

This fact sheet is designed to provide general guidelines and examples of situations which may occur when construction services or realty improvement work is done for a sales tax exempt entity. If this tax facts does not answer your specific question, please call the department's toll-free helpline at 1-800-TAX-9188 between 8:00 AM - 5:00 PM CST, Monday through Friday.

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

Sales Tax Exempt Entities Include

- The U.S. Government or its political subdivisions,
- The State of South Dakota, its cities, counties, and townships,
- Accredited schools and non-profit hospitals
- Exempt entities authorized by the South Dakota Department of Revenue (i.e. relief agencies such as the Salvation Army, Community Development and Lutheran Social Services).

Is an exempt entity subject to Excise Tax?

All realty improvement projects are subject to the 2% contractors excise tax on the gross receipts of all prime contractors. Subcontractors' gross receipts are not subject to the 2% tax, except those performed for qualifying utilities, if the subcontractors are furnished a valid prime contractors' exemption certificate by the prime contractor for each specific job performed.

Realty improvement projects performed for qualifying utilities are subject to the 2% contractors' excise tax on the gross receipts of BOTH prime contractors and subcontractors. This does NOT include realty improvements by qualifying utilities. Qualifying utilities include railroads; telephone companies, including rural telephone companies; telegraph companies; electric, heating, water and gas companies; rural electric companies; rural water supply companies; rural water systems and Municipal telephone systems.

Municipal owned utilities, including electric, light, heat and power, municipal sewer systems, and municipal water systems are not qualifying utilities.

What is use tax?

When sales tax is not paid to the supplier at the time of purchase, **use tax** is due on items used, stored or consumed in South Dakota. The use tax rate is the same as the sales tax rate and is due on the purchase price or the fair market value, whichever is greater.

When is use tax due?

Use tax is due when sales tax is not paid to the supplier of materials or equipment at the time of purchase; when a retailer/contractor removes materials or equipment from inventory to install into real property; and/or when a sales tax exempt entity furnishes materials to a contractor to perform a realty improvement.

Why is use tax due?

An exempt entity by law can purchase items of tangible personal property, including materials and equipment, exempt from sales tax. When an exempt entity hires a contractor to install the materials and equipment into real property, the contractor is always considered the end consumer of these materials. Because no sales tax was paid by the exempt entity, the contractor owes state use tax and applicable city use tax.

What about city tax?

Contractors have a municipal use tax liability if the materials furnished by the exempt entity are installed in a city that imposes a municipal tax. Many municipalities in South Dakota, impose a sales and use tax that is in addition to the state sales and use tax.

A list of municipal tax rates is available on our web site at www.state.sd.us/drr or by calling 1-800-TAX-9188.

A government entity may NOT issue an exemption certificate to a contractor that is performing construction services or realty improvements for that entity.

Are materials furnished by an owner subject to 2% contractors' excise tax?

Yes, for projects other than a **qualifying utility**, materials supplied by the owner (including sales tax) must be included in the amount subject to the 2% contractors' excise tax. Therefore, on projects for an exempt entity, the value of the owner furnished materials plus the use tax due must be added to the calculation on which the 2% contractors' excise tax is due

Realty Improvements for Sales Tax Exempt Entities

(this includes materials furnished by the contractor, sales or use tax paid on contractor-furnished material, labor, profit, expenses, taxes, etc.). These taxes may be passed on to the owner in your bid.

When performing a contract for a qualifying utility, the owner furnished materials do not have to be added to gross receipts subject to the 2% contractors' excise tax, but do not forget to add the use tax in your gross receipts, if sales tax was not paid on your purchases of material.

Example

A contractor receives a contract for \$10,000 to repair a road for the city of Lemmon. The city supplies the contractor with \$5,000 worth of materials to complete the project. The contractor would have a use tax liability of \$300 (4% state and 2% Lemmon city use tax) and would be liable for contractors' excise tax on the \$10,000 plus \$5,300.

How do you report the applicable taxes on owner furnished material?

On your contractors' excise tax return, you need to enter the total amount of materials on which you owe use tax on line 6 for the state, then calculate 4% use tax on line 6. Then, if city tax is due, go to the city/special tax jurisdiction tax calculation section on the return and enter the applicable city, the code, the gross receipts that are subjects to use tax, the rate and the tax. Add the taxable amount, the state tax rate, and the city tax and enter the total on line 2 of the return, which is owner furnished materials. Then enter your actual gross receipts on line 1 and complete the return.

Is the sale/installation of carpeting subject to Contractor's Excise Tax?

No. The 1991 South Dakota State Legislature specifically removed the installation of carpet and related services from the contractors' excise tax. These services are subject to sales tax. When a sale/installation is made and payment is received directly from a sales tax exempt entity, no tax would be due. This only applies to contracts made with the primary purpose of carpet laying and related services (under 1752 of the Standard Industrial Classification). This does not include ceramic tile or terrazzo work.

What about the sale/installation of locks?

In addition to carpet laying, the 1998 legislature added the installation of locks as services subject to sales tax rather than contractor's excise tax. As with the carpet layers, when

a sale/installation of a lock is made and payment is received directly from a sales tax exempt entity, no tax would be due. This only applies to contracts made with the primary purpose of repairing or changing locks.

Snow Removal

Snow removal services are not subject to contractors' excise tax. Snow removal services are subject to 4% state and applicable municipal sales tax. Contractors should report snow removal receipts on line 6 of their contractors' excise tax return along with any use taxable items reported by the contractor. The receipts are subject to 4% state sales tax. Do not include snow removable gross receipts on line 1. In addition, if the service is provided inside municipal boundaries, the receipts will be subject to applicable municipal tax and should be reported under the "municipal/special jurisdiction" area of the return on lines 8 through 21.

Receipts from a government entity for snow removal services are exempt from sales tax and should not be included on the return. In order to document why the receipts are not included on the return, the invoice must show the name of the entity the service was provided to, and the invoice must be marked as exempt. A copy of the exempt entity's exemption certificate should be on file with the contractor.

Unlicensed Vendors or Contractors

Public corporations may not award contracts for the construction of any public improvement to unlicensed contractors. Please contact the department at 1-800-TAX-9188 to verify the contractor's license prior to letting bids.

Contractors must provide documentation to the public corporation that these licensing requirements are met before the public corporation can do business with them.

Contractors may obtain an application for a tax permit from our website at www.state.sd.us/drr or by calling 1-800-TAX-9188.

Talk to Us

For more information please visit us on the web at www.state.sd.us/drr or call our toll-free tax helpline at 1-800-TAX-9188.

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