DEPARTMENT OF REVENUE

November 2021

Contractor's Excise 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. Apply online at https://apps.sd.gov/rv23cedar/main/main.aspx.

EPath: File and pay Sales, Use, and Contractor's Excise Taxes, 911 Surcharges and certain Motor Fuel taxes online. Find EPath at https://sd.gov/EPath.

Business Education: Go to https://dor.sd.gov/online-services/ to register for a seminar.

Tax Facts: Publications to help you better understand the tax obligations for specific industries. To view tax facts, visit https://sddor.seamlessdocs.com/sc/publications-tax-facts/.

Remote Sellers & Marketplace Providers: For updates on how South Dakota's remote seller and marketplace laws affect you, visit https://dor.sd.gov/businesses/taxes/sales-use-tax/#and.

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

State law allows contractors to list the contractor's excise tax and any use tax imposed under chapters 10-45, 10-46 or 10-52 as a separate line item on all contracts and bills, both for public and private entities. The excise and use taxes are a part of the contractor's total bill and are collectible from all entities.

(SDCL 10-46B-10, SDCL 10-46A-12)

CONTACT US

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

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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

Contractor's Excise Tax

Any person entering into a contract for construction services enumerated in Division C of the Standard Industrial Classification Manual of 1987 or engaging in services that include the construction, building, installation, or repair of a fixture to real property must have a South Dakota contractor's excise tax license. This includes repair or remodeling of existing real property or the construction of a new project.

Contractor's excise tax is imposed on the gross receipts of all prime contractors engaged in construction services or realty improvement projects in South Dakota (SDCL 10-46A). The gross receipts would include the tax collected from the consumer.

Contractor's excise tax is imposed on the gross receipts of all prime and subcontractors engaged in construction services or realty improvement projects for the following types of utility companies (SDCL 10-46B), the alternative contractor's excise tax):

- Electric, Heating, Power, Water, and Gas Companies (SDCL 10-35)
- Railroads (SDCL 10-28)
- Rural Electric Companies (SDCL 10-36)
- Telephone Companies, including Rural Telephone Companies (SDCL 10-33)
- Municipal Telephone Systems (SDCL 9-41)
- Rural Water Systems (ASRD 64:07:01:01.02)

To be taxed under SDCL 10-46B the realty improvement work must be for the actual utility. This includes buildings, offices, installing lines, pipes, etc. If a QU company owns or operates businesses other than the utility, such as an apartment or other non-utility building, then the realty improvement work is taxed under SDCL 10-46A.

The prime contractor's contract determines the tax application for all subcontractors. If the prime's contract is for a qualified utility construction project subject to tax under SDCL 10-46B, the subcontractor's contracts are also subject to tax under SDCL 10-46B. The contractor's excise tax that applies to the original contract applies to all change orders to that contract.

Contractor's Excise Tax Application

The prime and subcontractor's tax liability under SDCL 10-46A and SDCL 10-46B are as follows.

Projects that are not Qualified Utility Projects
Tax applies under 10-46A

Prime Contractors:

- Owe contractor's excise tax on their gross receipts.
- Include the value of material furnished by the owner in their gross receipts subject to the contractor's excise tax.
- Owe state and applicable municipal use tax on materials furnished by the owner if the owner does not document sales or use tax was previously paid.
- Owe state and applicable municipal use tax on material they furnish for the contract if sales or use tax was not previously paid.
- Must issue prime contractor exemption certificates to all subcontractors.
- Cannot deduct amounts paid to subcontractors in determining gross receipts subject to the contractor's excise tax.

Subcontractors:

- Do not owe contractor's excise tax IF a prime contractor's exemption certificate is received for the project.
- Owe state and applicable municipal sales or use tax on material the subcontractor furnishes for the contract.

Qualified Utility Projects
Tax applies under 10-46B

Prime Contractors:

- Owe contractor's excise tax on their gross receipts.
- Do not include the value of the owner furnished material in their gross receipts subject to the contractor's excise tax.
- Owe state and applicable municipal use tax on materials furnished by the owner if the owner does not document sales or use tax was previously paid.
- Owe state and applicable municipal sales or use tax on material they furnish for the contract.
- Cannot issue prime contractor's exemption certificates to subcontractors for a qualified utility project.
- Cannot deduct amounts paid to subcontractors in determining gross receipts subject to the contractor's excise tax.

Subcontractors:

- Owe contractor's excise tax on their gross receipts.
- Owe state and applicable municipal sales or use tax on material the subcontractor furnishes for the contract.
- Cannot accept a prime contractor's exemption certificate for a qualified utility project.

Definitions and General Information

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%**
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%**

Prime Contractor

A "prime contractor" is anyone entering into a contract for construction services or realty improvements with the project owner.

Subcontractor

A "subcontractor" is a person contracting to perform all or part of the construction services or realty improvement for a prime contractor. The subcontractor must receive a prime contractor exemption certificate from the prime contractor.

Prime Contractor's Exemption Certificate

Except for projects for a qualified utility, it is the prime contractor's responsibility to issue prime contractor's exemption certificates to all subcontractors for each project. If a subcontractor hires another subcontractor, the prime contractor must issue the exemption certificate.

- Prime contractor exemption certificates cannot be issued to subcontractors on contracts for qualified utilities (SDCL 10-46B).

The exemption certificate must show the prime contractor's excise tax license number, the project location, and description. A blanket certificate cannot be issued to a subcontractor, it must list the specific project.

Subcontractors that do not have a certificate on file for a project are considered prime contractors and are subject to the contractor's excise tax. The department recommends obtaining a prime contractor's exemption certificate prior to starting work.

Certificates may not be issued by:

- United States Government, the State of South Dakota, or any other state, public, or municipal corporation.
- The owner of a project. (Exception: an owner is a prime contractor if they are building or remodeling with the intention of selling the property or building property to lease.)

Anyone, other than the prime contractor, who provides a prime contractor's exemption certificate is liable for the contractor's excise tax not paid plus a 10% penalty.

Contractors: Display Your License Number

All contractors must display their contractor's excise tax license numbers with their building permits. This does not mean that the contractor's excise tax license itself must be displayed but that the license number should be written on or near the building permit.

Gross Receipts

Contractor's excise tax is calculated on the total gross receipts.

- Gross receipts include the full amount received directly or indirectly in money, credits, property, liquidated damages, or other money's worth in consideration for performing construction services or realty improvements in South Dakota.
- Gross receipts also include the greater of the cost or fair market value of materials furnished by the owner for the contractor to install.
- Gross receipts for qualified utility projects do not include owner-furnished material.
- The gross receipts include the tax collected from the customer.

BID FACTOR

Because contractor's excise tax is owed on the gross receipts, which include any taxes collected from the customer, a bid factor of 2.041% may be used to calculate the excise tax when preparing a bid or bill. This allows the contractor to collect the full amount of excise tax due.

Only use this factor to prepare a bid or bill. A straight 2% is used when calculating tax due on the excise tax return.

A Bid Factor Calculator is available online at https://sddor.seamlessdocs.com/f/1895 This form calculates the tax to include on a bid or invoice based on amounts entered.

A contractor cannot take a deduction for the cost of the property sold, cost of the materials used, cost of services or labor purchased, amounts paid for interest or discounts, taxes, or any other expenses or losses.

Include all Sales, Use, and Contractor's Excise Tax collected in gross receipts, even if the tax is separately listed in the contract. Taxes may not be deducted when determining taxable receipts.

The contractor's excise tax and the contractor's sales and use taxes are part of the contractor's total bill and are collectible from all entities, both public and private. State law allows contractors to list their tax expense as a separate line item on all contracts and bills (SDCL 10-46A-12).

Definitions and General Information (cont.)

Owner-Furnished Material

The prime contractor owes contractor's excise tax on the value of material furnished by the owner of the construction project, except for qualified utility projects. The fair market value of the owner-furnished material includes sales or use tax on the material.

Contractors also owe state and applicable municipal use tax on all material furnished for a construction project if they do not have documentation showing sales or use tax was paid. Documentation may include a copy of the invoice showing tax or a written statement from the owner that sales or use tax was paid. Contractors will owe use tax on material furnished by a government or other sales tax exempt entity because the government will not have paid sales tax at the time of purchase.

Contractor's excise tax and use tax due on owner-furnished material is reported during the reporting period the material is furnished for the contractor's use.

Subcontractor Payments - Contractors cannot deduct amounts paid to subcontractors.

Liquidated Damages, Penalties - Interest, penalties, or liquidated damages paid by the contractor may not be deducted from gross receipts.

Building Permit Fees - Include amounts received for all licenses or permits required for a project.

Bonus - Include amounts received for bonus. Example: payments for early completion.

Indirect Payments - Amounts paid to others, material suppliers or subcontractors, on behalf of the prime contractor are considered gross receipts of the prime even if payment is made directly by the customer.

Barter - When equipment, supplies, or services are exchanged for labor, the value of the item received is reported as gross receipts on the contractor's excise tax return.

Sweat Equity - Homeowners who provide part of the construction in exchange for a reduction in the amount due the contractor are providing "sweat equity". The prime contractor cannot make a deduction for the amounts allowed the homeowner for their portion of the work. The homeowner that does part of the construction work is a contractor. The prime contractor should give the owner a Prime Contractor's Exemption Certificate.

Undue Enrichment - Overcollection of tax. If more tax is collected than is actually due, the additional tax must be remitted to the department or refunded to the customer.

Project Examples

Speculative Building

- **Buildings Built for Lease**

  Anyone constructing a building for lease to others is liable for the contractor's excise tax based upon the fair market value of the building if the value is greater than $100,000 and:

  ⇒ The owner has a contractor's excise tax license; or

  ⇒ The owner is not a licensed contractor, but the owner performs part of the construction.

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https://sddor.seamlessdocs.com/sc/publications-tax-facts/

- **Operative (Speculative) Builder** *(Also known as "Flipping")*

  A person who owns land and builds with the intent of selling the building once it is complete is an operative (speculative) builder and is a prime contractor. This includes new construction or remodeling of existing structures. This person must have a contractor's excise tax license whether they do the construction themselves or hire someone else. More information is available in the Speculative Builders and the $100,000 Rule Tax Fact.

Communication System Projects

Contractors installing or performing repairs to communication systems are subject to contractor's excise tax. More information is available in the Communications Equipment - Installation and Repair Tax Fact.

Gravel Crushing and Selling

The sale of gravel and the crushing of gravel is subject to sales tax. More information is available in the Gravel Tax Fact.

Snow Removal

Snow removal services are subject to sales tax. When such service is rendered for a political subdivision, such as a county, the receipts are not taxable but a tax license is still needed.

Project Examples (cont.)

Highway Construction Subcontractors

Prime contractors bidding on highway construction contracts can provide prime contractor exemption certificates to subcontractors performing the following services: traffic control, striping, flagging, operation of pilot cars, signing, landscaping, seeding, sodding, mulching, and erosion control.

Trucking

Intrastate transportation of products by trucking companies or delivery companies is exempt from sales tax. Garbage hauling is subject to sales tax.

When a job includes some services that, if performed separately, are subject to contractor's excise tax and some services that are subject to sales tax, the primary purpose of the job determines which tax applies.

When the primary purpose is not clear, the tax may be applied in one of the following ways.

- Itemize the services on the invoice, applying sales tax to the sales taxable services and contractor's excise tax to those subject to contractor's excise tax; or
- If 25% or more of the dollar value of the contract is for excise taxable work, charge contractor's excise tax on the entire contract. If the excise taxable work is less than 25% of the dollar value of the contract, charge sales tax on the entire contract.

Irrigation Projects

Installation of irrigation systems is subject to contractor's excise tax. More information is available in the Agriculture Machinery, Attachment Units, and Irrigation Equipment and Services Tax Fact.

Satellite Dishes

Charges for connection of a satellite system for a homeowner's use are subject to sales tax. The cost of installing poles or lines between the satellite dish and the building is subject to contractor's excise tax. Contractor's excise tax must be remitted on all charges for the connection of a commercial system.

More information is available in the Communications Equipment-Installation and Repair Tax Fact.

Carpet Laying

Most floor covering sales and installations are subject to sales or use tax, not contractor's excise tax.

All other types of flooring, such as ceramic tile, terrazzo work, and epoxy flooring are subject to contractor's excise tax. More information is available in the Flooring Tax Fact.

Landscaping – Lawn Care

Services subject to sales tax: landscape designing, lawn mowing, spraying, and fertilizing, ornamental shrub and tree planting, trimming and removal (including stump removal and grinding), pruning, utility line tree trimming, seeding or laying sod, and mowing highway edges.

Note: Seeding/sodding public road right of way as part of a highway contractor's excise tax.

Services subject to contractor's excise tax: laying bricks (whether around a flower bed, for a retaining wall, patio, walkway or driveway), installation of a lawn sprinkler system, installation of fountains and ponds that contain heaters or flowing water, brush or timber clearing services (such as for a shelter belt), and stump removal in fields. More information is available in the Landscaping and Lawn Care Tax Fact.

Examples of Flooring Subject to Sales Tax:

- access flooring
- asphalt tile installation
- carpet laying or removal service
- duraceramic and durastone
- fireproof flooring construction
- floor laying, scraping, finishing and refinishing
- hardwood flooring
- linoleum installation
- parquet flooring
- resilient floor laying
- vinyl floor tile and sheet installation
- wood flooring

construction project is subject to

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https://sddor.seamlessdocs.com/sc/publications-tax-facts/

Leasing

- **Leasing Equipment With an Operator** - If construction machinery, such as a crane, backhoe or grader, is leased with an operator to perform a portion of a realty improvement, this is a construction service subject to contractor's excise tax.

  When the lease of equipment with an operator is not used on a realty improvement project, the service is subject to sales tax.
- **Leasing Equipment Without An Operator** - Rental payments on construction equipment without an operator are subject to sales or use tax.
- **Leasing of Installed Systems** - The tax liability for leasing of systems which fall under the contractor's excise tax law depends on the situation. Examples include: burglar alarms, communication systems, electronic control systems, fire alarms, irrigation systems, and monitoring systems.
- **Leasing of Crane or Rigging Service** - is taxed based on the job performed:
  ⇒*Sales Tax:* the crane or rigging service moves or places the equipment or materials.
  ⇒*Contractor's Excise Tax:* the crane or rigging service places and attaches the equipment or materials to real property.

Project Examples (cont.)

Roto-Rooting Service

The total charge made for cleaning sewer pipes with a roto-rooter is subject to sales tax. Inspection of sewer pipes is also subject to sales tax.

Drapery Installation

The installation or replacement of curtains on stages in auditoriums, theaters, or schools is subject to contractor's excise tax. Sales or use tax is due on the cost of the curtains.

The sale and installation of draperies or window coverings in homes and offices is subject to sales tax.

Locksmiths and Locksmith Shops

Gross receipts from the sales and services of locksmiths and locksmith shops are subject to sales tax. Locks, lock parts, and other materials that are sold to the customer can be purchased for resale.

Occasional Retail Sales of Materials

If a contractor occasionally sells material or supplies they previously paid sales or use tax on, they are responsible for remitting additional sales tax on the difference between the sale price and the amount sales or use tax was previously paid on.

Construction Management

Construction managers hired to manage construction projects are subject to sales tax. Construction managers may provide services such as reviewing and selecting contractors, reviewing purchase invoices, selecting material, and overseeing construction progress.

Construction managers do not have contracts where payment is received for construction services or realty improvement work. Managers who have contracts or receive payment for construction services are prime contractors subject to the contractor's excise tax.

Cleaning and Adjustments

Cleaning, calibration, and adjustments to real property, excluding the repair to or replacing of parts, are subject to sales tax.

Examples:

1. Cleaning a furnace and replacing a filter are subject to sales tax.
2. Replacing the furnace motor is subject to contractor's excise tax.

Highway Contractor License

In addition to the contractor's excise tax license, a highway contractor's license is required for all prime or subcontractors who perform highway construction work on public roads.

- Highway construction means all work performed by vehicles, machinery, or equipment within the right-of-way in the construction, reconstruction, repair, or maintenance of public highways.
- Highway construction includes snow removal and blading.

"Public highways or roads" are any way or place, including waterways and snowmobile trails, open to the use of the public for vehicular, snowmobile, or watercraft travel. This definition includes those ways or places temporarily closed for construction, reconstruction, maintenance, or repair.

Political subdivisions will contact the department to verify the contractor is properly licensed prior to awarding a bid and will verify the contractor has filed and paid all tax liabilities prior to issuing the final payment.

Diesel Fuel

Undyed Diesel Fuel - All undyed diesel fuel purchased in South Dakota includes state fuel tax.

Dyed Diesel Fuel - All dyed diesel fuel purchased for commercial use is subject to sales or use tax.

It is recommended that dyed diesel fuel is used in all unlicensed equipment/machinery. No refund of the state fuel tax will be granted when undyed diesel fuel is used in equipment/machinery.

The South Dakota Highway Patrol conducts fuel inspections to ensure dyed diesel fuel is not being utilized in licensed vehicles. If dyed fuel is detected in a licensed vehicle, the owner will be subject to both state and federal fines and penalties.

More information is available in the Highway Contractor section of our website at https://dor.sd.gov/businesses/taxes/motor-fuel/ or by calling 605-773-8178.

Sales and Use Tax

All contractors are responsible for paying sales or use tax on all purchases of products or services. This includes materials installed in construction projects and all equipment, tools, and supplies used by the contractor.

Licensed suppliers are responsible for collecting sales tax based on where the contractor receives the product.

- If the contractor picks products up at the store, state and municipal sales tax applies at the store's location.
- Products delivered are subject to state and municipal tax where delivered.

State and municipal use tax applies if the supplier does not charge the applicable sales tax. Use tax is reported on the contractor's excise tax return for the period when the contractor receives the product and the tax rate is based on the location where the product is used.

Use tax applies to the cost of the material including delivery and handling charges. If a contractor marks up the price of the material when billing for a construction project, the markup is not subject to sales or use tax.

Out-of-State Purchases

Material and equipment delivered into South Dakota are subject to South Dakota sales or use tax even if the supplier charges another state's sales tax.

Credit will be given for another state's sales tax legally paid on materials and equipment when brought 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 tax and applicable municipal tax must be added together to determine if additional tax is due.

Examples:

1. *A contractor bought and picked up material in Minnesota and paid Minnesota sales tax. The contractor then uses the material in Clark.*
   - If the use tax due in Clark is higher than the sales tax paid to the Minnesota supplier, the contractor will owe additional use tax.
2. *A contractor purchases material without tax from a business in Ohio. The material is shipped by common carrier to Aberdeen where it is used in a project.*
   - Because the supplier did not charge sales tax the contractor owes the state use tax plus the Aberdeen use tax. The tax applies to the total paid for the material including delivery and handling charged by the supplier.

Material Removed from Retail Inventory

Some businesses, such as a lumber yard, have both a sales tax license and a contractor's excise tax license. The business may use their sales tax license to purchase inventory for resale without paying sales tax.

When a business takes material out of its tax unpaid inventory to use in a construction project, the business is the consumer of the material. The business is responsible for the state use tax plus city use tax at the time the material is removed from inventory. Use tax is owed based on where the material is used.

Use tax due for a construction project must be reported on the contractor's excise tax return.

Examples:

1. *A-P Plumbing purchases pipe without sales tax as part of its retail inventory. The pipes are kept at its store in Brandon. A-P has a contract to install plumbing in a Sioux Falls home.*
   - A-P, as a contractor, is the consumer of the pipe removed from the tax unpaid inventory and must pay the state use tax plus Sioux Falls city use tax. Sioux Falls city use tax is due in addition to the state use tax because the material was used in Sioux Falls.
2. *While completing the project in Sioux Falls, A-P purchases additional pipe from a supplier in Sioux Falls. Because A-P has a sales tax license it may purchase this pipe for resale.*
   - Because A-P did not pay sales tax, it owes the state use tax and Sioux Falls use tax on the pipe used in the project in Sioux Falls. If A-P bought more than it needed for the Sioux Falls project, the remaining pipe could be placed in inventory for sale at A-P's store and would not be subject to tax until sold or removed from inventory for another project.

Fabricators – Out-of-State Project - Refunds

A contractor that fabricates products for use in projects outside South Dakota may be entitled to a refund of the sales or use tax that was paid on the material if the fabricated product is exempt from sales or use tax in the state where the contract is performed.

Sales and Use Tax (cont.)

Services

South Dakota's sales and use tax applies to all services unless state law specifically exempts the service. Examples of sales or use taxable services include: engineering, accounting, computer services, business consulting, surveying or staking, architectural planning, testing, rock crushing, carpet laying, locksmiths, inspecting, and snow removal.

Contractors cannot purchase services for resale.

Use tax is based on where the product or service is used.

The service provider is responsible for state and municipal sales tax on services based on where the contractor receives the service. If the contractor receives the service at the seller's location, sales tax applies at that location. Services delivered to the contractor are taxed where delivered. If the delivery address is not known, then sales tax applies based on the contractor's address.

- **Services performed on personal property** are subject to sales tax where the property is delivered to the customer. This includes services such as repairs, rag cleaning, fabrication, and millwork finishing.
- **Services to real property** are subject to sales tax at the property location where the service is performed. This includes services such as carpet installation, surveying or staking, pest control, lawn care, and security services.
- **Other services** are subject to sales tax where the customer receives the service. This includes services such as consulting, architecture, engineering, legal, third party administrative, and accounting.

Examples:

1. *An architect completes plans and sends them to the contractor in Nebraska. The plans are for a building to be built in Yankton.*
   - Because the plans are used to construct a building in Yankton, the value of the plans are subject to the state use tax and Yankton city use tax. The contractor will owe the use tax if the architect did not collect sales or use tax.
2. *A contractor hires ABC Custom Door to stain doors for a home in Rapid City. The contractor picks up the stained doors at ABC's location outside Rapid City.*
   - ABC charges the state sales tax on their service because the contractor received the stained doors outside city limits. The contractor will owe additional Rapid City use tax because the service is used in Rapid City.

Because services may be used at locations other than where the service was originally received, the contractor must be aware of the tax rates in each location they work. If the contractor includes the cost of a service in the amount billed for the construction contract, the service cost becomes part of the amount subject to contractor's excise tax.

Construction Equipment

New equipment purchased for use in South Dakota is subject to the South Dakota sales or use tax.

If used equipment is brought into the state by a contractor who originally purchased the equipment for use in another state, and the equipment is seven years old or less, use tax must be paid on the fair market value of the equipment.

The amount of use tax on the equipment will be reduced by the amount of sales or use tax previously paid. The age of the equipment is based on the manufacture date if available; if not available, age is based on the purchase date.

Lease or Rental of Equipment

Rental payments on construction equipment without an operator or rental of other items, including products transferred electronically, are subject to the South Dakota sales or use tax.

Contractors will owe additional use tax on the rental or lease payment if they use the equipment at a location that imposes a higher use tax rate than is collected by the lessor. Repair parts and service and maintenance to leased or rented equipment are subject to sales and use tax.

More information is available in the Lease and Rental Tax Fact.

Visit our Tax Facts for more information on various topics. https://sddor.seamlessdocs.com/sc/publications-tax-facts/

Municipal Sales and Use Tax

Municipal sales and use tax is in addition to the state tax and is reported on the sales tax return forms.

The municipal sales or use 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 within a municipality imposing a tax.

Contractors will owe additional municipal tax if products are used or consumed in a city that imposes a higher tax rate than was paid on the purchase.

For municipal tax rates, view the Municipal Tax Guide online at https://dor.sd.gov/businesses/taxes/municipal-tax/ or call 1-800-829-9188.

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.

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.

Corporation, 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 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

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

445 E Capitol Ave

Pierre, SD 57501

Form: 1933

Contractor's Excise Tax Return

License #: _____

Name: _____

Return: _____ Reporting Period: _____

Return Due: _____

If your address changed, please update below:

Mailing Address: _____

City: _____ State: ____ Zip Code: _____

Out of Business? Last day of business: _____

Please return your license card in to the Department.

Excise Tax Calculations	Gross	Taxable	Rate	Tax Due
1. Gross Receipts				
2. Owner-Furnished Materials				
3. Deductions (Subcontractors Receipts, Out-of-State)				
4. Special Jurisdiction Receipts (Detail in City Section)				
5. Net State Excise Taxable (Line 1 plus Line 2, minus Line 3, minus line 4			x 2%	
6. Net Sales and/or Use Taxable			x 4.5%	
7. Total State Tax Due (Line 5 plus Line 6)				
8. City & Special Jurisdiction Tax Calculation Detail:				
9. City/Special Jurisdiction Name	**Code**	**Taxable**	**Rate**	**Tax Due**
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
22. Total City/Special Jurisdiction Tax (Add Lines 10 through 20)				
23. Total Tax Due (Line 7 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 that 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 Signature: _____

Date: _____ Licensee Signature: _____

An online version of the Prime Contractor's Excise Tax Return is available at https://sddor.seamlessdocs.com/f/1933.

Sample

Prime Contractor's Exemption Certification

South Dakota Department of Revenue
445 E Capitol Ave, Pierre, SD 57501

Instructions:

* An exemption certificate may not be used by an owner of a project or a government entity. Improper issuance of this certificate by anyone that is not a prime contractor will incur a penalty of 10% of the tax due.

* A prime contractor may not issue a prime contractor's exemption certificate for a qualified utility (QU) project. On a QU project, the prime contractor and all subcontractors owe the 2% contractor's excise tax on their gross receipts.

* An exemption certificate may not be given for a sales taxable service. Prime contractors must pay sales tax to the service provider on sales taxable services. Examples of sales taxable services are: engineering, architecture, surveying, gravel crushing, snow removal, drapery installation, roto-rooting, locksmith, construction management, cleaning and calibration, and installation of flooring. The installation of tile, terrazzo, and marble are subject to contractor's excise tax.

RETENTION OF THIS CERTIFICATE RELIEVES THE SUBCONTRACTOR FROM LIABILITY FOR CONTRACTOR'S EXCISE TAX SPECIFICALLY FOR THE PROJECT LISTED BELOW.

PRIME CONTRACTOR NAME		EXCISE TAX LICENSE NUMBER	
STREET ADDRESS	CITY	STATE	ZIP CODE
CONTRACTOR EMAIL ADDRESS			
SUBCONTRACTOR NAME		EXCISE TAX LICENSE NUMBER	
STREET ADDRESS	CITY	STATE	ZIP CODE
SUBCONTRACTOR EMAIL ADDRESS			
PROJECT DESCRIPTION			
PROJECT LOCATION			
PRIME CONTRACTOR'S SIGNATURE		DATE	

An online version of the Prime Contractor's Exemption Certification is available at https://sddor.seamlessdocs.com/f/1346.

DEPARTMENT OF REVENUE