

March 2011

This fact sheet is designed to provide general guidelines to Title or Abstract Company's services. If this Tax Facts does not answer your specific question, please call the Department's toll-free helpline at 1-800-TAX-9188 between 8:00 AM - 5:00 PM CST, Monday through Friday.

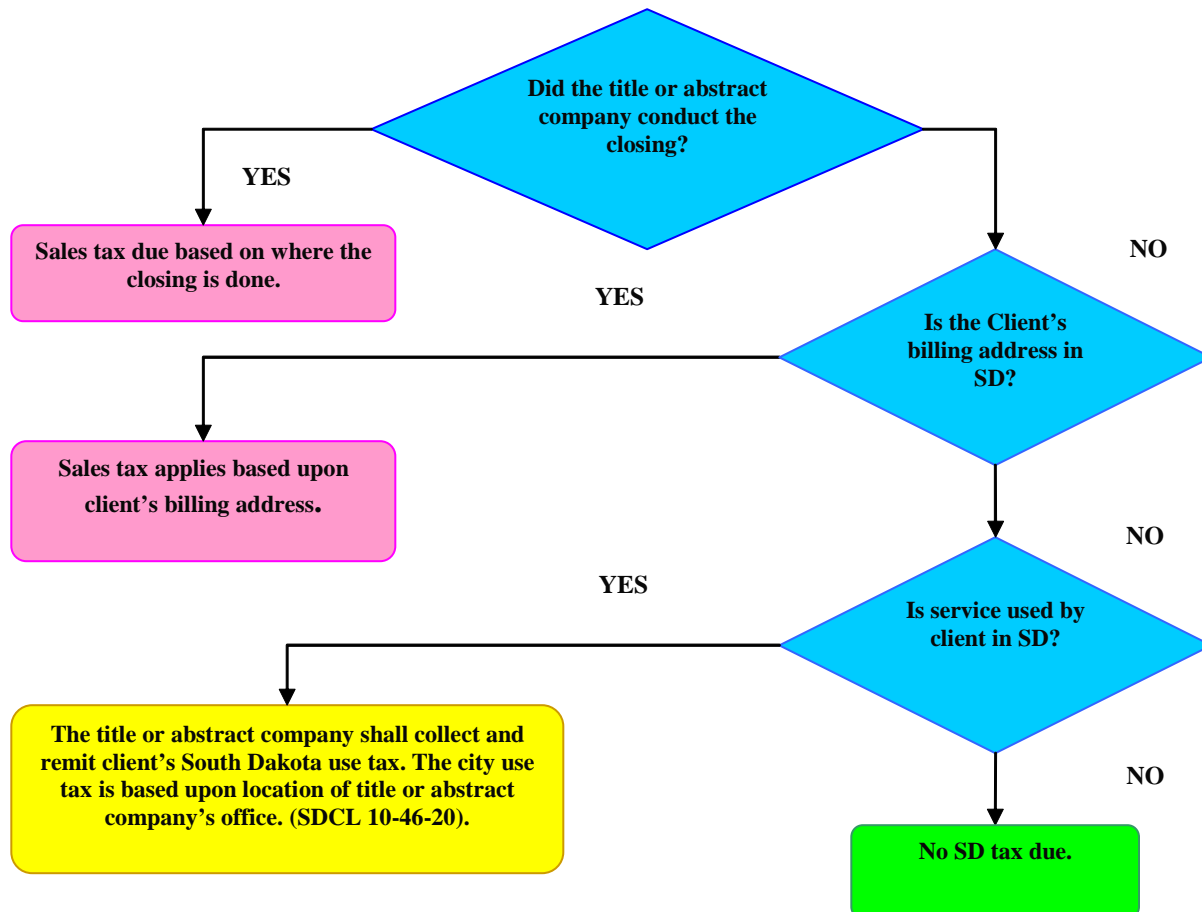
Information found in this document rescinds and replaces all previously written information on this subject. All readers and users of this publication are responsible for keeping informed about changes in tax laws and regulations by reading the department's newsletters, press releases, Tax Facts, and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

Many of the services provided by a title or abstract company are subject to sales tax. The following guide explains which services are taxable and where the sales or use tax applies.

The customer or client is the party responsible for the payment of the service billed.

Sales or use tax applies to title search or examination fees, and all other taxable fees, based on the following rules:

1. If the title or abstract company does the closing, the title search fees and all other taxable fees are subject to the 4% state sales, plus municipal sales tax based on the location of the closing.
2. If the title or abstract company does not do the closing, the title search fee and all other taxable fees are subject to the 4% state sales tax plus municipal sales tax based on the customer's billing address.
3. When the customer is located outside South Dakota and the services were for property in South Dakota, use tax is due. The title or abstract company is responsible for collecting and remitting the 4% state use tax for their client. The title or abstract company is also responsible for collecting and remitting municipal use tax if they are located in a city that imposes a municipal tax.



Title Insurance

The title or abstract company or title agent has a contract with the title insurance company as an agent to issue title assurances of the title insurance company, to receive and process applications, determine insurability of any title by examination of abstract or records from title plant (same as register of deeds records). The title or abstract company collects the premium for the title insurance company based on the rates set by the title insurance company.

Title insurance companies collect premiums and pay insurance premiums tax based on one of the two following methods:

A. Gross All-Inclusive Premiums

Under this method of reporting direct premiums written, the title insurer and its title agent generally perform all of the functions necessary to insure the risk and issue a title insurance policy. The title insurer reports 100% of the premiums charged either through its branch office or its title agents. The premiums are reported to the Division of Insurance and are subject to the insurance premiums tax.

The premiums collected under the gross all-inclusive premiums are not subject to sales tax.

The commission or service fees a title or abstract Company or title agent retains from a Title Insurance Company on insurance subject to insurance premiums tax are not subject to sales tax. SDCL 10-45-12.1 exempts commissions earned or service fees paid by an insurance company to an agent or representative for the sale of a policy.

Receipts for services that are in addition to the premium charge are subject to sales tax, except for filing or recording fees and taxes. See other services for explanation of tax on related services.

B. Gross Risk Rate Premiums

This method of reporting direct written premiums is when the charges for the title search and examination are excluded or charged separately from the title insurance premiums. The premiums are reported to the Division of Insurance and are subject to the insurance premiums tax.

The premiums collected under the gross risk rate premiums are not subject to sales tax.

Receipts for title search and examination and other services that are in addition to the premium charge are subject to sales tax, except for filing or recording fees and taxes that the client is legally liable for.

Closing Fees: Escrow or Settlement Services

Charges for escrow or settlement services are specifically excluded in the defined methods of reporting title premiums. These charges are subject to the 4% state sales tax, plus applicable municipal sales tax. Sales tax applies where the closing is held.

Search and Update Fees

Fees from a title search or examination are subject to sales tax. If the title search fee is included in the gross all-inclusive premium, and there are no additional charges, the premium is not subject to sales tax.

Fees charged for the title search at the time of the title commitment are subject to sales tax. If this fee is later credited towards the gross all-inclusive premium, it is not subject to sales tax.

Countersignature Fees. A title or abstract company can only search records in the county they are located in or in counties they have the appropriate "title plant" for (record of register of deeds records). If they are contacted to do a title search of land in another county, they will contact the title or abstract company in the county where land is located. That title or abstract company does the search and countersigns — they sign off on the search of the records in that county. This is a sale for resale. The company purchasing the service should issue an exemption certificate to the title or abstract company that performed the search. The company providing the service to the client is responsible for remitting sales tax, if applicable, on their receipts.

Example: Title Company A in Pierre is contracted to search property in Stanley County. Title Company A contracts Title Company S in Ft. Pierre to complete the title search. Title Company S bills Title Company A for the search. Title Company A should furnish Title Company S an exemption certificate. Title Company S does not owe sales tax on this transaction if they have received the exemption certificate. Title Company A is responsible for sales tax on their receipts for this service.

Other Fees

Please refer to the rules and flowchart on page one to determine where sales or use tax applies to the following services:

- **Attorney Fees** - If the title or abstract company hires an attorney for part of the research or work for a specific client the title or abstract company can issue the attorney an exemption certificate if the criteria listed under purchases for resale is met. The title or abstract company will owe sales or use tax on the charge to the client.
- **Commitment Fee** — Fees for the original research work is often included in the Title Insurance premium, however, this fee may be listed as a separate charge depending on contract or type of search requested by the client. The commitment fee is subject to sales or use tax.
- **Cancellation Fee** – A cancellation fee may be charged if the search is completed, then the sale falls through and the process is stopped. Fees charged for services that are provided that are not premiums for the title insurance are subject to sales or use tax. Sales tax applies to cancellation fees based on the client's address.
- **Copies** – Charges for copies are subject to sales or use tax.
- **Disbursement Fee** – Fees for disbursing funds are subject to sales or use tax.
- **Escrow Fee** - Fees for handling trusts or payments are subject to sales or use tax.
- **Liens/judgments** – Fees charged by the title or abstract company to collect and disperse amounts for liens, judgments, or other creditors are subject to sales or use tax.
- **Postage** - There may be charges to mail the title insurance, or charges to mail packets after closing to various lenders and others as designated. Postage is included in the amount subject to sales or use tax. If there are no taxable charges, then the postage is not subject to sales tax.
- **Recording Fees** – Filing or recording fees for recording deeds, liens, mortgages, or title transfers are not subject to sales tax. These are items the client is legally liable for and can be deducted from the title or abstractors' gross receipts.
- **Taxes** – Tax payments are not subject to sales or use tax. Fees for disbursing tax payments are subject to sales or use tax.
- **Wire Fees** - Fees to wire money to or from businesses are subject to sales or use tax.

Use Tax Collection by Title or Abstract Companies

Sales tax applies to title or abstract company's services, based on the above rules. The seller is responsible for reporting and remitting the sales tax.

Use tax, on the other hand, is based on where the service is used. The purchaser or consumer is legally responsible for the use tax. The title or abstract company is responsible for sales tax in those jurisdictions that tax their services. If the title or abstract company's customer receives the service in a jurisdiction that does not tax the title or abstract company's service, but the customer will owe the South Dakota use tax, the title or abstract company shall collect and remit the South Dakota use tax on behalf of their customer. City use tax should be remitted using the tax rate applicable for the title or abstract company's office.

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

Purchases for Resale

As a general rule a title or abstract company cannot purchase supplies and services the title or abstract company uses exempt from sales tax. However, services can be purchased for resale if the following criteria are met:

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

Title or abstract companies must give an exemption certificate to their suppliers to purchase services for a specific customer exempt from sales tax.

Receipts for services and items purchased without sales or use tax are included in the title or abstract company's taxable receipts.

Use Tax

Supplies, materials, or services purchased from an unlicensed business are subject to use tax. The state use tax rate is 4%, plus applicable municipal use tax, and is payable to the Department of Revenue in the filing period in which the title or abstract company receives the supplies or services.

Tangible personal property delivered into South Dakota is subject to the South Dakota sales or use tax, even if the supplier charges another state's sales tax.

When a purchase is made out-of-state and possession is taken out-of-state the supplier may charge that state's sales tax. If the other state's sales tax is the same or more than South Dakota's tax, there is no South Dakota use tax due. If it is less than South Dakota's, the difference is due in use tax. The state use tax plus applicable municipal use tax must be added together to determine if additional tax is owed.

Examples of use taxable items are:

- Computers
•Software
•Office Supplies
•Equipment

Municipal Tax

Many municipalities in South Dakota have a sales and use tax in addition to the state tax. If the customer receives a product or service in one of these cities, the product or service is subject to that municipality's sales or use tax. A list of municipal tax rates is available on our website at www.state.sd.us/drr.

It is the title or abstract company's responsibility to remit the correct sales tax. If the title or abstract company relies on the customer's representation of their taxing jurisdiction and that information is incorrect, the title or abstract company will be responsible for any additional sales tax due.

TaxMatch, the department's GIS system, will help users quickly find the correct tax rate and codes for locations throughout South Dakota. Users will enter any South Dakota address into TaxMatch, the system will then provide all the applicable tax codes and rates for that address. For quick and easy access, look for the GIS icon on the department's web site at www.state.sd.us/drr.

Exempt Entities

Accredited schools, non-profit hospitals, approved relief agencies, and government entities are exempt from sales and use tax. Government entities must provide an exemption certificate to the vendor or the vendor must keep documentation to show the purchase was paid from government funds. Documentation may include a purchase order or a check stub.

Relief agencies and religious or private schools must provide an exemption certificate to purchase products and services exempt from sales and use tax.

Required Records

Title or abstract companies must have a South Dakota sales tax license for each place of business within the state. Records, such as purchase and sales invoices, bills of lading, books of all receipts and sales, cash register receipts, and other pertinent papers and documents, are required to be kept for at least three years and be available for inspection during business hours.

Talk to Us!

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

South Dakota

Department of Revenue

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