank account and regularly deposit collected retail sales tax or other taxes you may owe. Withdraw the funds only when you pay the taxes.
- Promptly notify the Department of Revenue if your address and/or phone number changes.

South Dakota Department of Revenue

Business Tax Division

445 E. Capitol Ave.

Pierre, SD 57501-3100

Form: 2032

## Sales and Use Tax Return

License #: _____

Name: _____

Return: _____ Reporting Period: _____

Return Due: _____

If your address changed, please update below:

Mailing Address: _____

Physical Address: _____

City: _____ State: ____ Zip Code: _____

Out of Business? Last day of business: _____
*Please return your license card in to the Department.*

| Sales Tax Calculations | Gross | Taxable | Rate | Tax Due |
|---|---|---|---|---|
| 1. Gross Sales | | | | |
| 2. Use Taxable | | | | |
| 3. Non-Taxable Sales | | | | |
| 4. Special Jurisdiction Sales (Detail in City Section) | | | | |
| 5. Net State Sales Taxable (Line 1 plus Line 2, minus Line 3, minus Line 4) | | | × 4.5% | |
| City & Special Jurisdiction Tax Calculation Detail: | | | | |
| City/Special Jurisdiction Name | Code | Taxable | Rate | Tax Due |
| 6. | | | | |
| 7. | | | | |
| 8. | | | | |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. | | | | |
| 13. | | | | |
| 14. | | | | |
| 15. | | | | |
| 16. | | | | |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 22. Total City/Special Jurisdiction Tax (Add Lines 6 through 19) | | | | |
| 23. Total Tax Due (Line 5 plus Line 22) | | | | |
| 24. Penalty/Interest | | | | |
| 25. Adjustment (Previous Credit/Balance Due) | | | | |
| 26. Total Due (Line 23 plus Line 24 plus Line 25) | | | | |
| 27. Amount Remitted | | | | |

I declare under the penalties of perjury this return has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

Date: _____ Preparer: _____

Date: _____ Licensee: _____

Sample

DEPARTMENT OF REVENUE