

South Dakota
Department of Revenue & Regulation

2006

Contractors' Excise Tax Guide

July 2006

Tax Help That Works!

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

E-mail: bustax@state.sd.us

Website: www.state.sd.us/drr

Filing your TAXES has never been easier with SDQUEST.com

Dear Taxpayer:

This booklet has been designed to assist you in applying for a South Dakota Contractors' Excise Tax license and to assist you in better understanding contractors' excise tax laws, including the collection and remittance of tax to the Department of Revenue & Regulation.

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.

A quarterly newsletter is mailed to each licensee with updates on tax laws and policies. Be sure to read each newsletter carefully; this information may save you time and money. Tax Facts are available on issues specific to contractors' excise tax.

The Department of Revenue & Regulation has a toll-free helpline you can call weekdays between 8:00am and 5:00pm Central to get answers to basic questions regarding contractors' excise tax. The number is 1-800-TAX-9188 statewide and 605-773-7126 in the Pierre area. Additional information can be found on our web site at www.state.sd.us/drr.

If you have questions, do not hesitate to contact any of our offices or email us at 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 & Regulation.
7. You have the right to be notified before the department audits your records unless the Secretary of Revenue & Regulation 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 & Regulation correct the public record.

South Dakota

Department of Revenue & Regulation

Business Tax Division | 445 East Capitol Avenue | Pierre, SD 57501-3185 | 605-773-3311

Aberdeen Area Office

419 Moccasin Drive
Aberdeen, SD 57401-5085

Mitchell Area Office

417 N. Main, Suite 112
P.O. Box 1103
Mitchell, SD 57301-7103

Rapid City Area Office

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

Sioux Falls Area Office

230 S. Phillips, Suite 301
Sioux Falls, SD 57104-6321

Watertown Area Office

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

Yankton Area Office

Kanner Building
3113 North Spruce Street
Suite 127
Yankton, SD 57078-5320

Tax Helpline: 1-800-TAX-9188 | Email/Website: businessstax@state.sd.us | www.state.sd.us/drr

Six thousand copies of this document were printed by the South Dakota Department of Revenue and Regulation at a cost of \$.21 a piece.

Applying For a License

Who Needs a License?.....	4
Display Your License Number.....	4
How to Apply.....	4
Statewide Tax Permit - Consolidated Reporting.....	4
SD QUEST.....	4
Changes in Ownership, Address or Business.....	4
Bonding Your Business.....	5
Corporate Officer Liability.....	5
List of Subcontractors.....	5
Canceling a License.....	5
Accounting Methods.....	5
Record Keeping.....	5
Audits.....	5
Collections.....	6

General Information

Contractors' Excise Tax.....	7
Gross Receipts.....	7
Prime Contractor.....	7
Sub Contractor.....	8
Projects for Qualifying Utilities.....	8
All Other Construction Services.....	8
Owner Furnished Material.....	8
Government Contracts.....	8
Prime Contractor Exemption Certificates.....	8
Bid Factor.....	9
State Sales and Use Tax.....	10
Sales and Use Tax Rates.....	10
Use Tax on Material.....	10
Out of State Purchases.....	11
Material Removed from Inventory.....	11
Fabricators-Out of State Projects.....	11
Owner Furnished Material.....	11
Services.....	12
Construction Equipment.....	13
Lease or Rentals.....	13
Municipal Sales and Use Tax.....	13
Tribal Sales, Use and Excise Taxes.....	14
Water Projects.....	15
Special Highway Contractor License.....	15
Diesel Fuel.....	15

Some Taxable Events

Highway Construction Subcontractors.....	16
Buildings Built for Lease.....	16
Speculative Builders.....	16
Leasing of Systems.....	16
Communication System Projects.....	17
Irrigation Projects.....	17
Satellite Dishes.....	18

Common Exceptions

Leasing Equipment With an Operator.....	18
Leasing Equipment Without an Operator.....	18
Gravel Crushing and Selling.....	18
Trucking.....	18
Delivery and Handling Charges.....	18
Landscaping/Sodding.....	18
Lawn, Garden, and Tree Services.....	18
Carpet Laying.....	19
Roto-Rooting Service.....	19
Snow Removal.....	19
Drapery Installation.....	19
Locksmiths and Locksmiths Shops.....	19
Infrequent Retail Sales of Materials.....	19
Construction Management.....	19
Cleaning and Adjustments.....	19

Completing Your Tax Return

The Tax Return.....	20
Late Filing and Paying.....	20
Filing an Amended Return.....	20

Example of a Completed Return.....22

Top 10 Tax Errors.....23

Appendix A.....25

Prime Contractors' Exempt Certificate....27

Contractors' Excise Tax Worksheet.....28

Contractors' Excise Tax Return.....30

Tax Facts Available for Contractors

- Audits
- Communication Equipment-Installation & Repair
- Contractors Excise Tax
- Gravel
- Lease and Rentals
- Manufactured & Modular Homes
- Realty Improvements for Exempt Entities
- Self Contractors
- Specialty Builders and the \$100,000 Rule
- Tribal

Tax Facts can be obtained from our website at www.state.sd.us/drr or by calling 1-800-TAX-9188.

Applying For a License

Before opening a business, the Department of Revenue & Regulation encourages you to make a personal visit to the nearest department office simply because it will save you time. Department personnel can provide answers to questions about sales, use and contractors' excise taxes, department bond requirements, and proper procedures for filing tax returns.

Who Needs a License?

Any person entering into a contract for construction services enumerated in Division C of the Standard Industrial Classification Manual of 1987 must have a South Dakota contractors' excise tax license. Any person engaging in services not specifically listed in Division C, that includes the construction, building, installation, or repair of a fixture to real property must also have a South Dakota contractors' excise tax license.

This requirement applies whether your business is a sole proprietorship, partnership, corporation, or any other organizational type including businesses that are nonprofit.

You must be licensed **before** starting work in South Dakota and must have a license for **each** business location (not each construction site) in the state. All contractors must be licensed regardless of the amount of the receipts they have or the amount of tax due.

A representative listing of contractors who are included under the excise tax law can be found in Appendix A of this guide.

A person who is not primarily in the business of making realty improvements but who regularly employs people who repair, maintain or make realty improvements to his/her property is not a prime contractor, and is NOT liable for the contractors' excise tax.

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.

How to Apply

To obtain a state tax license, log onto the web at www.state.sd.us/drr to complete the online application. The online application features a series of easy-to-follow screens asking for specific areas of information.

Once the application is completed and submitted, you will receive a confirmation number. You should print the confirmation screen for your records. You will be contacted by Department personnel at a future date to review your application and answer questions you may have or you will receive written confirmation that your license has been issued.

If you do not have access to the Internet, stop by any of our local offices to complete your application. The Department of Revenue & Regulation has offices located in Aberdeen, Mitchell, Pierre, Rapid City, Sioux Falls, Watertown, and Yankton.

Statewide Tax Permit - Consolidated Filing

Businesses with multiple locations that remit South Dakota sales, use or contractors' excise taxes may be eligible to apply for a statewide tax permit. A statewide tax permit allows a business that has multiple locations to file one consolidated tax return, rather than a tax return for each business location. To be eligible the businesses must have:

- Identical Ownership;
- Identical Federal Identification Numbers;
- Identical Standard Industrial Classification Numbers;
- Identical License Types.

An application for a consolidated return must be completed by the business and approved by the department.

For more information or to apply for a statewide tax permit call the department at 1-800-TAX-9188 or visit us at www.state.sd.us/drr.

SD QUEST

SD QUEST is **quick, easy and secure tax-filing**. This system makes it convenient to file your South Dakota sales and use tax or contractors' excise tax.

SD QUEST submits your return electronically, eliminating delays from mail service. No forms, checks, envelopes or postage to send. With SD QUEST, you receive instant confirmation that the department has received your tax return.

SD QUEST is easy to use. The automated telefile system has an easy-to-follow script that walks you through your return step by step. The Internet program features easy-to-use screens that look just like the paper return. Also, the Internet has a complete list of the municipal tax codes. Once enrolled, you will receive a detailed user's guide to assist you in filing with SD QUEST.

Paying and filing with SD QUEST is secure. No bank account or taxpayer information is transmitted via SD QUEST.

For more information or to enroll in SD QUEST, call the department at 1-800-TAX-9188 or visit us at www.state.sd.us/drr. SD QUEST is available to South Dakota taxpayers free of charge. Taxpayers must complete an application and be approved by the department in order to file and pay electronically.

Changes in Ownership, Address or Business

If you sell your business, change your mailing address or business location, or change the business' ownership status, you will need to advise the Department of Revenue & Regulation. In each case, the information needed by the department will be different.

If you sell your business or go out of business, you must send in your contractors' excise tax license for cancellation; complete a final contractors' excise tax return; and pay all contractors' excise, sales and use tax due. This must be done within 30 days of the completion of the sale or the closing of the business. The purchaser of the business must apply for a new license in his or her own name.

Note: Contractors' excise tax licenses are NOT transferable.

Applying For a License

If your business changes from one kind of business ownership to another, you must contact the Department of Revenue & Regulation and a new license must be issued.

When changing partners in a partnership, the new partner must supply the department with his or her full 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.

When a business incorporates or dissolves a corporation, a new tax license is required. A change in corporate officers does not require a change in the tax license, but all changes must be reported to the department.

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 tax license number and business name to:

South Dakota
Department of Revenue & Regulation
Business Tax Division
445 East Capitol Avenue
Pierre, SD 57501-3185

Bonding Your Business

There is no fee for an excise tax license. However, the department may require you to post a bond as a guarantee of tax payment before a license is issued. The performance bonds for contracts, including public contracts, entered into for the construction, alteration or repair of improvements to property located in South Dakota must include a guarantee of taxes to be paid to the State.

Corporate Officer Liability

If a corporation fails to file the required returns or to pay the tax due, all officers charged with the responsibility for filing returns and making payments will be personally liable. If the corporate officers do not want to be personally liable, their corporation must provide the department with a surety bond or certificate of deposit in an amount sufficient to cover one year's worth of tax liability.

The bond or security may be a bank certificate of deposit (with right of setoff), a time savings certificate, cash bond, or a continuous surety bond. Any interest earned on any interest-bearing security may be paid to you. These bonds will be returned upon written request after two consecutive years in which all taxes are paid on time. The bonding exemption will then continue as long as a good tax payment record is maintained.

NOTE: Personal or business checks are not accepted for bonds.

List of Subcontractors

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.

Canceling a License

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. Cancel information must be in writing.

Accounting Methods

Contractors may report their gross receipts by using either the accrual method or the cash method of accounting. When using the **accrual method**, you report and pay contractors' excise tax as you bill the customer and enter the transaction on your records whether or not you have received payments. 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.

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

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 or agents to determine the correct amount of a business' tax liability. Records of business transactions must be kept at least three years and must include beginning and ending inventories, contracts, prime contractor exemption certificates, purchase invoices, canceled checks, receipts, bills of lading and other pertinent documents.

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 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.

After a preliminary examination of your books, the auditor will decide whether to conduct a "detailed" or "sample" audit. In a detailed audit, all your records for the entire audit period will be examined. In a sample audit, only representative items will be reviewed.

Applying For a License

Any errors are then projected throughout the entire audit period. In either case, the methods used by the auditor, as well as any determination of additional taxes owed, will be explained.

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 or interest, the Department of Revenue & Regulation may take the following actions to collect the amounts due.

Notice of Jeopardy Assessment

If the Secretary of Revenue and Regulation finds that the assessment or 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. After making the assessment, the Secretary will send the taxpayer a Notice of Jeopardy Assessment by certified mail.

Notice of Tax Lien

Any time a taxpayer has tax, penalty, or interest due there is an automatic lien in favor of the State against the taxpayer's real and personal property. In order to preserve the state's lien priority against other creditors or entities, the department will file a Notice of Tax Lien with the Register of Deeds of the county where the taxpayer has property.

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 still 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 and Regulation 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.

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

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.

Contractors' Excise Tax

The contractors' excise tax is a 2% tax imposed upon the gross receipts of contractors who are engaged in construction services or realty improvements in South Dakota. 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 services enumerated in Division C of the Standard Industrial Classification Manual of 1987 or any service that includes the construction, building, installation, or repair of a fixture to real property.

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 – Include all amounts collected for labor, whether employees, day laborers, or subcontractors.

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 line 4, Subcontractor Receipts.

Materials – Include all amounts collected for material and sales or use tax on the material.

Owner Furnished Material – Include the value of owner furnished material plus sales or use tax on that material. This is reported on line 2 of the return. (Exception – do not include owner furnished material if the project is for a qualified utility project.)

Services – Include all amounts collected for services included in your contract, whether performed by your employees, day laborers, or other businesses.

Profit – Include any markup on material, labor, services, and amounts included as 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 Permits - Include amounts collected for any fees or permits required for the project.

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.

Prime Contractor

A "prime contractor" is anyone entering into construction services or a realty improvement contract with another person who is the owner of real property upon which the improvement will be made. In actual practice, any person contracting to provide con-

struction 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.

Qualifying Utility Projects

If any part of a construction contract is for construction services or realty improvement projects for qualifying utilities, then the gross receipts of both prime contractors and all subcontractors are subject to the 2% excise tax. This does not include construction services or realty improvements performed by utility companies unless the project is for another qualifying utility.

The excise tax applies to the total contract price including labor and materials. Gross receipts on projects for qualified utilities do not include materials provided by the owner, however, the contractor is liable for use tax on the owner-furnished material if sales or use tax was not previously paid.

Subcontractors are liable for 2% excise tax on amounts received from prime contractors. Prime contractors cannot issue prime contractor exemption certificates to subcontractors for projects for qualified utilities. The prime contractor cannot deduct amounts paid to subcontractors in determining gross receipts subject to the contractors' excise tax.

Qualifying utilities include railroads; telephone companies; telegraph companies, electric, heating, water and gas companies; rural electric companies and rural water systems. Also included are municipal utilities that offer electric, light, heat, power, water, sewer, and telephone services. Examples of construction services and realty improvements for utilities include office buildings for utility companies and the construction of their generating plants, power lines, and telephone lines.

Contact the department at 1-800-TAX-9188 for questions on qualifying utility projects.

All Other Construction Services

On all projects other than those for qualified utilities, the prime contractor's gross receipts are subject to the 2% excise tax. The gross receipts subject to contractors' excise tax are not subject to the state or municipal sales or use tax, however, purchases of materials and sales taxable services by the contractor are still subject to sales or use tax.

Subcontractors' gross receipts are not subject to the 2% tax if the subcontractor is furnished a valid prime contractor's exemption certificate by the prime contractor for each specific job performed. The prime contractor must duplicate the prime contractors exemption certificate and furnish a completed certificate to each subcontractor for each specific project. The subcontractor must keep the prime contractor's exemption certificates with his/her records in order to verify the subcontractors deduction and avoid being assessed the excise tax. Do not send these exemption certificates with the tax return.

Owner-Furnished Material

Even though a contractor does not pay for materials furnished by the owner, the value of those materials must be added to the contract price in order to determine the contractors' excise tax liability. Materials include those purchased by the person who let the contract or his/her designee. The amount added includes the greater of the cost or fair market value of the materials plus applicable sales or use tax. The owner-furnished materials should be reported on line 2 of the contractors' excise tax return, during the filing period the owner provides them to the contractor.

Example:

An owner buys materials valued at \$200,000 and pays state sales tax at the rate of 4% or \$8,000. Total value of the materials is \$208,000. The owner then seeks bids from contractors to install those materials into an office building. The contractor receives \$400,000 for the installation of the materials. The contractor is liable for contractors' excise tax on \$608,000 (\$400,000 plus \$208,000).

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. When a contractor does not buy in his own right, but is the purchasing agent for the government with title passing directly from the seller to the government, his sales or purchases are not subject to sales tax. The contractor or subcontractor becomes liable for use tax when the materials are used or consumed by the contractor or subcontractor in construction projects.

If a governmental body or sales tax exempt entity furnishes construction materials for a project, the contractor has a use tax liability even though title never rested with him. In addition to sales or use tax on the materials, the contractor is also subject to the contractors' excise tax on the gross receipts resulting from realty improvements for government agencies and the value of the owner-furnished material.

When bids are made, the value of the government furnished materials plus the use tax must be included in the contract price in order to determine the contractors' excise tax liability.

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

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 ex-

General Information

cise tax license number, the project location and description. These certificates cannot be issued for contracts for qualifying utilities. The prime contractor cannot deduct amounts paid to subcontractors in determining the gross receipts subject to the contractors excise tax.

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. See Speculative Building on page 16.

A prime contractors' exemption certificate can be found on page 27 of this book.

Example:

A prime contractor receives a contract to complete a realty improvement. He hires four subcontractors to complete the project: an electrician, a mechanical contractor, an excavator and a painter. He must furnish each subcontractor with a completed exemption certificate explaining the project location, description and his contractors' excise tax license number. The subcontractors are, therefore, not liable for any excise tax on this project.

Bid Factor

Contractors' excise tax is calculated on total gross receipts. Gross receipts are defined as the total amount received including, but not limited to, sales tax, contractors' excise tax, cost of materials, your labor and profit, owner-furnished material and any other expenses. Because the tax is included in your gross receipts, the department has developed a factor of 2.041% that can be used to calculate excise tax due when preparing a bid or bill for your customer. This factor allows you to recover the excise tax you will owe.

A Bid Factor Calculator, which can be an excellent tool for calculating South Dakota Contractors' Excise Tax, is available on the department's homepage, at 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 also print a Bid Factor Sheet without the calculation fields for use out in the field or if they don't have continual access to a computer.

Note: 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 your return.

Example 1: Prime contractor provides all material and labor. Contractor owes excise tax on their total receipts.

\$1,060.00	Material (sales tax was paid)
+ 1,000.00	Labor
<u>\$2,060.00</u>	Total
<u>x 2.041%</u>	Bid Factor
42.04	Excise tax to collect
\$2,102.04	Amount of Bill or Bid

Excise tax calculation on return for Example 1.

Gross Receipts (Line 1 and 5)	\$2102.04
2% Contractors' Excise Tax	<u>x 2%</u>
Excise Tax Due (Line 5 x 2%)	\$42.04

Example 2: The owner furnishes material. The contractor provides the labor. Contractor owes excise tax on their receipts plus the cost of the owner furnished material.

\$1,060.00	Cost of owner furnished materials (sales tax was paid)
+ \$1,000.00	Labor
<u>\$2,060.00</u>	Total amount to calculate excise tax on
<u>x 2.041%</u>	Bid Factor
42.04	Excise tax to collect
\$1,042.04	Amount of Bill or Bid (\$1,000 labor + \$42.04 tax)

Excise tax calculation on return for Example 2.

Gross Receipts (Line 1)	\$1,042.04
Owner Furnished Material (Line 2)	<u>+1,060.00</u>
Total Subject to 2% Contractors'	
Excise Tax (Line 5)	2,102.04
2% Contractors Excise Tax	<u>x 2%</u>
Excise Tax Due (Line 5 x 2%)	\$42.04

Example 3. The owner is a government entity, accredited school, nonprofit hospital, or relief agency. Material is furnished by the owner. No sales tax was paid on material by the exempt entity. The contractor owes use tax on the material and will owe excise tax on their receipts plus the owner furnished material.

\$1,000.00	Cost of owner furnished materials
\$60.00	Use tax due on material (4% state + 2% municipal use tax)
<u>\$1,000.00</u>	Labor
<u>\$2,060.00</u>	Total amount to calculate excise tax on
<u>x 2.041%</u>	Bid Factor
42.04	
<u>\$1,102.04</u>	Amount of Bill or Bid (\$1,000 labor plus \$102.04 excise and use tax. This is the amount of gross receipts on Line 1 and 5 of the excise tax return.)

Excise tax calculation on return for Example 3.

Gross Receipts (Line 1)	\$1,102.04
Owner Furnished Material (Line 2)	+1,000.00
Total Subject to 2% Contractors'	
Excise Tax (Line 5)	2,102.04
2% Contractors Excise Tax	x 2%
Excise Tax Due (Line 5 x 2%)	\$42.04
Use Taxable (Line 7)	1,000.00
4% State Use Tax Due	\$40.00
2% City Use Tax Due	\$20.00
Total Tax Due	\$102.04

State Sales and Use Tax

According to state law, for sales and use tax purposes contractors and subcontractors are the user and consumer of all materials and services purchased for use in their construction project. State law holds the contractor liable for the sales or use tax on material used in their construction project.

A contractor should pay sales tax on all material when purchased. A contractor is prohibited from using a use tax license or a contractors' excise tax license number to purchase items exempt from sales tax. Sales and use tax is due on the total purchase price of the materials and services including delivery charges and handling charges. A contractor cannot give a Prime Contractors' Exemption Certificate to a vendor or service provider.

Those who sell material to contractors are responsible for collecting and remitting sales tax. The seller's obligation is to collect the 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 seller will charge the state and city sales tax that applies at that store's location.

If the seller delivers the material to the contractor or hires a delivery company to deliver the material to the contractor, the seller will charge the state and city sales tax that applies at the delivery address.

Sales and Use Tax Rates

No tax increase may be levied on materials incorporated in construction work or on the gross receipts of a realty improvement bid or entered into on or before the effective date of the tax increase.

Example:

A contractor makes a bid on December 29, 2003, to erect a building within the city limits of Kadoka, SD. The city of Kadoka increases their municipal tax rate from 1% to 2% effective January 1, 2004.

Since the contractor's bid was before January 1, 2004, the contractor is liable for the 1%, not the 2% municipal sales or use tax on materials used in that project.

The contractor should give a copy of the bid to the materials supplier to ensure that the 1% municipal rate is charged on all materials purchased for the project.

Use Tax on Material

The sales tax isn't the only state and city tax that can apply to construction material. The state and many cities impose a tax called the 'use tax' that applies in those situations when the seller didn't charge sales tax. The difference between the sales tax and the use tax is who is responsible for its payment. Where the sales tax is the responsibility of the seller, the use tax is the responsibility of the contractor. If the person selling material doesn't charge sales tax, for whatever reason, the contractor is responsible for paying the use tax.

It is the contractor's obligation to pay the use tax rate that applies 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.

The contractor must pay the use tax in the tax 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. The use tax applies to the amount the contractor 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. If the contractor collects more tax than is actually due, the contractor must either refund the extra tax to their customer or they must remit the extra tax collected to the state.

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

Over two hundred South Dakota cities have a sales and use tax. The department provides a list of those cities with their tax rates in paper and also on the web at www.state.sd.us/drr. Contractors must know the sales and use tax rate at each location they work. The contractor will be held liable for additional use tax if the material is used, stored, or consumed in a city that imposes a higher tax rate than was previously paid on the material.

Examples:

1. In June a contractor buys lumber and has the seller deliver it in rural Hughes County. The seller charges the contractor only the 4% state sales tax. In September the contractor uses the material to build a home in Pierre. The contractor will owe the Pierre city use tax on the material because only the 4% state sales tax was previously paid. The contractor must pay the additional Pierre city use tax on the September return.
2. A contractor stores material in Henry. The supplier charged the contractor 5% sales tax (4% state sales tax, plus 1% Henry city tax) when the material was delivered to Henry. The contractor then used the material in a project in Clark. Because Clark imposes a 2% city tax and the contractor was charged the 1% Henry sales tax, the contractor owes an additional 1% Clark city use tax.

3. A contractor purchases material in Brandon. The supplier charged the 4% state sales tax plus 2% Brandon city tax at the time of purchase. The material is used in a project outside city limits. Because the tax rate outside city limits is only the 4% state tax, no additional use tax is due on this material. No credit will be issued for the 2% Brandon city tax paid at the time of purchase.

Out-of-State Purchases

When purchasing material or equipment outside South Dakota that is delivered into South Dakota by a transportation company or by the supplier, be careful that the seller does not charge you the other state's sales tax. That material and equipment will be subject to the 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 makes a purchase out-of-state and the contractor or their employees take possession of the property out-of-state, the supplier will most likely charge that state's sales tax. If the other state's sales tax is the same or more than South Dakota's tax, the contractor will not owe any additional South Dakota use tax. However, if the contractor is charged less tax in the other state than what is charged 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 sell items at retail and also provide construction services. These businesses must have both a sales tax license and a contractors' excise tax license. For example, a lumberyard that sells lumber at retail and also does construction must have a sales tax license and a contractors' excise tax license. A business that has a sales tax license may use the 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. As a contractor, they are responsible for the 4% state use tax plus city use tax at the time the material is removed from inventory. In these situations the first use tax is owed based on where the material is taken out of inventory.

A contractor may 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.

Contractors that also have sales tax licenses must report all use tax due for a construction project 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 imposes a lower city use tax than Brandon.
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.
3. A-P Plumbing has a project in Minnesota to replace pipes in a remodeled home. Because A-P is the contractor, they are responsible for remitting the 4% state use tax plus Brandon 2% city use tax on the pipe removed from the tax unpaid inventory even though the project is located out-of-state.

Fabricators – Out-of-State Projects Contracts

Effective July 1, 2005, 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.

Owner Furnished Material

Not all material used in a construction project is purchased by the contractor. The owner of a project may provide material to a contractor to install. State law calls this type of material 'owner furnished material'. Because state law makes the contractor the user and consumer of all material for sales and use tax purposes, the contractor may owe use tax on all material furnished for them

General Information

to install unless they have documentation that sales or use tax was previously paid on the material. The contractor will owe use tax on material furnished by a government and other exempt entities. The government 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.

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.

Note: The contractor will owe Contractors' Excise Tax on the value of owner furnished materials.

Examples:

1. The City of Hoven hires John to build a storage shed. The city purchases the material directly from a lumberyard and has it delivered to the jobsite. John owes the state and city use tax because the city purchased the material without sales tax. The tax applies on the amount the city paid for the material. In addition, John must include the value of the material and the use tax as part of his gross receipts subject to the contractors' excise tax.
2. The City of Wall hires John to install new sewer pipes for a two block area in town. The city purchases the material directly from the supplier and has it delivered to the jobsite. John owes the state and city use tax because the city purchased the material without sales tax. The tax applies on the amount the city paid for the material. Because municipal sewer systems are a utility project, John does not include the value of the material as part of his gross receipts subject to the contractors' excise tax.
3. John is building a log cabin for his vacation home. John bought the material from a company in Wyoming that is not license in South Dakota and did not collect South Dakota sales tax. John hires Sam Builder to construct the cabin. Sam Builder owes the 4% state use tax on the material because no sales or use tax was paid on the purchase. Sam Builder also owes the 2% contractors' excise tax on his total receipts plus the value of the material furnished by John.

Services

South Dakota's sales and use tax applies to many services. All services are subject to sales and use tax 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.

The service provider is responsible for collecting and remitting sales tax on services the contractor receives in South Dakota. Use tax, on the other hand, is based on where the product or service is used.

The purchaser or consumer is legally responsible for the use tax.

The retailer is responsible for sales tax in those jurisdictions that tax the product or service received in that jurisdiction. When the contractor owes use tax in South Dakota because the contractor received the product or service in a jurisdiction that does not tax the product or service, the retailer shall collect and remit use tax on behalf of the contractor pursuant to SDCL 10-46-20.

The retailer will not be held liable for the contractor's use tax if the retailer makes a good faith effort to collect the use tax but the contractor refuses to pay. In such case, the Department shall require payment directly from the contractor.

Contractors cannot purchase services for resale. The following rules determine where sales tax applies.

1. Services the contractor receives at the seller's location are subject to sales tax at that location.
 2. Services the contractor receives at another location are taxed at that location.
 3. If it is unknown where the contractor will receive the service, sales tax applies based on the contractor's address.
 4. If it is unknown where the contractor will receive the service, and the contractor's address is unknown, then sales tax applies based on the seller's location.
- 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. For example, a contractor takes his backhoe to Rapid City for repairs. The repair shop completes the repairs and delivers the backhoe to the contractor in Sturgis. The repair shop will charge the 4% state sales tax and the Sturgis city sales tax because the repaired backhoe is delivered in Sturgis. The contractor took receipt of the repair service where the repair shop delivers the backhoe to the contractor.
 - 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.
 - Services that are not performed on tangible personal property or on real property 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. For example, an architect completes plans for a building to be built in Yankton and sends the plans to the client in Sioux Falls. The 4% state sales tax plus Sioux Falls city sales tax is due because the client receives the result of the service in Sioux Falls.

General Information

If the contractor is not charged sales tax, the contractor is responsible for paying use tax. The contractor will owe the use tax rate that applies at the location where the service is used by the contractor. The contractor must pay the use tax in the tax reporting period in which the contractor receives the service. The use tax applies to the amount the contractor paid for the service. 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.

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 maybe 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.

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. If the architect does not owe sales tax in Nebraska where the plans are received, and the architect knows that the client will use the plans in Yankton, the architect should charge the state and Yankton's use tax. 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.
3. A contractor sends a motor to Texas to be repaired. The repair business delivers the repaired motor to the contractor in Aberdeen. The contractor is responsible for remitting the 4% South Dakota use tax and Aberdeen city use tax on the repair plus delivery charges if the repair business does not collect South Dakota sales tax.

Construction Equipment

If equipment is purchased or brought into the state for use during construction, it is subject to the South Dakota sales or use tax.

If new equipment is purchased for construction use, the South Dakota sales tax must be paid to a licensed vendor or the use tax paid to the Department of Revenue & Regulation on the cost or fair market value, whichever is greater.

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 unless sales or use tax has been 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. The amount of tax on the equipment will be reduced by the amount of sales or use tax previously paid by the contractor to another state.

Equipment used in a municipality is subject to that municipality's use tax. Credit will be given for municipal sales or use tax previously paid.

Leases or Rentals of Equipment

Rental payments on construction equipment without an operator or other tangible personal property are subject to the South Dakota sales or use tax. A lease or rental that requires recurring periodic payments is subject to sales tax as follows:

1. The first periodic payment is subject to state and municipal sales tax where the lessee receives the product.
2. If the product is moved to a new location and the lessor has been notified of the new location, the lessor will tax subsequent payments based on the new location. If lessor does not receive notice of a change of location sales tax will continue to apply based on where the lessee received the product. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

Note: 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. Please contact the department at 1-800-TAX-9188 for help in determining the use tax due.

For more information on lease and rentals, view the Lease and Rental Tax Fact on our website at www.state.sd.us/drr or request a copy by calling the department toll free at 1-800-TAX-9188.

Municipal Sales and Use Tax

The Business Tax Division is the administrative and enforcement agency for municipal sales and use taxes. Municipal tax is reported on state tax return forms, and only one return form is needed to report and remit both state and municipal tax.

Generally, municipal sales and use taxes are applied in accordance with state sales and use tax laws. Anyone licensed to engage in business in South Dakota is considered to be registered for municipal sales tax purposes.

The municipal sales or use tax applies when the purchaser takes receipt of tangible personal property or service within a municipality imposing a tax.

When materials or equipment are purchased without municipal tax, and then used in a municipality that imposes a municipal tax, the contractor is responsible for reporting that municipality's use tax.

If materials or equipment are shipped into a municipality and no municipal sales tax was charged at the time of purchase, both state and municipal use tax are due, even though they are later installed outside the municipality's limits.

General Information

Information pertaining to each municipality can be found in the Municipal Tax Information Bulletin which can be obtained at www.state.sd.us/drr or by calling 1-800-TAX-9188. Changes in municipal taxes are sent to each licensed business as they occur and can be found in the department newsletter.

Tribal Sales, Use and Excise Taxes

The State of South Dakota is unique in that it has tax collection agreements with four of the state's nine tribal governments. The agreements were developed to eliminate confusion regarding tax collection and to make sure all retailers and customers are treated alike. The agreements require the tribe and the state to split the tax collected. The tribal tax ordinances enacted by the Cheyenne River, Standing Rock, Oglala (Pine Ridge) and Rosebud Sioux Tribes mirror the state's tax structure.

The Cheyenne River, Oglala (Pine Ridge), Standing Rock and Rosebud Sioux Tribes have tax agreements with the state of South Dakota. These reservations impose a 4% tribal sales and use tax and a 2% contractors' excise tax on sales and construction services or realty improvements that occur within the boundaries of the reservation. The 4% tribal sales and use tax and 2% contractors' excise tax are also applicable in Indian Country in Gregory, Lyman, Mellette and Tripp counties. We encourage that you check with the agreement reservation for you may have additional tax due directly to the tribal government.

Retailers making sales and deliveries on the agreement reservations are subject to the 4% tribal sales and use taxes. The tribal taxes are applicable on sales to Indians and non-Indians. Retailers making sales that are delivered on Indian country where there is no agreement with the controlling Tribal government are responsible for the 4% state sales tax.

Contractors engaged in construction services or in making realty improvements on agreement reservations are liable for sales or use tax on the cost or fair market value of the construction materials as well as excise tax on their gross receipts and owner furnished materials.

The tribal sales and use tax is due on construction materials used in all construction projects whether performed for the United States Government, the tribal government, the state of South Dakota or private persons if the project is located on a reservation imposing a tribal sales and use tax.

The department has developed a Tribal Tax Facts that addresses tax returns, sales to tribal governments, tribal governments without agreements and more.

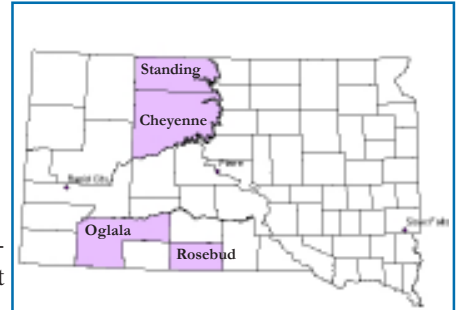
You can find the Tribal Tax Facts online at www.state.sd.us/drr or call and request one toll-free at 1-800-TAX-9188.

Realty improvements made on Crow Creek, Lower Brule, Flandreau, and Yankton reservations and Sisseton-Wahpeton Indian Country may be subject to the tax, depending on the type of project. Before completing a bid on a project on these reservations or Indian Country, be sure to contact the Department of Revenue & Regulation and the Tribal Tax Office in regards to any taxes that may apply.

Reporting Reservation Receipts on Contractors' Excise Tax Returns

Receipts from contracts on agreement reservations (Cheyenne River, Oglala [Pine Ridge], Standing Rock and Rosebud Sioux Tribes) will be identified and reported in the following manner:

- Include reservation receipts on Line 1, "Gross Receipts", along with all other gross receipts.
- On Line 2, enter the total amount of owner furnished materials used on your contracts, if any.
- On Line 3, show all receipts for which you have received a prime contractors' exemption certificate. (You must have the exemption certificate on file to be considered a subcontractor.)
- On Line 4, show all taxable receipts from contracts located on reservations which have a tax agreement with the State. (Include any owner-furnished materials from these same contracts that are shown on Line 2.)
- Add lines 1 and 2 and subtract lines 3 and 4 and put the amount on Line 5. Contractors whose receipts are entirely from contracts on the reservation will find the amount on Line 5 is zero.
- Enter the name of the reservation on which the receipts were received under "City/Reserv Tax Calculations". Then, enter the proper reservation code under "Code". Place the amount of taxable receipts under "Net Taxable", followed by the proper rate under "Rate". Finally, multiply the rate times the net taxable and put the amount of tax due under "Tax". After completing the City/Reservation portion of the return, be sure you place the total city/reservation tax due on Line 22.
- Place the total of Lines 7 and 22 on Line 23. Then add any applicable penalty/interest and place the total amount due on Line 26.



The Tribal Governments with tax collection agreements include:

- **Cheyenne River Sioux Tribe** - Includes the Cheyenne River Reservation in Dewey and Ziebach Counties.
- **Standing Rock Sioux Tribe** - Includes the Standing Rock Reservation in Corson County and a 500 foot strip of land in the northernmost portions of Dewey and Ziebach Counties.
- **Oglala Sioux Tribe** - Includes the Pine Ridge Reservation in Shannon County and that portion of Jackson County south of the White River.
- **Rosebud Sioux Tribe** - Includes the Rosebud Reservation in Todd County, and Indian country defined by 18 U.S.C. 1151 (b) and (c) in Mellette, Tripp, and portions of Gregory and Lyman Counties.

Example:

\$10,000 is received for roofing jobs in Mission, SD. Sales or use tax was paid on the material at time of purchase. Mission, SD is located on the Rosebud Sioux Tribe Reservation. Following is an explanation of how such a transaction is reported on a contractors' excise tax return.

1. Report \$10,000 as gross receipts in line 1.
2. Deduct \$10,000 as Reservation receipts on line 4.

EXCISE TAX COLLECTIONS		GROSS
1. Gross Receipts	*	\$10,000.00
2. Owner-Furnished Materials	*	\$0.00
3. Deductions (Subcontractor Receipts)	*	\$0.00
4. Reservation Receipts	*	\$10,000.00
5. Net State Excise Taxable		\$0.00

3. Report \$10,000 as Rosebud Reservation receipts under City/Reservation Tax Calculations as shown below.

CITY/RESERVATION TAX CALCULATIONS				
9. CITY/RESERVATION	CODE	TAXABLE	RATE	TAX DUE
10. Rosebud	412-2	\$10,000.00	2.00	\$200.00
11.				

Water Projects

Contractors' excise taxes paid for the construction of water development projects in the state water resources management system whose cost exceeds twenty million dollars are deposited into the water and environment fund. These projects include: Oglala Sioux Rural Water System (part of the Mni Wiconi project); West River Lyman Jones Rural Water System; Mid-Dakota Rural Water System; Rosebud Sioux Rural Water System (part of the Mni Wiconi project); Sioux Falls Flood Control; Lewis and Clark Rural Water System; and Perkins County Rural Water System.

Contractors' excise tax for these water development projects is reported on the excise tax return under a city/reservation section of the return using a code assigned to each project. Contractors working on these projects must include their gross receipts on line 1, deduct the receipts from these projects on line 3, and report the gross receipts in the city/reservation tax section under the code assigned to that project.

Because of agreements with tribal governments, contractors working on these projects on an Indian Reservation will have an additional form to file with their returns. Tax receipts from these projects are split with the tribal government prior to being distributed to the Department of Water and Natural Resources.

Highway Contractor License

In addition to the contractors' excise tax license, a highway contractors 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 of \$.22 per gallon. 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. A licensed highway contractor can do this on the quarterly tax return filed with the DMV. If this return is filed as a credit amount and the credit exceeds \$25, it will be automatically refunded. If the credit is less than \$25, it will be held until such time the credit reaches \$25. If you are not performing highway construction work, you can obtain a refund for your commercial off-road travel through licensing under the fuel refund program.

The South Dakota Highway Patrol will conduct 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.

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.

Any subcontractor who does not retain an exemption certificate is considered a prime contractor and is subject to the contractors' excise tax. Use tax is due on all materials used in performing the contract. Subcontractor's receipts resulting from such contracts are not subject to sales tax.

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. The contractors' excise tax is due the first reporting date after the improvement is used or leased.

If the owner is not a licensed contractor, but will be doing some or all of the work and the building is valued at \$100,000 or more, the owner needs to:

1. obtain a temporary contractors' excise tax license,
2. pay sales/use tax on all construction materials,
3. give prime contractors' exemption certificate to all of the contractors hired,
4. report excise tax on total value of the building when it is first leased.

If the realty improvement is sold within a four-year period after completion, contractors' excise tax is due on the selling price less the cost of the land. Credit is allowed for tax already paid when the building was leased. The owner may apply the credit toward the contractors' excise tax due on the selling price. In this situation, the contractors' excise tax does not apply to the United States, the State of South Dakota and its subdivisions, or public or municipal corporations in South Dakota.

Examples of buildings built for lease are hotels, apartments, office buildings, and strip malls.

Example 1

A contractor purchases land and starts to build an apartment building; when completed, the contractor will own and rent apartments to other individuals. The fair market value of this apartment is \$1,000,000, which does not include the cost of the land. In August 2003, he begins renting the apartments. A 2% contractors' excise tax (\$20,000) is owed on the building on the August 2003 monthly return. As required, he pays that amount by September 20, 2003.

Example 2

The same apartment building is sold November 15, 2003 for \$1,500,000. Contractors' excise tax at the rate of 2% is due on the selling price, less the cost of the land which was valued at \$100,000.

The contractor is allowed to deduct the contractors' excise tax that was paid in September 2003 (\$20,000) from the amount due. The total amount of additional tax due is \$8,000.

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.

Sales tax needs to be paid to your suppliers on all purchases of tools, materials, equipment and sales taxable services such as leases of equipment, carpeting and flooring installation, landscaping, engineer's service, surveyor's service, construction management, etc. When the use of a service is in South Dakota, use tax is due if the service provider charged no sales tax.

In addition, 2% contractors' excise tax is due on the total selling price of the structure at the closing of the sale. The contractor may deduct the greater of the fair market value or the cost of the land from the selling price of a spec home. Costs associated with the sell of a spec home may not be deducted. The excise tax applies to all sales within four years of completion of the structure. A prime contractor exemption certificate must be provided to any subcontractor hired to complete any portion of the actual construction work, for each specific structure.

Example 1

When a contractors' excise tax licensed contractor decides to build his own home he should not give prime contractor exemption certificates to his subs, as he is the owner and owes contractors' excise tax to the contractors he hires. If during the next four years he sells the house, 2% contractors' excise tax is due on the selling price, less the cost of the land and less the amount of the contractors' excise tax paid to the other contractors who completed a portion of the work.

Example 2

A spec house is not selling as fast as planned, and the prime contractor decides to move into the house or rents the house to another party. Prime contractor exemption certificates were given to the subcontractors before the house was started so no contractors' excise tax has been paid. When the contractor moves in or rents the house, the 2% contractors' excise tax on the work performed by subcontractors needs to be reported and paid by the prime contractor.

When the house is sold within four years of completion the 2% contractors' excise tax is due on the selling price, less the cost of the land and less the amount paid when the house was used by the contractor.

Leasing of 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.

Example 1

A new manufacturing company needs several systems installed in their new plant. They decide it would be beneficial to lease rather than purchase the systems. The company enters into an agreement with a leasing firm in which the leasing firm will purchase the equipment installed from a supplier/contractor/dealer. The dealer pays 4% state use tax plus any applicable municipal tax on the cost of the material and also collects and remits 2% contractors' excise tax on the total contract receipts. The leasing firm does not charge any sales, use, or contractors' excise tax on the lease payments made by the manufacturing company.

Example 2

Another manufacturing company contacts a dealer for the same type of systems. In this situation, the dealer installs the systems and becomes the leasing firm. The dealer owes state and municipal use tax on the cost of the materials. In addition, each rental receipt resulting from the lease of the systems is subject to the contractors' excise tax.

Example 3

If the dealer hires a contractor to install the systems, that contractor would owe use tax on the cost of the materials (if sales tax or use tax was not paid by the dealer) plus 2% contractors' excise tax on the total receipts including the value of the system. In this situation, the dealer would not charge any sales, use or contractors' excise tax on the lease receipts.

Communication System Projects

Contractors installing or performing repairs to communication systems are subject to contractors' excise tax. The following list includes some examples of realty improvements which are subject to the contractors' excise tax:

- Cable laying
- Cable splicing
- Cellular tower construction
- Conduit installation
- Communication or intercommunication equipment installation
- Pole line construction
- Telephone line installation
- Telephone installation construction
- Satellite installation for commercial use
- Radio or television transmitting tower construction
- Transmission line construction
- Sound equipment installation

Gross receipts resulting from this type of realty improvement are subject to 2% contractors' excise tax. In addition, the 4% state and applicable municipal sales or use tax is due on the cost of

materials and supplies purchased for use in the contract of installing communication equipment.

In a separate contract, the installation of telephones into pre-wired outlets are subject to sales tax. For additional information, please contact any department office.

Irrigation Projects

An irrigation project is subject to the 2% contractors' excise tax on the total gross receipts. Gross receipts include the charges for the equipment, sales or excise tax, and the installation labor.

The following explains the tax liability of the material based on what the equipment is used for.

- **Irrigation equipment used exclusively for agricultural purposes:** Effective April 1, 2006, materials (from the wellhead out) used are subject to the 4% state tax even if they are leased. 4% state tax plus applicable municipal tax is due on material from the well head down.

Repair parts that replace parts that have a part number assigned by the irrigation equipment manufacturer are not subject to sales or use tax. When irrigation equipment is brought to a shop to repair and there is no installation of the equipment to the irrigation system, the repair is not subject to sales or use tax.

When the repair is to equipment that is installed, the gross receipts for the repair are subject to the 2% contractors' excise tax. The contractor will not owe sales or use tax on the parts, but will owe the 2% contractors' excise tax on the receipts for the parts and labor.

Material used in the construction or repair of water wells are subject to 4% sales or use tax, applicable municipal tax, plus the applicable contractors' excise tax.

- **Irrigation equipment used for non agricultural purposes:** Examples are golf courses and governmental projects.

The 4% sales or use tax plus municipal tax are due on the materials.

Repair and replacement parts and maintenance items for irrigation equipment used for non agricultural purposes are subject to the 4% state sales tax, plus applicable municipal sales tax.

When irrigation equipment is brought to a shop to repair and there is no installation of the equipment to the irrigation system the repair is subject to sales tax. Repair services are subject to sales tax where the repaired item is received by the customer. Repairs completed out-of-state that are delivered to a South Dakota location are subject to South Dakota sales tax.

When the repair is to equipment that is installed, the gross receipts for the repair are subject to the 2% contractors' excise tax. The contractor will also owe sales or use tax on the parts.

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.

Example 1

A homeowner contracts to have a satellite dish installed in his yard for his personal use. The receipts from the sale, installation and connection of the system are subject to sales tax.

Example 2

The Rest Easy Motel installs a satellite system for use by its patrons. The installation and connection costs are subject to the contractors' excise tax and sales or use tax on the cost of material installed.

A prime contractors' exemption certificate cannot be accepted for a sales taxable service. These certificates may be used for services subject to the contractors' excise tax. If you have a question about your project, please call 1-800-TAX-9188.

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, the equipment owner is performing a construction service and is subject to contractors' excise tax unless a prime contractor exemption certificate is furnished by the prime contractor. When the lease with an operator is to a qualified utility or for a qualifying utility project, both the prime and subcontractor are subject to 2% 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.

Examples

A crane is leased with an operator to unload the contents of a railroad car onto a truck. This service is subject to sales tax on the total charge, as no realty improvement is taking place.

A crane leased with an operator to set rafters in place is subject to contractors' excise tax.

Leasing Equipment Without An Operator

Rental payments on construction equipment without an operator is subject to sales or use tax.

Gravel Crushing and Selling

Receipts from the sale of gravel, including delivery charges, are subject to sales or use tax. Receipts resulting from the service of crushing stone into gravel are subject to sales tax when the service is provided for the user or consumer of the gravel. Subcontractors rendering gravel crushing services are subject to sales tax, but not contractors' excise tax, on their gross receipts.

Trucking

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

Delivery and Handling Charges

Delivery and handling charges are subject to the same sales and use tax rate as the product delivered. Delivery and handling charges for exempt products are not subject to sales tax. If both taxable and nontaxable products are in the same shipment, sales tax is due on the portion of delivery charge for the taxable products.

This is determined by using a percentage of the sales price or weight of the taxable property compared to the total sales price or total weight of all property in the shipment.

Landscaping/Sodding

The primary purpose of a landscaping project determines which tax should be charged, the sales tax or the contractors' excise tax.

Consider the following examples:

- As a contractor, if you install retaining walls, sidewalks and seed or sod the yard, the service is considered to be a realty improvement and is subject to sales or use tax on materials and contractors' excise tax on the total gross receipts.
- If the primary purpose of the job is simply to seed or sod, the service is subject to sales tax, even if some leveling of the land and bringing in dirt is involved.
- The installation of sprinkler systems is subject to the contractors' excise tax.

Note: Seeding/sodding public road right of way as part of a highway construction project is subject to Contractors' Excise Tax.

Lawn, Garden, and Tree Services

Lawn mowing, spraying, and fertilizing, ornamental shrub and tree planting, pruning, utility line tree trimming, and mowing highway edges are subject to sales tax when performed apart from other contracts involving realty improvements. Equipment and supplies consumed in the performance of these services are subject to sales or use tax on the purchase price. Chemicals used in lawn and garden services can be purchased for resale.

Common Exceptions

If you provide tree trimming or tree removal, including stump removal and grinding, you must report sales tax on your gross receipts. The contractors' excise tax applies to brush or timber clearing services, such as for a shelter belt, and stump removal in fields.

Carpet Laying

Gross receipts resulting from the sales and service of carpet and laying are subject to sales or use tax rather than contractors' excise tax. Services listed under number 1752 of the Standard Industrial Classification Manual of 1987:

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

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

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

Curtains installed or replaced on stages in auditoriums, theaters, schools, etc., are subject to sales or use tax on the cost of the curtains. Contractors' excise tax is due on the gross receipts of the installer, which includes the value of the curtains plus the sales or use tax paid on the cost of the curtains. The sale and installation of draperies 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 purchased for use by locksmiths as classified in repair shops and related services can be purchased for resale.

Infrequent Retail Sales of Materials

In the event you have an infrequent retail sale of materials, sales tax should be charged on the total sale, including delivery charges. The difference between the retail sale and the amount on which you paid sales tax to the supplier should be reported on line 6 (amount subject to state use tax) of your contractors' excise tax return. Attach a note of explanation.

Example

You paid sales tax on an item which cost \$50. You sell this item for \$100. The difference of \$50 should be entered on line 6, with tax of 4% showing on line 6 equaling \$2. Any applicable municipal tax should be entered in the municipal tax portion of the return.

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 improvements 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 is subject to sales tax.

Example

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

Completing Your Tax Return

The Tax Return

State law requires that every holder of an excise tax license 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 you have applied for and received your contractors' excise tax license, you will be sent a tax return and a contractors' excise tax worksheet. It should arrive about 20-30 days prior to the date on which your contractors' excise tax payment is due. The calculations should be done on the worksheet and the figures transferred to the tax return. Be sure to keep the worksheet in your files.

Note: Failure to receive a form does not excuse you from filing a return or paying taxes. If for any reason your form fails to arrive, it is your responsibility to contact the department, obtain a form, and submit it on time.

The date your return and tax payment are due depends on the frequency at which you must file and the method of tax remittance. The most common filing period is once a month, and the deadline for filing is the 20th of the following month. The tax due date for a December filing period is January 20th.

All taxpayers who file and pay with SD QUEST must file the returns no later than the 23rd day of the month. Payments must be electronically remitted on the second to last working day of the month.

When gross receipts are comparatively small, or if there is a unique situation to your business, you may request or be required to file at a different frequency than monthly. Returns, other than monthly, are due the last day of the month following the reporting period. The schedules for the various reporting periods along with their tax due dates are listed in the quarterly newsletter.

The reporting period, return number, return due date and license number will usually be preprinted on the return for you. If not, you are responsible for providing them. Please contact the department if you are not certain of your reporting schedule or your license number.

Mail returns and payments to the Remittance Center, PO Box 5055, Sioux Falls, SD 57117. Do NOT mail the worksheet; keep it in your records. Be sure to include your license number on all correspondence with the department.

Late Filing and Paying

If your return is filed late (one month or more after the due date), you will be assessed a late filing penalty of 10% of the tax due or a \$10 minimum.

If you pay the tax late (after the due date of the return) you will be assessed interest at the rate of 1.5% of the tax due (or a minimum of \$5.00) for each month or portion of a month the payment is late.

In addition to penalty and interest, late returns and payments may result in your 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. A self-audit worksheet (amended return) for each specific period needing correction will be mailed with the Summary for Amending. The left side will show how the return was originally filed. On the right side, enter figures as the return should have been completed. After completing the form, please be sure to sign and date it. Also include a daytime telephone number next to your signature. Payment must be submitted for additional taxes and/or interest due. Documentation supporting the changes in figures will be required prior to approval of the self audit worksheet.

If your original return was filed by the due date or within one month of the due date, no penalty is due on the amended return. If your original return was filed late (one month or more after the due date), the late filing penalty of 10% (\$10 minimum) will be recalculated based on the tax due as shown on your amended return.

Interest is due whenever payment is late. Interest is calculated at the rate of 1.5% (with a minimum of \$5.00) for each month or portion of month the return is late. Please call 1-800-TAX-9188 if you need to file an amended return.

Licensee Information

Reporting Period - Numeric date - year and last month of the reporting period. (Make sure you are using the correct return for the period on which you are reporting.)

Change of address? Be sure to check here if your address has changed. If your new address does not fit on the line, be sure to enclose it on a separate sheet with the return.

Out of business? Check this box if you have gone out of business. Be sure to include the date of your last day of business.

The worksheet has complete line by line instructions for filing the return. Be sure to correctly transfer the figures from the worksheet to the return. Both the preparer of the return and the licensee must sign and date the return.

YOU MUST FILE A RETURN EVEN IF NO TAX IS DUE.

Return Examples

1. On June 20, 2004, ABC signs a contract with the City of Edgemont for \$50,000 to install materials into a water line. This project is for a qualified utility. The contractor will owe use tax on the material furnished by the municipality. However, they do not include the material on line 2 as owner furnished material subject to the excise tax. Materials provided by the city are valued at \$12,000, with possession taken on August 5. The city did not pay sales tax on these materials. Payment of \$50,000 was received August 20, 2004.
2. On June 25, 2004, ABC Corporation submits a bid for \$300,000 to remodel a school building in Hot Springs, SD. ABC purchases some materials locally and pays the applicable state and municipal sales tax to the supplier. A hard-to-locate material is purchased from an unlicensed out-of-state supplier at a cost of \$25,000 plus \$300 freight. No sales tax is paid on this purchase. The materials arrive at the jobsite on August 1. Payment of \$200,000 is received on August 4, 2004.
3. On July 30, 2004, ABC enters into an agreement with a furniture store in Custer to build a warehouse for \$175,000. The furniture store purchases the materials and provides them to ABC to install. The purchase price, including sales tax, is \$100,000. Payment of \$175,000 is received on August 25, 2004.
4. On August 4, 2004, ABC enters into an agreement with a Rural Water System (qualifying utility) to add on to an office building. The contract amount is \$150,000. Materials are purchased from a licensed supplier and state and municipal sales tax are paid. Payment of \$75,000 is received on August 27, 2004.
5. On August 5, material is delivered from an unlicensed out-of-state supplier to ABC in Mission. Materials cost \$4,900 plus \$100 delivery. ABC remodels a house using this material and on August 25 receives payment of \$25,000 for this project.

State Tax Liability – Return Information

Line 1. Add remittances received during August of \$50,000 from the City of Edgemont; \$200,000 from Hot Springs school building; \$175,000 from furniture store; \$75,000 from Rural water system; and \$25,000 from house remodel in Mission. Put total of \$525,000 on line 1 under Gross Receipts.

Line 2. Owner-furnished materials provided to ABC during August was \$100,000 from the furniture store, enter \$100,000 on line 2.

Line 3. ABC was not a subcontractor. Enter 0 on line 3.

Line 4. The house project in Mission is on the Rosebud Reservation. The \$25,000 receipts for this project are entered on line 4 Reservation. The \$25,000 is then entered under City/Reservation Tax Calculations under Rosebud, Code 412-2 at 2%.

Lines 5. Enter \$600,000 on line 5.

Calculate tax by multiplying \$600,000 by 2%. Enter \$12,000 on line 5 under tax due.

Lines 6. Use tax is due on material furnished by Edgemont, \$12,000, furnished August 5, and Hot Springs school, \$25,000 + \$300 freight, furnished August 1. Enter the total material \$37,300 on line 6 and the 4% use tax of \$1,492 on line 6 under tax due.

Lines 10-22. Use tax is also due on material purchased for the house remodel in Mission. Because this material was delivered on the Rosebud reservation the use tax is reported on the \$5,000, (\$4,900 plus \$100 delivery) under the City/Reservation Tax Calculations under Rosebud, Code 412-4 at 4% and Under Mission city code 239-2 at 1.75%.

Line 7. Add column tax due for lines 5 + 6 and enter \$13,492 on line 7.

City/Reservation Tax Calculations

Lines 10-22. Materials provided for the Hot Springs school and the City of Edgemont were used inside city limits. Under the City/Reservation Tax Calculations enter \$25,300 under Hot Springs, Code 169-2, at 2% for tax of \$506 and enter \$12,000 under Edgemont, code 104-2, at 2% for tax of \$240.

Include the receipts from the Rosebud Reservation from Example 5. Enter \$25,000 under Rosebud, Code 412-2 at 2% for tax of \$500. Use tax is also due on material purchased for the house remodel in Mission. Because this material was delivered on the Rosebud Reservation use tax is reported on the \$5,000, (\$4,900 plus \$100 delivery) under the City/Reservation Tax Calculations under Rosebud, Code 412-4 at 4% for tax of \$200.00 and under Mission city code 239-2 at 1.75% for tax of \$87.50.

Line 22. Total column tax due for lines 10 through 21 and enter \$1,533.50 on Line 22.

Line 23. The total tax due is computed by adding lines 7 + 22, enter \$15,025.50 on line 23.

Line 24. Enter any interest or penalty due if the return or payment is late on line 24.

Line 25. Enter any previous credit or amount due.

Line 26. Add lines 23 + 24, and subtract any notice of credit or add any billing notice amounts from line 25 and enter the total on line 26.

Line 27. Enter the amount of remittance.

Are you making these Top 10 Contractors' Excise Tax Errors?

1. Do you deduct the contractors' excise tax from gross receipts prior to listing the total gross receipts on line 1 of the contractors' excise tax return?

The contractors' excise tax is a gross receipts tax on the contractor. Gross receipts include 100% of the amount received in payment from the owner for completing the project. No deductions may be taken for any expenses or losses incurred. The contractors' excise tax is an expense of the project and must be included in the figure on line 1 of the return.

In order for the contractor to recoup tax from the customer, the contractor is allowed to use a factor of 2.041% when bidding and billing the customer. See page 9 for bid factor information

2. Does the project owner provide materials for you to install?

The cost or fair market value of materials provided by the owner for a contractor to install are subject to the 2% contractors' excise tax and must be reported on line 2 of the return. The contractor should obtain a copy of the invoice or a statement from the owner regarding the price of the materials and sales tax paid on the materials. If this information is not provided by the owner, the contractor must calculate the fair market value of the materials provided. The fair market value of the owner-furnished materials includes sales or use tax on the material.

3. Do you bring materials and equipment into South Dakota from out of state or buy tools and materials over the Internet?

If a contractor purchases or brings equipment or materials into South Dakota from out of state, the contractor may have a use tax liability. If the vendor does not collect the applicable sales tax, new or used equipment and materials delivered into South Dakota are subject to 4% state use tax, plus applicable municipal tax, on the purchase price. If the contractor paid tax in another state and the rate was less than South Dakota's, the contractor must remit the additional use tax in South Dakota.

If equipment is purchased or brought into the state for use during construction, it is subject to the South Dakota sales or use tax.

If new equipment is purchased for construction use, the South Dakota sales tax must be paid to a licensed vendor or the use tax paid to the Department of Revenue & Regulation on the cost or fair market value, whichever is greater.

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 unless sales or use tax has been 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. The amount of tax on the equipment will be reduced by the amount of sales or use tax previously paid by the contractor to another state, if South Dakota has reciprocity with

that state. Equipment used in a municipality is subject to that municipality's use tax. See page 14.

4. Do you have contracts for Exempt Entities?

Contractors' excise tax is a tax imposed on the gross receipts of all contractors engaged in realty improvements including projects for government entities. There are NO exemptions from contractors' excise tax. Sales and/or use tax is also due on the materials used in projects for exempt entities. If the exempt entity provides materials, the contractor will owe the state use tax, plus applicable municipal tax, in addition to contractors' excise tax on the value of the materials. See page 8.

5. Do you barter or trade items? Do you have liquidated damages? Do you reduce the contract amount for "sweat equity"?

A contractor cannot deduct "sweat equity," or labor performed by the homeowner, in exchange for a reduction in the amount due to the contractor, from their gross receipts reported. If a contractor barter or trades an item for labor, the value of the item determines the amount of tax due.

Example: The owner asks, "Will you reduce my contract amount by \$10,000 if I do all the trim work in my new home?" The contractor agrees. The contractor will still owe contractors' excise tax on the \$10,000. The owner becomes a subcontractor.

Example: The owner asks, "Will you reduce my contract amount by \$10,000 on my new home if I give you the title to my boat?" The contractor agrees. The contractor will still owe contractors' excise tax on the \$10,000 as gross receipts.

Example: The contractor is behind on his work. The contract amount to complete a highway project was \$750,000. The deadline to be done with the project was January 15, 2006; the contractor finished the project on February 15th. The contract stated that the owner would reduce the payment amount by \$1,000 for every day that the contractor went over the deadline. The contractor is not allowed to reduce gross receipts by the amount the owner withheld for penalty for late completion. The contractor will owe contractors' excise tax on the full amount of \$750,000. See page 7.

6. Do you take material or equipment from a rural location into a city?

Materials and equipment are taxable where possession is taken. If possession is taken in a city that imposes a city tax, applicable city tax is due. City use tax is due during the reporting period that the materials are used, stored or consumed in the city limits.

Many contractors have offices or storage facilities located outside of city limits and many of their contracts are located inside city limits. Contractors who have materials or equipment delivered to their office or storage facilities located outside of the city limits owe the municipal tax when the equipment or materials are used inside city limits. See page 14.

7. Do you issue or receive Prime Contractor Exemption Certificates?

The prime contractor should furnish prime contractors' exemption certificates to each subcontractor for each realty improvement project. The prime contractors' exemption certificate must show the prime contractor's valid excise tax license number and the project location. Prime contractors' exemption certificates cannot be issued to service providers subject to sales tax such as carpet installers, surveyors, or architects or to subcontractors on contracts for qualifying utilities.

Subcontractors must retain the prime contractors' exemption certificates in their records. The prime contractors' exemption certificate should not be mailed in with the excise tax return. Any subcontractor who fails to retain a prime contractors' exemption certificate for each project is considered to be a prime contractor and is subject to the 2% contractor's excise tax on their gross receipts from the project. See page 8.

8. Do you know what "undue enrichment" is?

Auditors and agents often see accumulating balances in the tax account record when the amount of tax collected from accumulated customers does not balance with the actual tax due on the return. This is often a result of rounding. If the correctly calculated return does not balance with the amount collected, 100% of the tax collected must be remitted. A business is not allowed to transfer tax collected into an operating account and use for general operating expense. If tax is collected from the customer it must be remitted to the Department. If an error was made in collecting tax from the customer, the additional tax collected must be refunded to the customer. The tax account record should zero out each month.

9. Do you make sure your subcontractors have a current contractors' excise tax license?

The Department of Revenue and Regulation works to make sure that all contractors working in South Dakota are properly licensed and remitting the appropriate sales and excise taxes. It is also very important for the prime contractor on a project to verify that all subcontractors working for them on a project have a contractors' excise tax license. 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." For your own protection be sure to verify that all your subcontractors are licensed and have paid the applicable sales or use tax on the materials they furnish for a job. If you would like to know if a business has a valid tax license, please contact the Department at (800) 829-9188. See page 4.

10. Do you have both a sales tax and contractors' excise tax license? Do you report the use tax on materials for an excise taxable transaction on the sales tax return?

If you have both a sales tax license and a contractors' excise tax license, you must complete two different tax return forms. Retail sales and services are reported on the sales tax return. When use tax is due on the contractors' cost of materials used in an excise taxable transaction, the state use tax and any applicable municipal tax should be recorded on the contractors' excise tax return.

Appendix A

The following is a representative listing of contractors who are included under the excise tax law.

A. BUILDING CONSTRUCTION — GENERAL CONTRACTORS AND OPERATIVE BUILDERS (Major Group 15)

This group includes general contractors and builders primarily engaged in the construction of residential, farm, industrial, commercial or other buildings.

1. General Contractor - Single Family Houses

These general contractors are primarily engaged in construction (including new work, additions, alterations, remodeling and repair) of single family houses.

- a. Single family house construction and improvements
- b. Prefabricated single family house erection
- c. Remodeling or repairing of buildings for single family housing
- d. Townhouse construction

2. General Contractors - Residential Buildings Other Than Single Family

These general contractors are engaged in construction (including new work, additions, alterations, remodeling and repair) of residential buildings other than single family houses.

- a. Apartment building construction and alterations
- b. Dormitory construction
- c. Hotel and motel construction
- d. Remodeling, renovating, or repairing of buildings
- e. Two or more family house construction

3. Operative Builders

These builders are primarily engaged in the construction of single family houses and other buildings for sale on their own account rather than as contractors.

- a. Apartment developers
- b. Condominium developers
- c. Speculative builders

4. General Contractors - Industrial Buildings and Warehouses

These general contractors are primarily engaged in construction (including new work, additions, alterations, remodeling and repair) of industrial buildings and warehouses such as aluminum plants, pharmaceutical manufacturing plants, and commercial warehouses.

- a. Factory construction
- b. Grain elevator construction
- c. Industrial and warehouse building construction
- d. Prefabricated building erection
- e. Remodeling, renovating or repairing industrial and warehouse buildings

5. General Contractors - Residential Buildings, Other than Industrial Buildings and Warehouses

These contractors are engaged in construction (including new work, additions, alterations, remodeling and repair) of nonresidential buildings such as commercial, institutions, religious, amusement and recreation buildings.

- a. Auditorium construction
- b. Bank building construction
- c. Church construction
- d. Commercial building construction
- e. Farm building construction
- f. Hospital construction
- g. Office building construction
- h. Post Office building construction
- i. The remodeling, renovating, repairing of other nonresidential buildings

- j. Restaurant construction
- k. School building construction
- l. Shopping center construction
- m. Silo construction

B. CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION

General Contractors (Major Group 16)

This group includes general contractors engaged in heavy construction (including new work, additions, improvements, maintenance and repair) such as highways and streets, bridges, sewers, railroads, irrigation projects, flood control projects, marine construction, and miscellaneous types of construction work other than buildings.

1. Highway and Street Construction

These contractors are engaged in the construction of roads, streets, alleys, sidewalks, guardrails, parkways, parking areas, airports, bridle paths, athletic fields, and grading and maintenance of roads.

2. Heavy Construction

These contractors are primarily engaged in construction of heavy projects such as bridges, viaducts, elevated highways, tunnels, subway construction, pipeline, communication, powerline, sewer, water mains, and other miscellaneous heavy projects.

- a. Blasting construction
- b. Bridge construction
- c. Cable laying construction
- d. Canal construction
- e. Dam construction
- f. Drainage construction
- g. Earth moving
- h. Elevated highway construction
- i. Gas main construction
- j. Irrigation project construction
- k. Land clearing
- l. Man-hole construction
- m. Pipeline construction
- n. Powerline construction
- o. Railroad construction by general contractors
- p. Rock removal
- q. Sewer construction
- r. Telegraph and telephone line construction
- s. Transmission line construction
- t. Trenching
- u. Trestle construction

C. CONSTRUCTION SPECIAL TRADE CONTRACTORS

(Major Group 17) - This group includes contractors who are specialized in activities such as plumbing, painting, plastering, carpentry, etc. Also included are establishments engaged in miscellaneous specialized construction activities such as industrial machinery or equipment installations, gas leakage detection, and water well drilling. Special trade contractors usually work on a subcontract basis for the general contractor, performing only part of the work covered by the general contractor, or they may work directly for the owner and become the prime contractor.

1. Plumbing, Heating, except Electrical, and Air Conditioning

These contractors are engaged in the heating, plumbing or air conditioning and similar work or any combination of these types of work.

- a. Boiler erections and installation
- b. Fuel oil burner installation and service
- c. Furnace repair
- d. Pipe and duct work
- e. Plumbing repair
- f. Refrigeration and freezer work
- g. Sewer hook-ups and connections for buildings
- h. Sprinkler system installation
- i. Sump pump installation and service

2. Painting, Paper Hanging and Decoration

- a. Bridge painting
- b. House painting
- c. Painting of buildings and other structures
- d. Paper hanging
- e. Traffic lane painting

3. Electrical Work

- a. Burglar alarm installation
- b. Communication equipment installation
- c. Electric heating equipment installation
- d. Fire alarm installation
- e. General electric work
- f. Heating equipment installation
- g. Sound equipment installation

4. Masonry, Stone Works, Tile and Plastering

- a. Acoustical work
- b. Brick laying
- c. Chimney construction
- d. Dry wall construction
- e. Fresco work
- f. Insulation installation
- g. Marble installation
- h. Masonry
- i. Plastering
- j. Taping and finishing
- k. Asbestos removal

5. Carpenters Engaged in Carpentry Work

- a. Carpentry work
- b. Garage door installation
- c. Store fixture installation
- d. Window and door installation

6. Roofing and Sheet Metal Work

- a. Down spout installation
- b. General siding contractors
- c. Metal ceilings
- d. Roof repair
- e. Sheet metal work
- f. Skylight installation

7. Concrete Work

- a. Asphaltting of driveways
- b. Blacktop work
- c. Concrete construction
- d. Concrete floor surfacing
- e. Grouting
- f. Sidewalk construction

8. Water Well Drilling

These are contractors primarily engaged in water well drilling and servicing of such wells.

9. Miscellaneous Trade Contractors.

- a. Structural steel erection
- b. Glass and glazing work
- c. Excavation and foundation work

10. Wrecking and Demolition Work

These contractors are engaged in the wrecking and demolition of buildings and other structures, and who may or may not sell materials derived from demolition of buildings and other structures.

11. Installation or Erection of Building Equipment

These contractors are normally engaged in the installation or erection of building equipment such as elevators, pneumatic tube systems, dust collection equipment, revolving door installation, vacuum cleaning systems, and the installation of machinery and other industrial equipment.

12. Special Trade Contractors not elsewhere classified

- a. Antenna installation
- b. Awning installation
- c. Bowling alley installation
- d. Caulking contractors
- e. Cleaning building exteriors
- f. Countertop installation
- g. Fence construction
- h. Fire escape installation
- i. Gasoline pump installation
- j. House moving
- k. Paint and wallpaper stripping
- l. Sandblasting of building exteriors
- m. Scaffolding construction
- n. Service and repair of broadcast stations
- o. Swimming pool construction
- p. Welding contractors at site of construction

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 CODE
----------------	-------------------------

SUBCONTRACTOR NAME	EXCISE TAX LICENSE NUMBER
---------------------------	---------------------------

STREET ADDRESS	CITY / STATE / ZIP CODE
----------------	-------------------------

PROJECT DESCRIPTION AND LOCATION

Prime Contractor's Signature	DATE
-------------------------------------	-------------

Additional copies can be obtained from our website at www.state.sd.us/drr or by calling 1-800-TAX-9188.



Department of
Revue &
egulation

License Number _____
Return Period _____
Date Filed _____
Amount Paid _____
Check Number _____

CONTRACTORS' EXCISE TAX RETURN WORKSHEET/INSTRUCTIONS

This worksheet is for your records only. Be careful to transfer the correct figures to the actual tax return.

Additional worksheets can be obtained by contacting your nearest Department of Revenue & Regulation office or at our website:
<http://www.state.sd.us/drr2/forms/btaxforms.htm>

Excise Tax Calculation			
1. Gross Receipts (Do NOT deduct out any tax before reporting your gross receipts.) The Gross Receipts figure must include all receipts received during the reporting period by the contractor for performing a realty improvement. The figure should reflect all taxable and non-taxable receipts, including those for projects located on an Indian Reservation.	1.		
2. Owner Furnished Materials The Owner Furnished Materials figure includes the total value of all materials used by the contractor for the realty improvement that the owner furnished (Prime & Subs). This does NOT apply to projects for qualifying utilities.	2.		
3. Deductions (Subcontractors Receipts, Out-Of-State) Include the total gross receipts figures paid to you by the prime contractor when you have been given a prime contractors' exemption certificate for that specific project, other than projects for utilities. Also include all receipts for projects located outside of South Dakota or any other non-taxable transactions that were included in Line 1.	3.		
4. Reservations Receipts (Detail in City Section) Receipts from projects located on the Cheyenne River, Pine Ridge, Rosebud or Standing Rock Indian Reservations are subject to reservation excise tax. Those receipts should be included in Line 1 and transferred to the city tax portion of the original contractors' excise tax return. Owner furnished materials, that are used on the Cheyenne River, Pine Ridge, Rosebud, or Standing Rock Indian Reservations are subject to reservation contractors' excise tax. Owner furnished materials are included on Line 2 and are transferred to the city tax portion of the contractors' excise tax return.	4.		
5. Net State Excise Taxable Add Lines 1 and 2 and Subtract Lines 3 and 4	5.1	x 2%	5.2
6. Net Sales and/or Use Taxable Enter construction materials, equipment, office supplies and services used and consumed during this period when sales tax was not paid to the vendor at the time of purchase. Also enter any taxable retail sales or services performed during this period if you do not have a sales tax license. Examples: snow removal, lawn care or consulting service.	6.1	x 4%	6.2
7. Total State Tax Due Add Lines 5.2 and 6.2			7.

A return MUST be filed even if no tax is due.

(Continue on reverse side)

8. City & Reservation Tax Calculation Detail				
9. City/Reservation Name	Code	Taxable	Rate	Tax Due
10.		10.		10.
11.		11.		11.
12.		12.		12.
13.		13.		13.
14.		14.		14.
15.		15.		15.
16.		16.		16.
17.		17.		17.
18.		18.		18.
19.		19.		19.
20.		20.		20.
21.		21.		21.
22. Total City/Reservation Tax (Add lines 10 through 21) Total City/Reservation tax owed must be reported here. The individual listing of each city or reservation with its corresponding code and rate, along with net taxable amount due for each individual city/reservation is listed on the original return. Please use the above spaces to record this information for your file. The amount of net taxable receipts from projects on an Indian Reservation must also be included in your Gross Receipts on line 1 and then deducted out on Reservation Receipts on Line 4.				
23. Total Tax Due Total tax due is calculated by adding Lines 7 and 22				
24. Penalty/Interest Interest: 1.5% (.015) 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 each month). Penalty: 10% (.10) of the tax liability (minimum \$10.00, even if no tax is due) is assessed if a return is not received within the next month following the due date.				
25. Adjustment (Previous Credit/Balance Due) Credit balance should be listed as a negative amount, Balance Due should be listed as a positive amount.				
26. Total Due (Lines 23 plus 24 plus 25) Total amount owing is calculated: Add lines 23, 24 and 25.				
27. Amount Remitted Enter amount of the remittance attached and make all remittances payable to the South Dakota State Treasurer. Thank You.				

NOTE: Both the preparer of the return and the licensee **MUST** sign and date the return. You must file a return even if no tax is due.

Do not staple or paper clip your check to the return. Be sure to mail your return and payment in the reversible envelope.



**CONTRACTORS' EXCISE
TAX RETURN**

ATTENTION

Mail Returns and Payments to:
Remit Center
PO Box 5055
Sioux Falls, SD 57117

Reporting Period _____
 Return _____
 Return Due _____
 File Code _____

CHECK FOR CHANGE OF ADDRESS BELOW

Check if out of business
 Last day of business: _____

 License # _____

EXCISE TAX CALCULATIONS	GROSS	TAXABLE	RATE	TAX DUE
1. Gross Receipts				
2. Owner-Furnished Materials				
3. Deductions (Subcontractors Receipts, Out-of-state)				
4. Reservation 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%	
7. Total State Tax Due (Line 5 plus Line 6)				
8. City & Reservation Tax Calculation Detail:				
9. City/Reservation Name	Code	Taxable	Rate	Tax Due
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22. Total City/Reservation Tax (Add Lines 10 through 21)				
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 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

