

January 2019

This Tax Facts is designed to explain how sales and use tax applies to Internet access and Internet related services. If this Tax Facts does not answer your specific question, please call the Department's toll-free Helpline at 1-800-TAX-9188 between 8:00 AM – 5:00 PM CST, Monday through Friday.

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

The sale of Internet access and Internet related services are subject to the state sales tax plus applicable municipal sales tax.

Examples of Internet related services subject to sales tax are:

- Internet access fees
- Internet e-mail services
- Arranging for live chat or conferencing sessions directly on the Internet, i.e., webinar session
- Technical assistance and support (for example, assistance or support either in person, over the phone, electronically, or via e-mail)
- Web hosting and/or domain name registration
- Web site development (without placement)
- Web site maintenance (without placement)
- Real-time streaming video and/or audio

Internet related services not subject to sales tax include:

- Web site development that includes placement on Internet by the same agency.
- Web site maintenance that includes placement on Internet by the same agency.
- Fees charged by a website owner to place ads on their website.

Internet Access

Internet access is subject to state and applicable municipal sales tax determined by the customer's place of primary use. The customer's place of primary use is the residential street address or the primary business street address of the customer.

Satellite Internet services are subject to state and applicable municipal sales tax based on the customer's place of primary use.

Prepaid Internet Cards can be purchased for a specific amount of Internet access time and are subject to sales tax when purchased.

- Prepaid cards purchased at a store are subject to state and municipal sales tax based on the store location.
- Prepaid cards or any additional minutes purchased online or by phone are subject to state and municipal sales tax based on the customer's place of primary use.

Equipment

Service providers that provide equipment to the customer at no additional charge (a modem or similar device, for example) owe use tax on their cost of the equipment.

If a fee is charged for the rental of the equipment, sales tax is due on the rental fee. In this situation, the rental equipment may be purchased for resale.

Telecommunication Services

Effective 7/1/2008, telecommunication services purchased by an Internet service provider for providing Internet services are no longer subject to sales tax. The Internet service provider is still responsible for sales tax on the full charge for providing Internet services to its customers.

Wireless and Portable Internet Devices

Wireless portable devices sold or rented are subject to sales tax. Access fees for wireless Internet are subject to sales tax. Wireless devices to be sold or rented may be purchased for resale.

WEB Sites

Web Page Development

The development of a Web Page involves the designing, programming, and placing of the Web Page on the World Wide Web. Web Pages may contain any combination of the following elements:

- Text
- Artwork or graphic design
- Embedded programming (scripts) within the HTML page that may be executed by the viewer's browser (e.g., viewer's browser allows viewer to download files)
- Software programs and databases that reside with the Internet Service Provider (ISP) and interface with Web pages
- Software programs that Web pages download to the viewer's machine
- Software programs that interact with applications and/or databases that reside on computers located at the customer's facilities

Once developed, Web pages are transferred to the customer or to the Web Hosting Service, in the following ways:

- Uploaded to the Web Host's Server, or delivered to the Web Host Service via magnetic or other media; or
- Delivered to the customer via magnetic or other media or electronically.

Preparing and Placing Websites

Preparing a web page, home page, or billboard and placing it on the Internet is providing an exempt advertising service. Charges for preparing and placing updates to billboards, homepage or web page are also exempt advertising services. Both preparing and placing must be done by the agency for the service to be exempt. (SDCL 10-45-12.1, ARSD 64:06:02:03)

Service providers that maintain or update a webpage and place the changes on the Internet are not subject to sales tax.

Preparing or Placing a Website

Preparing or developing a website is subject to sales tax where the product is delivered. Fees for hosting a website on a server are subject to sales tax based on the customer's location.

Sales or use tax is due on the software purchased by the designer to provide the service.

Advertising on an existing webpage

Fees charged by a website owner for others to place ads on their website are not subject to sales tax. This charge is exempt whether the website owner designs and places the ad or just places the ad on their website.

Examples: A newspaper has a website. The newspaper charges a fee for people to place ads on their web site. The newspaper converts the paper ad into the proper format for placing on a web page. The fee to place the ad on the newspaper's site is not taxable.

A website owner allows a banner or link for another business to be placed on their website. The website owner may receive a fee for placement of the link or a fee each time the banner is clicked on. That fee is not subject to sales tax.

Examples:

ABC is a website design and hosting service. Customer 1. ABC designs the website and places it on the Internet using ABC's server. ABC's charge for designing and placing is exempt from sales tax as an advertising service. Monthly fees for hosting the website are subject to sales tax.

Customer 2. ABC prepares the website and sends the website to Customer 2. Customer 2 uses another web hosting service to place the website on the Internet. ABC's design services are subject to sales tax. The web hosting service is also subject to sales tax.

Customer 3. Customer 3 designs their own webpage and contracts with ABC to place the website on the Internet. ABC's charge for the web hosting service is subject to sales tax.

Web Site Internet Storage or Hosting

Web hosting services are subject to state sales tax, plus applicable municipal sales tax based on the customer's location. A web host may just provide server space or they may also place the web page, provide necessary domain name registrations or other services. The web host service is subject to the state sales tax, plus applicable municipal tax, based on the customer's location.

The only exemption from sales tax is when the company prepares and places a website. Fees for web hosting are subject to sales tax.

Example: When XYZ Company designs a home page, they charge a monthly fee for hosting. This fee keeps the server space open for the customer's home page. This fee does not cover any changes or additions to the home page. This fee is subject to sales tax.

Web server space purchased by an agency to place their client's web page on is subject to sales tax. A web hosting service may allow a business to upload or delete files, create file directories, change permissions, and the like. If the advertising agency downloads the webpage and changes the links on the page, adds the domain name, etc. the agency has changed the server space and cannot purchase this for resale.

If the Agency just sends the webpage to the web hosting service and the web hosting service provides installation, the hosting service is then passed on unchanged, and when purchased for a specific customer, it can be purchased for resale.

Other Services

The following services are subject to sales tax. State and applicable municipal tax applies to these services based on the customer's location.

Domain Names

- **Domain name registration** can only be done through a Registrar. Fees charged to register domain names are subject to sales tax based on the customer's location. Renewal fees for domain name registrations are subject to sales tax.
- The **sale of a domain name** is the sale of an intangible and is not subject to sales tax. Example: Someone may register a name, then another business may purchase that name to use for their website - the fee paid for the right to use that name is not subject to sales tax.

Web Application Servers. These application servers are used to interface with existing business systems. Example: If a business has an existing database they want available to their clients, the web application server will interact between the existing database and the Internet server to convert data so it is accessible. Sales tax applies based on the customer's location.

Search Engine Positioning. A consulting service may help a business find the best search names. When names are submitted to search engines, that search engine reviews the page, selecting key words and ranks the page by those key words, the higher the ranking the higher on the search list when that word is searched. Sales tax applies based on the customer's location.

Strategic Links. Consulting service to help a business locate and place links on pages that provide the greatest visibility for that company. Example: Placing a name in an Internet Mall. Sales tax applies based on the customer's location.

Web Site Security and Certificates. Software, such as the SSL certificate, provides encryption for your site. The purchase of this software or any security services are subject to state and applicable municipal sales tax. Sales tax applies based on the customer's location.

Resale

Service providers, such as Internet service providers (ISP), web page developers, web hosting services, etc, are subject to sales or use tax on the purchase of all products and services used by their service.

Products such as modems and computers can be purchased for resale if they will be sold or leased to customers.

Services can only be purchased for resale if the following three criteria, as listed in ARSD 64:06:01:08.03, are met:

1. The service is purchased for or on behalf of a current customer;
2. The purchaser of the service does not use the service in any manner; and
3. The service is delivered or resold to the customer without any alternation or change.

Artwork such as photography or clip art that is purchased for a specific customer and is not used for multiple customers can be purchased for resale. Artwork or clipart purchased for general use for multiple customers is subject to sales or use tax when purchased.

Examples: An advertising service hires a photographer to take photos of a business for use on the business' website. Because the photos become a part of the website and are not used for other customers, the advertising service may purchase the photographer's services for resale.

The advertising service hires a photographer to take pictures of trees and plants. The advertising service alters the colors and layers the photos for various effects. These photos are used on multiple websites. Because the photos are altered and not purchased for a specific client, the photographer's service cannot be purchased for resale.

Programming or design services. Software programs or programming may become an actual part of a web page. Software programs or programming that becomes an actual part of the web page may be purchased for resale when it is purchased for a specific customer, and is delivered to the customer or added to the webpage without any alterations or changes. These programs or services cannot be

purchased for resale if they can be copied and used in more than one client's web site.

Software used to design and create the web page is subject to sales or use tax when purchased.

Internet Access. An Internet service provider (ISP) may purchase Internet access from another ISP for resale when the purchase is for a specific customer and is delivered to the customer without any alteration or change. When an ISP purchases Internet access blocks (for access by more than one customer), and the purchase is not for a specific customer, the purchase of the Internet access is subject to sales tax. The ISP will also owe sales tax on the charge to their customers.

Example: An Internet service provider (ISP) sells Internet access. The ISP purchases the Internet access from DotCom as each customer signs up. DotCom provides the Internet access directly to the customer. The ISP can purchase the Internet access from DotCom for resale because they meet the criteria for resale.

Support Services - Help Lines

Charges for support services or help lines are subject to state and applicable municipal sales or use tax, based on the customer's location. All charges to the customer are taxable.

An Internet service provider (ISP) may choose to contract out the support service. An ISP that purchases the help line service for a fee for each customer may purchase the help line for resale. An ISP that purchases the help line service based on a flat fee regardless of the number of existing customers or set quantity of customers cannot purchase the help line service for resale.

Example: An ISP provides a help line for its customers. The ISP contracts with a help line provider to answer the calls and provide help directly to the customer. The help line provider charges the ISP a fee for each customer the ISP provides the help line for. Because the help line service is purchased on behalf of a specific customer, it is passed on unchanged, and the ISP does not use the service, the helpline service may be purchased for resale.

Voice Over Internet Protocol

This is a telecommunications service and is subject to state and applicable municipal sales tax based on the customer's primary place of use, which is the business or residence street address.

Sales over the Internet

The sale of goods or services via the Internet is subject to state and applicable municipal sales tax when delivered (physically or electronically) to locations in South Dakota. Any delivery charges or handling charges are included in the amount subject to sales tax. The consumer will owe use tax when they purchase from an unlicensed Internet vendor.

Products are subject to sales tax based on where the product is delivered. If the delivery location is unknown the sales tax applies based on the customer's location or customer's address that is on file. When no delivery address or customer address is known, the sale of products transferred electronically is subject to sales tax at the location the product was first available for transmission by the seller.

South Dakota businesses selling goods over the Internet are required to have a sales tax license. All sales of products or services delivered to locations in South Dakota are subject to sales tax.

If your business is located outside South Dakota, you are required to collect and remit the sales tax on sales delivered to South Dakota locations if you:

- Have a permanent or temporary business location in SD, including a warehouse, sales room, or office;
- Have any kind of representative or agent in the state, even temporarily, who makes sales, takes orders, installs, assembles, or repairs merchandise etc. or makes deliveries.

Internet Auction Services

Products sold by vendors using an Internet auction site are subject to state and applicable municipal tax if the products are delivered to locations in South Dakota.

Fees charged by Internet auction sites are subject to state and applicable municipal tax based on where the user of the auction site is located. This includes fees to list products and commissions paid to the auction site when products are sold.

Internet auction companies are required to have a South Dakota sales tax license if:

- the business has a physical presence in South Dakota.

If the internet auction company does not have a physical presence but meets one or both of the following criteria in the previous or current calendar year, the internet auction company is required to license their business:

- gross sales into South Dakota exceeding \$100,000; or
- 200 or more separate transactions into South Dakota.

If the internet auction company is not licensed, the purchaser of these services is responsible for remitting use tax directly to the state.

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

Talk to Us!

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

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