

South Dakota  
Department of Revenue

2011

## Contractors' Excise Tax Guide

July 2011

**Tax Help That Works!**

Find tax answers toll-free at **1-800-829-9188**.

[bustax@state.sd.us](mailto:bustax@state.sd.us)

[www.state.sd.us/drr](http://www.state.sd.us/drr)

**E-File:** [SDQUEST.com](http://SDQUEST.com)

Dear Taxpayer:

This book is designed to assist licensees in better understanding the South Dakota Contractors' Excise Tax Laws, including the collection and remittance of the tax. Contractors' Excise Tax is an essential part of the South Dakota tax structure and the more you know about the tax, the easier it is to comply with it. Please take time to acquaint yourself with how this tax relates to your business.

Information published by the department in newsletters, tax facts, guides, press releases, or on the Department's website rescinds all prior written opinions.

Newsletters and Tax Facts, which are information bulletins available for specific businesses, may be obtained online at [www.state.sd.us/drr](http://www.state.sd.us/drr) or can be obtained by contacting the department at 1-800-829-9188.

The department offers a toll-free helpline you can call for answers to contractors' excise tax questions. The number is 1-800-829-9188 or 605-773-7126 in the Pierre area.

If you have questions, do not hesitate to contact any of our offices or email us at [bustax@state.sd.us](mailto:bustax@state.sd.us).

Sincerely,  
Business Tax Division

### ***Taxpayer's Bill of Rights***

1. You have the right to confidentiality.
2. You have the right to tax information that is 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 collection procedures or assessments are not influenced by performance goals or quotas.
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 that the seizure of your property for taxes be approved by a person no lower in authority than the division director.
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.

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#### **Talk to Us!**

#### **If you have a tax problem or questionTalk to Us!**

If you have a tax problem or question, call the South Dakota Department of Revenue toll-free at 1-800-829-9188. Visit us on the web at [www.state.sd.us/drr](http://www.state.sd.us/drr), email us at [bustax@state.sd.us](mailto:bustax@state.sd.us) or write us:

#### **South Dakota Department of Revenue**

Business Tax Division | 445 East Capitol Avenue | Pierre, SD 57501-3100

##### **Aberdeen Area Office**

419 Moccasin Drive  
Aberdeen, SD 57401-5085

##### **Mitchell Area Office**

417 N. Main, Suite 112  
Mitchell, SD 57301-2600

##### **Rapid City Area Office**

4447 S. Canyon Rd., Suite 6  
Rapid City, SD 57702-1889

##### **Sioux Falls Area Office**

300 S. Sycamore, Suite 102  
Sioux Falls, SD 57110

##### **Watertown Area Office**

1505 10th Ave. SE, Suite 1  
Watertown, SD 57201-5300

##### **Yankton Area Office**

1900 Summit Street  
Yankton, SD 57078-1951

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## Publications and Forms

Additional guides, Tax Facts, and forms are available online at [www.sd.state.drr](http://www.sd.state.drr) or by calling 1-800-829-9188.

### Contractors Excise Tax Publications

- Bid Factor Sheet
- Construction Contractors and Subcontractors Booklet
- Agricultural Equipment & Services
- Audits
- Carpet & Flooring
- Communications Equipment - Installation & Repair
- County Governments
- Exempt Entities
- Gravel
- Investigative Services Bureau
- Lease and Rental
- License Requirements for Sales, Use, and Contractors' Excise Tax
- Manufactured and Modular Homes
- Metal Mining
- Oil & Gas Field Services
- Qualified Utility Projects
- Realty Improvements for Exempt Entities
- Self Contractors
- Specialty Builders and the \$100,000 Rule
- State Water Resources Management Systems

### City Tax Publications

- Municipal City Tax Guide

### Forms Available

- Contractors' Excise Tax Return
- Contractors' Excise Tax Return Worksheet/Instructions
- Application for Change in Accounting Method
- Bid Factor Instructions and Calculator
- Change of Address Form
- Change in Partnership Application
- Corporate Officer Update
- Equipment List
- Fabricators Sales & Use Tax Refund for Contractors & Subcontractors
- Information Release Authorization Form
- Power of Attorney
- Prime Contractor's Exemption Certificate
- Summary for Amending Returns
- Electronic Filing: SD Quest Application

## Contractors' Excise Tax

An excise tax of 2% is imposed on the gross receipts of all prime contractors on construction projects. Subcontractor's gross receipts are not subject to the 2% tax if they are furnished a valid prime contractor's exemption certificate by the prime contractor for each specific job performed. The gross receipts of both prime contractors and subcontractors providing construction services or realty improvement projects for qualifying utilities are subject to 2% excise tax. See "Qualified Utility Projects" for explanation.

Gross receipts resulting from construction services or realty improvements for public and private entities are subject to the excise tax. Therefore, projects for the U.S. Government, State of South Dakota, counties, cities, schools, hospitals, churches, and private individuals are taxable. (SDCL 10-46A and 10-46B)

The contractors' 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.

Construction services include any service enumerated in Division C of the Standard Industrial Classification Manual of 1987 or services that include the construction, building, installation, or repair of a fixture to real property. This includes repairs, remodeling, or new construction.

- **Construction services, except qualified utility projects**, in South Dakota are subject to tax under **SDCL 10-46A**. If SDCL 10-46A applies to the original contract, it will apply to all change orders to that contract.
- **Construction services for qualified utilities** (qualified utility projects) are subject to tax under **SDCL 10-46B**, the alternative contractors' excise tax.

### The tax application for prime and subcontractors under SDCL 10-46A is as follows:

Prime Contractors:

- Owe 2% contractors' excise tax on their gross receipts.
- Owe 4% state, plus applicable municipal use tax on materials furnished by the owner, if the owner does not document sales or use tax was previously paid.
- Includes the value of material furnished by the owner in their gross receipts subject to the contractors' excise tax.
- Owe 4% state and applicable municipal sales or use tax on material they furnish for the contract.
- Must issue prime contractor exemption certificates to subcontractors.
- Cannot deduct amounts paid to subcontractors in determining gross receipts subject to the contractors' excise tax.

Subcontractors:

- Do not owe the 2% contractors' excise tax IF a prime contractor's exemption certificate is received for that project.
- Owe 4% state and applicable municipal sales or use tax on material they furnish for the contract.

## Qualified Utility Projects

**Construction projects for the following types of utility companies are qualified utility projects subject to tax under 10-46B.**

- Electric, Heating, Power, Water, and Gas Companies
- Telephone Companies (both private & municipal)
- Rural Electric, Telephone, or Water Supply Companies
- Rural Water Systems
- Railroads (if they own track in South Dakota)

The work **must be for the utility and payment to the prime contractor must be paid by the utility** to be taxed under SDCL 10-46B. If a contractor receives payment directly from an entity that is not the utility company, the project is not a qualified utility project and is subject to contractors' excise tax under SDCL 10-46A. If the utility company receives funding from an outside source and the utility company pays the contractor, the project is taxed as a qualified utility project.

Qualified utility projects do not include construction services or realty improvements performed by utility companies unless the project is for another qualifying utility.

Qualified utility projects include buildings built for a qualified utility for use by that utility business including offices, warehouses and storage buildings are taxed as a qualified utility project.

### The tax application for prime and subcontractors for qualified utility projects taxed under SDCL 10-46B is as follows:

Prime Contractors:

- Owe 2% contractors' excise tax on their gross receipts.
- Do not include the value of the owner furnished material in their gross receipts subject to the contractors' excise tax.
- Owe 4% 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 4% state and applicable municipal sales or use tax on material they furnish for the contract.
- Cannot issue prime contractor exemption certificates to subcontractors for a qualified utility project.
- Cannot deduct amounts paid to subcontractors in determining gross receipts subject to the contractors' excise tax.

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 10-46B, the subcontractor's are also subject to tax under 10-46B.

Subcontractors:

- Owe 2% contractors' excise tax on their gross receipts.
- Owe 4% state and applicable municipal sales or use tax on material they furnish for the contract.
- Cannot accept a prime contractor's exemption certificate for a qualified utility project.

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## Municipal Contracts

Construction for the following is subject to tax under 10-46A

- Municipal Sewer System
- Municipal Utility including electric, light, heat, and power
- Municipal Water System

The Qualified Utility Tax Facts provides information on how contracts for these utilities are taxed. This tax facts is available online at [www.sd.state.drr](http://www.sd.state.drr) or by calling 1-800-829-9188.

## Water Projects

Contractors for certain water development projects in the state water resources management system whose cost exceeds twenty million dollars have special reporting requirements. These projects include: Oglala Sioux Rural Water System (part of the Min Wiconi project); West River Lyman Jones Rural Water System; Rosebud Sioux Rural Water System (part of the Mini Wiconi project); Sioux Falls Flood Control; Lewis and Clark Rural Water System; and Perkins County Rural Water System; Southern Black Hills Water System.

Refer to State Water Resources Management Systems Tax Facts for additional information.

## Prime Contractor

A “prime contractor” is anyone entering into a contract for construction services or a realty improvement. Any person contracting to provide construction services or make a realty improvement with another person who has not been issued a prime contractors’ exemption certificate is a prime contractor.

## Subcontractor

A “subcontractor” is a person contracting to perform all or part of the construction services or realty improvement for a prime contractor and has received a prime contractors’ exemption certificate from the prime contractor.

All contractors working in South Dakota are required to have a contractors’ excise tax permit. Administrative Ruling 64:09:01:16 states, “General contractors are liable for use tax due on all items of tangible personal property used, stored or consumed in the performance of their contract including those portions of the contract performed by subcontractors.” To verify if a business has a valid tax license, please contact the Department at (800) 829-9188.

## Gross Receipts

Gross receipts include the full amount received in consideration for performing construction services or realty improvements in South Dakota. No deductions may be taken for any expenses or losses incurred.

Gross receipts include, but are not limited to, consideration in money or other money’s worth received directly or indirectly for the following:

- **Labor**
- **Subcontract Work** – Do not deduct amounts paid to

subcontractors. If you are a subcontractor, you must include your receipts in the gross receipts line 1. Subcontractor receipts for which you have received a Prime Exemption Certificate are deducted on the Subcontractor Receipts line.

- **Materials**
- **Owner Furnished Material** – Include the value of owner furnished material plus sales or use tax on that material. (Exception – do not include owner furnished material if the project is for a qualified utility project.)
- **Services**
- **Profit**
- **Sales, Use, and Contractors’ Excise Tax** - Include all tax collected, even if the tax is separately listed in the contract. Taxes may not be deducted in determining taxable receipts.
- **Building Permit Fees**

**Gross receipts may be directly or indirectly paid to the contractor.**

- **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 person the realty improvement is done for.

*Example:* The owner of the project sets up a construction account at his bank. The account is in the owner’s name, and the prime contractor submits all bills to the bank for direct payment to the suppliers, subcontractors, etc. This money is never deposited in the prime’s account. This is considered indirect payments and the prime is responsible for reporting and remitting contractors’ excise tax on the amounts paid to all vendors, suppliers, service providers and subcontractors.

**Other money’s worth may include:**

- **Barter** - When equipment, supplies, or services are exchanged for labor, the value of the item received is reported as gross receipts on the contractors’ excise tax return. *Example:* An equipment supplier gives a contractor a bobcat, worth \$5,000, in exchange for the contractor remodeling the supplier’s office. The contractor is responsible for reporting and remitting tax on \$5,000.
- **Sweat Equity** - Homeowners that 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 Contractors’ Exemption Certificate.

*Example:* A contractor is building a house for \$150,000. After agreeing to the contract, the owner decides to paint the interior. The prime allows a credit of \$10,000 against the contract amount and collects \$140,000 for the project. The prime contractor is responsible for reporting and remitting contractors’ excise tax on the \$150,000.

Expenses or losses incurred may not be deducted from the gross receipts.

- **Liquidated Damages, Penalties.** Interest, penalties or liquidated damages paid by the contractor may not be deducted from gross receipts.  
*Example:* A contract for \$150,000 has a completion date of April 30. Failure to complete the contract by April 30 results in a penalty of 5% of the contract amount per day until the project is complete. This penalty is withheld from the payments made to the contractor. The project is completed 2 days late resulting in \$15,000 withheld from the payment. The contractor receives \$135,000. The contractor reports \$150,000 as gross receipts subject to the contractors' excise tax.
- **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.

## Bid Factor

A bid factor of 2.041% may be used to calculate excise tax due when preparing a bid or bill. This factor allows the contractor to recover the excise tax. The factor 2.041% is used to prepare a bid or bill, however, a straight 2% rate is used when calculating the excise tax on the return.

A Bid Factor Calculator, which is an excellent tool for calculating South Dakota contractors' excise tax, is available on the department's homepage, at [www.state.sd.us/drr](http://www.state.sd.us/drr). The calculator is a form that can be viewed with Adobe Acrobat Reader. The user will enter their figures and the form automatically calculates the tax due. Users can print the Bid Factor Sheet, as a worksheet, for use when they don't have access to a computer.

## Owner-Furnished Material

### Subject to Contractors' Excise Tax

The value of materials furnished by the owner must be added to the contract price in order to determine the contractors' excise tax liability on all contracts except qualified utility projects. The value is determined by the greater of the cost or fair market value of the materials plus applicable sales or use tax. Report the owner-furnished materials on line 2 of the contractors' excise tax return during the filing period the owner provides the materials.

### Subject to Use Tax

Contractors owe state and applicable municipal use tax on all material furnished for them to install if the owner did not pay sales or use tax on the material. If the owner has paid sales or use tax on the material the contractor should obtain a copy of the invoice showing the tax or a written statement from the owner that sales or use tax was paid.

The contractor will always owe use tax on material furnished by a government or other exempt entity even though title to the material never rested with the contractor. The exempt entity will not have paid sales tax on material they provide to a contractor.

The use tax the contractor will owe on owner furnished material is based on the cost or fair market value of the material, whichever is greater. The use tax rate is based on where the contractor takes possession of the material.

## Government Contracts

Contractors who have contracts with the United States, the state of South Dakota, and governmental subdivisions have the same sales or use tax liability on their purchases of materials and services as contractors with private entities. The contractor must pay sales tax to the vendor when purchasing materials for an exempt entity project. They are not entitled to a refund for any South Dakota sales or use tax they may have paid.

## Prime Contractors' Exemption Certificates

A prime contractor must issue a prime contractor exemption certificate to all subcontractors for each project. A blanket certificate cannot be issued to a subcontractor on a yearly basis. The exemption certificate must show the prime contractor's valid excise tax license number, the project location and description.

Prime contractor exemption certificates cannot be issued for contracts for qualifying utilities.

Subcontractors must retain the certificates in their records. Any subcontractor who fails to retain a certificate and a record of the project description for each project is considered a prime contractor and is subject to the 2% contractors' excise tax.

The department recommends obtaining a prime contractors' exemption certificate prior to starting work. If a subcontractor hires another subcontractor for his/her work, the prime contractor must issue the prime contractors' exemption certificate. Anyone, other than the prime contractor who provides a prime contractors' exemption certificate becomes liable for contractors' excise tax not paid, plus a 10% penalty based on tax due. No certificate may be issued by the United States, the State of South Dakota, or any other state, public or municipal corporation.

A certificate may not be issued by an owner of a project. A homeowner is not a prime contractor. Exception: An owner is a prime contractor if they are building or remodeling with the intention of selling the property.

## Sales and Use Tax

The contractor is liable for the sales or use tax on all purchases of products, including tangible personal property and products transferred electronically, or services. This includes material and services used in their construction projects and all equipment and supplies.

Sales and use tax is due on the total purchase price of the products and services including delivery charges and handling charges.

Suppliers are responsible for collecting sales tax based on where the material and supplies are delivered to the contractor or where the contractor takes receipt of the material. If the contractor takes delivery of the material at the store the state and city sales tax applies at the store's location. If the material is delivered to the contractor the state and city sales tax applies at the delivery address.

A contractor cannot give a Prime Contractors' Exemption Certifi-

cate to a vendor or service provider. A contractor's excise tax or a use tax license number cannot be used to purchase items exempt from sales tax.

**The contractor is responsible for paying use tax if the person selling material doesn't charge sales tax.**

The state and municipal use tax rate applies based on where the material is delivered to the contractor. The contractor will owe additional use tax if the material is used in a city that imposes a higher city use tax than was previously paid on the material.

Use tax is due in the reporting period the contractor receives the material. If the contractor later uses that material inside a city that imposes a higher sales tax rate contractor must pay the additional city use tax in the tax reporting period in which the contractor uses that material.

Use tax applies to the amount paid for the material including all delivery and handling charges. If a contractor marks up the price of the material when billing their customer for the project, the markup on the material is not subject to sales or use tax.

Contractors that also have sales tax licenses must report all use tax due for a construction project on their contractors' excise tax return.

## Out-of-State Purchases

Material and equipment delivered into South Dakota is subject to South Dakota sales or use tax even if the supplier charges another state's sales tax. South Dakota will not give a credit for taxes paid to another state if the material is delivered into South Dakota.

If a contractor takes receipt of property at an out-of-state location, the supplier will most likely charge that state's sales tax. If the contractor is charged less tax in the other state than what applies in South Dakota, the contractor will owe the difference in use tax to South Dakota. South Dakota 4% state sales tax plus applicable municipal taxes must be added together to determine if additional tax is owed.

Credit for sales or use tax paid to another state, up to the amount of use tax due South Dakota, is applied towards the amount of South Dakota state use tax first, then against the municipal tax due. Credit is not allowed for use tax paid to Nevada and Wyoming. They do not allow credit for use tax paid to South Dakota.

### Examples

1. A contractor purchasing material in Minnesota pays the Minnesota sales tax to the supplier. 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 from an unlicensed 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 4% 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 have both a sales tax license and a contractor's excise tax license, such as a lumber yard. These businesses may use their sales tax license to purchase inventory for resale, without sales tax.

When this business takes material out of their tax unpaid inventory to use in a construction project they are the consumer of the material. The contractor is responsible for the 4% 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 taken out of inventory.

A contractor will owe additional use tax if the contractor removes material from inventory in one city and uses, stores, or consumes that material in another city that imposes a higher city tax.

Use tax due for a construction project must be reported on their contractors' excise tax return.

### Examples:

1. A-P Plumbing purchases pipe without sales tax as part of their retail inventory. The pipes are kept at their 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 4% state use tax plus the Brandon 2% city use tax. There is no additional tax owed even though the material is used in Sioux Falls because Sioux Falls' city use tax is equal to Brandon's.
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 they may purchase this pipe for resale. Because A-P did not pay sales tax they owe the state 4% 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

A contractor that fabricates tangible personal property for use in projects outside SD may be entitled to a refund of the sales or use tax that was paid on the material if the fabricated tangible personal property is exempt from sales or use tax in the state where the contract is performed. Please contact the Department at 1-800-829-9188 for further information.

## 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.**

The service provider is responsible for state and municipal sales tax on services based on where the contractor receives the ser-

vice. 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 tangible 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 first used. This includes services such as carpet installation, surveying or staking, pest control, lawn care, and security services. These services are performed at a location and the service cannot be delivered to another location.
- **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.

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

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 in. For example a repaired item is delivered to a contractor in rural Hyde County where 4% state sales or use tax applies, but then used in Miller, where an additional 2% city use tax applies.

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 contractors' excise tax.

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 4% state use tax plus Yankton municipal 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 the stained doors up at ABC's location outside Rapid City. ABC charges the 4% 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.

## Construction Equipment

New equipment purchased or brought into the state for use during construction 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 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.

## Leases or Rentals of Equipment

Rental payments on construction equipment without an operator or rental of other tangible personal property or 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 is subject to sales and use tax.

For more information review the Lease and Rental Tax Facts.

## Municipal Sales and Use Tax

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

The municipal sales or use tax applies when the purchaser takes receipt of tangible personal property, products transferred electronically, or service 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 Rates online at [www.state.sd.us/drr](http://www.state.sd.us/drr) or call 1-800-829-9188.

## Taxes on Indian Country

### **Tax Collection Agreements**

At present, four Indian Tribes in South Dakota have tax collection agreements with the State that include sales, use and contractors' excise taxes. Two Indian Tribes have limited tax collection agreements that include contractors' excise tax and use tax.

The tax collection agreements ensure that all businesses making sales or providing construction services on property included in a tax collection agreement are subject to the same taxes, tax rates, and exemptions. All businesses, including those owned by tribal members, are responsible for remitting tax.

Indian country controlled by a Tribe 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.

### **Special Jurisdictions**

The Special Jurisdictions for the four tax collection agreements with sales, use, and contractors' excise tax are as follows:

**Cheyenne River Special Jurisdiction** - the Cheyenne River Indian Reservation, which is Dewey and Ziebach Counties, excluding a 500 foot strip of land in the northern-most portions of Dewey and Ziebach Counties.

**Oglala Special Jurisdiction** - the Pine Ridge Indian Reservation, which is Shannon County and that portion of Jackson County south of the White River. This Special Jurisdiction also includes the Allen Store in Allen, SD.

**Rosebud Special Jurisdiction** - the Rosebud Indian Reservation, which is Todd County. This Special Jurisdiction also includes Indian country defined by 18 U.C.S. 1151 (b) and (c) in Mellette, Tripp, and portions of Gregory and Lyman Counties controlled by the Rosebud Sioux Tribe.

**Standing Rock Special Jurisdiction** - the Standing Rock Indian Reservation, which is Corson County and a 500 foot strip of land in the northern-most portions of Dewey and Ziebach Counties.

**The Special Jurisdiction for the limited tax collection agreements with use and contractors' excise tax are as follows:**

**Yankton Sioux Special Jurisdiction**  
**Sisseton-Wahpeton Special Jurisdiction**

If you have any questions concerning whether or not a business or customer is located in a Special Jurisdiction set forth above, please contact the Department at 1-800-829-9188.

For further information on tax rates, collections, and reporting of taxes for Special Jurisdictions and Indian country that does not have agreements, review the Tribal Tax Facts.

## Highway Contractor License

In addition to the contractors' excise tax license, a highway contractor's license is required by the Division of Motor Vehicles (DMV) for all contractors, prime or subcontractors, who perform highway construction work on public roads. Highway construction work is defined as "all work which is performed within any capacity to propel vehicles, machinery, or equipment within the right-of-way in the construction, reconstruction, repair, or maintenance of public highways." Please note that highway construction work includes snow removal and blading of township roads.

Public roads are roads built with tax dollars. Public roads do not include private developments.

Prior to awarding bids to contractors, political subdivisions will insure that the contractor is licensed as a highway contractor with the DMV and Business Tax. Prior to releasing final payment to the contractor, the political subdivision will again check with the DMV and Business Tax to ensure that the highway contractor is in good standing. A licensee in good standing is an active licensee who has filed all tax returns and paid all tax liabilities to the department.

## Diesel Fuel

All undyed diesel fuel purchased in South Dakota includes state fuel tax. All dyed diesel fuel purchased for commercial use is subject to sales or use tax. It is recommended that you dispense dyed diesel fuel in all of your unlicensed equipment/ machinery. If you choose to dispense the undyed fuel in your equipment/ machinery, you will not be eligible to receive a refund of the state fuel tax.

Through documentation you will be able to receive a refund for fuel used in licensed vehicles for commercial off-road use.

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.

For additional information review the Highway Contractors' Fuel Tax Manual online at [www.state.sd.us/drr2/motorvehicle](http://www.state.sd.us/drr2/motorvehicle) or by calling 605-773-5335.

## Project Examples

### Speculative Building

- **Buildings Built for Lease**

Anyone constructing a building for lease to others is liable for the 2% contractors' excise tax based upon the fair market value of the building if the value is greater than \$100,000.

- **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 contractors' excise tax license whether they do the construction themselves or hire someone else.

For more information review the Specialty Builders and the \$100,000 Rule Tax Facts.

### Communication System Projects

Contractors installing or performing repairs to communication systems are subject to contractors' excise tax.

For more information review the Communications Equipment - Installation and Repair Tax Facts.

### 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.

### Irrigation Projects

Installation of irrigation systems is subject to contractors' excise tax.

For more information review the Agricultural Equipment and Services Tax Facts.

### 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 the contractors' excise tax. Contractors' excise tax must be remitted on all charges for the connection of a commercial system.

For more information review the Communications Equipment - Installation and Repair 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 contractors' 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 contractors' excise tax law depends on the situation. Examples include burglar alarms, communication systems, electronic control systems, fire alarms, irrigation systems, and monitoring systems.

For more information review the Lease and Rental Tax Facts.

### **Gravel Crushing and Selling**

The sale of gravel and the crushing of gravel is subject to sales tax.

For more information review the Gravel Tax Facts.

### **Trucking**

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

### **Landscaping – Lawn Care**

When a job includes some services that, if performed separately, are subject to contractors' 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 you may apply tax in one of the following ways.

1. Itemize the services on the invoice, applying sales tax to the sales taxable services and contractors' excise tax to those subject to contractors' excise tax; or
2. If 25% or more of the dollar value of the contract is for excise taxable work, charge contractors' 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. For more information, review the Landscaping and Lawn care Tax Facts.

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 construction project is subject to contractors' excise tax.

Services subject to contractors' excise tax: Laying bricks, whether around a flower bed, for a retaining wall, patio, walkway or driveway, installation of a lawn sprinkler system and installation of fountains and ponds that contain heaters or flowing water, and brush or timber clearing services, such as for a shelter belt, and stump removal in fields. For more information, review the Landscaping & Lawncare Tax Facts.

### **Carpet Laying**

Gross receipts resulting from the sales and service of installing

most floor covering are subject to sales or use tax, not contractors' excise tax. Flooring subject to sales tax includes:

- 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

All other types of flooring, such as ceramic tile, terrazzo work, and Epoxy flooring are subject to contractors' excise tax.

For more information review the Carpet and Flooring Tax Facts.

### **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.

### **Snow Removal**

Gross receipts resulting from 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.

### **Drapery Installation**

The installation of or replacement of curtains on stages in auditoriums, theaters, schools is subject to contractors' excise tax. 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 is 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 that have contracts or receive payment for construction services are prime contractors subject to the contractors' excise tax.

### **Cleaning and Adjustments**

Cleaning, calibration and adjustments to real property that does not

include the repair to or replacing of parts are subject to sales tax.

*Examples:* Cleaning a furnace and replacing a filter is subject to sales tax. Replacing the furnace motor is subject to contractors' excise tax.

## General Information

### Contractors: Display Your License Number

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

### Changes in Ownership, Address, or Business

**Canceling a License:** Cancellation requests must be in writing. To cancel a license, you must file all returns and pay all tax, penalties and interest due. Write the last date of business on your return in the area provided. This must be done within 30 days of the completion of the sale or the closing of the business. If you sold your business the purchaser must apply for a new license in his or her own name.

Sales or contractors' excise tax licenses are NOT transferable.

**Ownership Change:** If your business changes from one kind of business ownership to another, you must contact the department and a new license must be issued.

- **Partnerships:** When changing partners in a partnership, the new partner must supply the department with his or her name, social security number, personal address, and phone number. When a person leaves a partnership, that person must inform the department in writing of the effective date of separation. Changes in partnerships must be signed by all partners, those leaving, those entering and those staying in the partnership.
- **Corporations, LLC, or LLP:** A change in corporate officers, partners, or members does not require a change in the tax license, but all changes must be reported to the department.

**Address Change:** If your mailing address or your business location changes, inform us in writing immediately. Send the new address information including the zip+4, effective date of the change, your taxpayer number, and business name to:

South Dakota Department of Revenue  
Business Tax Division  
445 East Capitol Avenue  
Pierre, SD 57501-3100

Or e-mail changes to: [bustax@state.sd.us](mailto:bustax@state.sd.us)

## Accounting Methods

When using the **accrual method**, you report and pay tax as you bill the customer and enter the transaction on your records whether or not you have received payments. Under the accrual method, all cash, credit installment, and conditional sales must be included as gross receipts for the reporting period in which the transaction occurs or when billed. This rule applies even though all or part of a customer's payments have not been received.

Taxpayers reporting on the accrual method may take credit for **bad debts** on the return for the period during which the bad debt is written off as uncollectible in their books and records and is eligible to be deducted for federal income tax purposes.

The exception is a **conditional sales contract** in which the installment period is greater than 60 days. In this instance, only the payment actually received during each tax-reporting period is subject to sales tax.

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 basis.

Statements are prepared on a cash basis when revenue and expenses are recognized only upon receipt. In the case of cash basis, revenue from the sale of goods and services are recognized only when payments are made.

**Changes in accounting methods must be requested in writing.**

**Under both cash and accrual reporting:**

- Use tax is due on materials or services during the reporting period the purchaser receives the materials or services or is invoiced for the purchase.
- Owner-furnished materials are reported during the reporting period the materials are furnished to the contractor.

## Record Keeping

Every taxpayer is required to establish and maintain records that are adequate for auditors to use in determining the correct amount of a business' tax liability.

This responsibility includes not only those paying sales tax but also individuals paying use tax; persons purchasing tangible personal property for storage, use or other consumption in the state.

Records of business transactions must be kept at least three years and must include beginning and ending inventories, purchase invoices, sales, canceled checks, receipts, invoices, bills of lading, depreciation schedules, exemption certificates, contracts, prime contractor exemption certificates, and other pertinent documents.

A contractor must furnish a list of all subcontractors, the subcontractors' addresses, amount paid to each subcontractor and the approximate completion date of the contract at the department's request.

## Audits and Reviews

Eventually, most businesses will be audited or reviewed as a part of the department's normal review process. 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 make arrangements for a convenient time to check your books and records. You will need records or receipts, sales invoices, bills of lading, copies of bills of sale, and other pertinent papers that will allow the auditor or agent to confirm the accuracy of your tax returns. While you may only be asked to provide the records for a

single reporting period, you must keep your records for a minimum of three years or longer if you are depreciating capital assets.

If, after reviewing your books, an auditor determines that you were deficient in the amount of taxes you paid, you will be assessed the additional tax and interest. 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.

## Collections

If a taxpayer fails to file returns or pay taxes, penalties and interest, the Department of Revenue may take the following actions to collect the amounts due.

### **All licensed persons must file applicable tax returns whether or not the person has gross receipts subject to tax.**

**Notice of Jeopardy Assessment** - If the Secretary of Revenue finds that the collection of any tax is in jeopardy because of a taxpayer's delay the Secretary may make an immediate assessment of the estimated tax, penalty, or interest and demand payment from the taxpayer. The assessment may be made based on records or other sources of information available to the Secretary.

**Notice of Tax Lien** - Any time a taxpayer has tax, penalty, or interest due the department will file a Notice of Tax Lien with the Register of Deeds of the county where the taxpayer has property to preserve the state's lien priority against other creditors or entities.

The taxpayer will be unable to sell real property with a clear title until the department releases the lien. The taxpayer must satisfy the lien in full before the department will release the lien.

State law holds corporate officers personally liable for the taxes of the corporation. The department will impose liens on the corporate officers as well as the corporation.

**Distress Warrant – Collection Agency** - If the taxpayer fails to make payment, the department may turn the account over to a collection agency or request that the county treasurer issue a distress warrant to the county sheriff. A distress warrant is an official request from the department to the county sheriff to collect taxes owed to the State of South Dakota.

A distress warrant directs the sheriff to collect delinquent taxes by seizing and selling the taxpayer's personal property. State law considers business and personal checking and savings accounts to be personal property subject to seizure.

**License Revocation** - The department may revoke a tax license for failure to file returns timely or pay taxes due. Any person who engages in business after the Secretary of Revenue has revoked a tax license is guilty of a Class 6 felony.

**Criminal Penalties** - Any person who:

- Fails to file and/or pay one return is guilty of a Class 1 misdemeanor.
- Fails to keep or maintain records is guilty of a Class 1 misdemeanor.
- Fails to file returns or pay tax due two or more times in any twelve month period is guilty of a Class 6 felony.
- Makes any false or fraudulent return in attempting to defeat

or evade the tax is guilty of a Class 6 felony.

- Engages in business without a license after having been notified in writing by the Secretary of Revenue and Regulation is guilty of a Class 6 felony.

The maximum sentence upon conviction of a Class 1 misdemeanor is one year in jail and/or a \$1,000 fine. The maximum sentence upon conviction of a Class 6 felony is two years in prison and/or a \$2,000 fine.

## Filing The Tax Return

State law requires that every holder of tax permit must file a return for each reporting period, even if there is no excise or use tax liability. To file a return where there are no receipts, enter a \$0 in Line 1.

After a tax permit is issued a tax return and worksheet are mailed about 20-30 days prior to the date the return and payment are due. The tax calculations can be figured on the worksheet and the figures transferred to the tax return. Keep a copy of the worksheet.

It is the responsibility of the taxpayer to contact the department if a return is not received.

### **Due Dates for Returns and Payments**

- Filing once a month – returns are due the 20th of the following month.
- Filing every other month, semi-annually, or on a seasonal basis - returns are due the last day of the month following the reporting period.
- Filing electronically, using SD Quest - returns must be filed no later than the 23rd day of the month. Payments must be electronically remitted on the second to last working day of the month.

Mail returns and payments to the Remittance Center, PO Box 5055, Sioux Falls, SD 57117.

Do NOT mail the worksheet. Be sure to include the license number on all correspondence with the department.

### **Late Filing and Paying**

Return filed late (a return is not received within the next month following the due date) are assessed a penalty of 10% (.10) of the tax liability (minimum \$10.00, even if no tax is due).

Payments made after the due date of the return are assessed interest of 1.25% (.0125) of the tax liability each month or part thereof for a return filed or any tax unpaid after the due date (a minimum of \$5.00 is due the first month).

In addition to penalty and interest, late returns and payments may result in the license being revoked. Collection activities such as tax liens and distress warrants may be used on delinquent accounts.

### **Filing an Amended Return**

If you discover an error made on a previous return, you will need to request a Summary for Amending Sales, Use Tax, and Contractors' Excise Tax and a self-audit worksheet (amended return) for each specific period needing correction. Please call 1-800-829-9188 if an amended return needs to be filed.



CONTRACTORS' EXCISE TAX RETURN

Reporting Period
Return
Return Due
File Code

CHECK FOR CHANGE OF ADDRESS BELOW

Check if out of business
Last day of business:

License #

Table with columns: EXCISE TAX CALCULATIONS, GROSS, TAXABLE, RATE, TAX DUE. Rows include Gross Receipts, Deductions, Net State Excise Taxable, City & Special Jurisdiction Tax Calculation Detail, and Total Tax Due.

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

RV-068  
Revised  
04/04

## Prime Contractors' Exemption Certificate

South Dakota Department of Revenue

445 E. Capitol Avenue | Pierre, SD 57501-3185 | 1-800-829-9188 | E-mail: bustax@state.sd.us

**DO NOT SEND THIS CERTIFICATE TO THE DEPARTMENT OF REVENUE & REGULATION. PLEASE KEEP IN CASE OF AN AUDIT.**

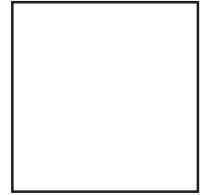
### Instructions

- An exemption certificate may not be issued 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 contractors' exemption certificate for a qualified utility (QU) project. On a QU project, the prime contractor and all subcontractors owe the 2% contractors' 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 & calibration, and installation of flooring. The installation of tile, terrazzo & marble is subject to contractors' excise tax.

**RETENTION OF THIS CERTIFICATE RELIEVES THE SUBCONTRACTOR FROM LIABILITY FOR CONTRACTORS' EXCISE TAX FOR THE PROJECT LISTED.**

|                                  |                    |                           |
|----------------------------------|--------------------|---------------------------|
| PRIME CONTRACTOR NAME            |                    | EXCISE TAX LICENSE NUMBER |
| STREET ADDRESS                   | CITY / STATE / ZIP |                           |
| SUBCONTRACTOR NAME               |                    | EXCISE TAX LICENSE NUMBER |
| STREET ADDRESS                   | CITY / STATE / ZIP |                           |
| PROJECT DESCRIPTION AND LOCATION |                    |                           |
| PRIME CONTRACTOR'S SIGNATURE     |                    | DATE                      |





<http://www.state.sd.us/drr2/businessstax/guest/guest.htm>

- Enjoy Efficient & Convenient Tax Filing
- File Online or by Phone
- Pay Electronically

- Enjoy Safety & Security
- Reduce Filing Errors
- Eliminate Excess Paperwork!

24 hours  
 a day,  
 365 days  
 a year



On the  
 Internet



By  
 Telephone



*E-file your taxes* 1-800-829-9188