

## **TITLING LEASED/RENTED MOTOR VEHICLES**

### A. Definitions:

1. "Leased vehicle," A motor vehicle titled in the name of a leasing company or the individual leasing the motor vehicle, which is leased for a period of more than 28 days.
2. "Rental vehicle," A motor vehicle titled in the name of a rental company licensed under 10-45 (sales tax license) which is rented for 28 days or less; or a trailer which is titled in the name of a rental company licensed under chapter 10-45 (sales tax license) and that has an unladen weight of 9,000 pounds or more, that is rented for 6 months or less and that is not consecutively rented to the same person for more than one 6-month period.

### B. **Vehicles with a gross vehicle weight rating of less than 16,000 pounds, excluding motorcycles and motorized bicycles, leased for more than 28 days.**

1. The lessor must title and license the vehicle. In the case of a leasing company within a dealership, the leasing company name must be separate and distinct from that of the dealership.
2. The lessor and the lessee's name must appear on the title.
  - a. The South Dakota driver's license or Social Security number of each lessee must be given. This information is not required if the lessee is a business.
3. The lessor or the lessee must pay the 3% excise tax on the purchase price of the vehicle (purchase price as defined in 3a).
  - a. Purchase price on a leased vehicle is the total consideration whether received in money or otherwise. Total consideration is: all lease payments, including cash, rebates, the net trade-in, extended warranties, administrative fees, acquisition fees, or any other fees assessed on the purchase of the vehicle. Total consideration does not include: title fees, registration fees, vehicle excise tax, federal excise tax attributable to the sale of the vehicle to the owner or to the lease of the vehicle by the owner, insurance, and refundable deposits.
  - b. Calculation of the tax shall be done on the South Dakota Lease Tax Worksheet. A copy of the worksheet must accompany the application for title and registration (MV608). The purchase price must be certified on the application for title and registration (MV608).
4. If the lessee buys the vehicle at the end of the lease, excise tax is assessed on the purchase price of the vehicle at the end of the lease.

- a. The lessor/dealer must assign the title to the lessee and submit the assigned title to the lessee's county treasurer, along with an application certifying the purchase price of the vehicle and the required fees and taxes.
  - b. A lessee who entered into a lease prior to July 1, 2000, and who paid excise tax based on the purchase price of the vehicle, including the value of the leased vehicle at the end of the lease shall receive credit for tax previously paid if the lessee purchases the vehicle at the end of the lease.
  - c. If a lease is terminated prior to the termination date contained in the lease agreement, no refund is given for tax previously paid.
  - d. If prior to the expiration of a lease, the leased vehicle is destroyed by fire, accident or vandalism to the extent that it constitutes a total loss of the vehicle, credit for the lease tax paid for the period remaining on the previous lease is allowed if another vehicle is substituted under the original lease or a new lease is executed with the intent to replace the vehicle subject to the previous lease. The new lease or substituted vehicle under the original lease must be executed by the same lessor and lessee for lease of a vehicle of the same or similar make, model, year and options as the vehicle subject to the previous lease. The lease must be for the remaining lease period as the previous lease, for the same lease price and under the same lease terms as the previous lease.
5. Leased vehicles entering the state under a lease are subject to tax on the date the vehicle enters this state for the remaining months in the lease period.
- a. Credit is given for tax that has been paid up-front to another state. The applicant must submit proof of payment of the tax. The lessee and the lessor must remain the same. [No credit is given if payment of the tax on a lease was being made to another state on a monthly basis.]
  - b. In the event tax was being paid by the lessee to another state on a monthly basis, the county treasurer shall require the leasing company making application for title and license to submit a completed application for title and registration, a South Dakota Lease Tax Worksheet For Out-Of-State Vehicle Lease, and a copy of the lease agreement.
6. When entering a lease transaction that falls under Section B above on the computer system, a tax code 45 should be used.

**C. Vehicles with a gross vehicle weight rating of 16,000 pounds or more, leased for more than 28 days.**

1. The lessor must title and license the vehicle. In the case of a leasing company within a dealership, the leasing company name must be separate and distinct from that of the dealership.
2. The lessor and the lessee's name must appear on the title.

- a. The South Dakota driver's license or Social Security number of each lessee must be given. This information is not required if the lessee is a business.
  3. The lessor or the lessee must pay the 3% excise tax on the purchase price of the vehicle. A bill of sale or purchase order is needed to establish purchase price, unless the dealer price certification on the application is completed.
    - a. Purchase price on a leased vehicle with a gross vehicle weight rating of 16,000 pounds or more is the total consideration whether received in money or otherwise. [Total consideration is the lessor's purchase price.]
    - b. In the case of a lessor/lessee situation in which a lease vehicle is traded in to a dealer on another lease (no buy-out takes place and the trade takes place with the same leasing company), the trade-in allowance is granted if the trade-in vehicle is in either the lessor or the lessee's name. If the lessee's name does not appear on the title, a copy of the lease agreement or other supporting documentation indicating that the lessee was responsible for payment of the excise tax is required. On titles issued after July 1, 1994, the law requires that the lessor and the lessee be indicated on the title.
  4. If the lessee pays the tax and subsequently purchases the vehicle, the lessee must title the vehicle and shall receive credit for tax paid (on a South Dakota title that denotes the lessee and lessor, a copy of the lease agreement is not required).
  5. Out-of-state leasing companies titling and licensing a leased vehicle in South Dakota that has been previously titled and licensed in another state shall be exempt from the 3% excise tax to the extent that an equal and similar amount of registration fee, sales tax, use tax, state excise tax (in dollars) has been paid in such other state. The lessee must remain the same.
    - a. The county treasurer shall require the leasing company making application for license of a vehicle to provide proof that a similar and equal amount of tax has been paid in another state.
    - b. If sufficient proof is not furnished at the time of application, the county treasurer shall collect the full amount of the 3% excise tax.
- D. Vehicles rented for 28 days or less (includes automobiles, pickups and vans with a manufacturers shipping weight, including accessories, of 10,000 pounds or less; trailers with an unladen weight of 9,000 pounds or more that are rented for six months or less.**
1. Exempt from the 3% excise tax.
    - a. A tax of 4 1/2% is imposed upon the gross receipts of any person renting motor vehicles for 28 days or less (see D. for qualifying vehicles). This tax is in addition to any sales tax levied pursuant to chapters 10-45 or 10-46 (4% sales tax, 1% tourism tax, plus applicable city tax).

- 1) Exemption code 19 should be used on the application for title (MV608).
  - 2) Title must be issued in the name of the rental company.
  - 3) If the rental company is within a dealership, the rental company name must be separate and distinct from that of the dealership.
  - 4) If the lessee is a rental company leasing vehicles for use in a daily rental operation, the rental company must be indicated on the title as the lessee.
- b. The rental company remits the 4 1/2% gross receipts tax and the rental sales tax to the Sales Tax Office of the Department of Revenue on the Sales Tax Return.
  - c. Title applications on rental vehicles must be accompanied by an affidavit from a representative of the rental company stating that the vehicle is being used for rental. The representative of the rental company will also be required to state the rental company's sales tax number on the affidavit. (An MV-609 exemption form, which contains this information, may be used in-lieu-of the affidavit.)
- E. All revenues received from the 3% excise tax and the 4 1/2% gross receipts tax are credited to the State Highway Fund.
- F. To apply for South Dakota title and registration, an applicant must complete an Application for Motor Vehicle Title and Registration (MV-608). The application must be filed in the county of the new applicant's residence.
1. The application must be signed by the record owner(s) or by an authorized agent for the record owner(s). If an authorized agent signs the application, a power of attorney document must be attached to verify the appointment.
- G. If the vehicle is new, a manufacturer's statement of origin (MSO) must be attached. If the vehicle is used, a certificate of title, properly transferred to the applicant, must be attached.
1. The purchase price would be the same as previously set out in the section entitled "Definition of 3% Excise Tax".
- H. A properly completed Damage Disclosure Statement form, if applicable, must be attached. The lessor is responsible for completing the Damage Disclosure Statement.
- I. Payment of the correct amount of 3% excise tax (if applicable), a title fee, and any license fee as may be required must be collected. Failure to pay the full amount of excise tax is a Class 1 misdemeanor.

