

South Dakota Municipal Sales Tax Update

By Rob Witte

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Want to receive **taxation** via email? Send your email address along with your tax license number to: webman@state.sd.us

Taxes Meet GIS Technology

Check out the departments GIS system, **TaxMatch**, allowing taxpayers to match sales tax codes and rates to physical addresses within South Dakota. Take advantage of this tool online at www.state.sd.us/drr2/GIS/index.htm. The site was developed to provide users a quick and convenient way to find the applicable sales tax code and rate for any address within South Dakota.

The following municipal tax rate changes go into effect January 1, 2005.

Aurora (019-2) is implementing a 1% general sales and use tax rate.

Belle Fourche (027-2) is increasing its general sales and use tax rate from 1.90% to 2%.

Beresford (029-1) is imposing a 1% municipal gross receipts tax on alcoholic beverages, admissions, eating establishments and lodging accommodations.

Centerville (065-1) is imposing a 1% municipal gross receipts tax on alcoholic beverages, admissions, eating establishments and lodging accommodations.

Delmont (095-2) is increasing its general sales and use tax rate from 1.76% to 2%.

DeSmet (092-1) is imposing a 1% municipal gross receipts tax on alcoholic beverages, admissions, eating establishments and lodging accommodations.

Dimock (097-2) is implementing a 2% general sales and use tax rate.

Hot Springs (169-2) is increasing its general sales and use tax rate from 1.83% to 2%.

Timber Lake (345-2) is increasing its general sales and use tax rate from 1.70% to 2%.

Webster (382-1) is imposing a 1% municipal gross receipts tax on alcoholic beverages, admissions, eating establishments and lodging accommodations.

Yankton (405-2) is increasing its general sales and use tax rate from 1.86% to 2%.

Insights...from the Secretary's Desk



Looking back over another busy year for our department, 2004 marked the 5th anniversary of SD QUEST, the tool that allows taxpayers to file returns and pay taxes electronically. Many of you have commented on how quick and easy this system makes filing and paying taxes, and the number of taxpayers filing electronically continues to grow. We will do all we can in the future to improve this system and look for other ways to assist you in filing returns and understanding the tax laws.

The 2005 legislative session is rapidly approaching, and while there has not been a lot of talk of tax law changes, it seems that some changes always come about. Be sure to check our next newsletter for a recap of legislative action relating to changes in the state's tax law.

We think we have had a good year insofar as taking steps to improve the ability to serve taxpayers is concerned. Much effort has gone into refocusing the way we go about our work so that we can be more effective in administering South Dakota's tax system. If there is something you think we could be doing better, however, we would love to hear from you. Please drop us a line, visit our office nearest you, give us a call at 1-800-TAX-9188, or visit us on the web.

On behalf of the Department of Revenue & Regulation, I wish you happy holidays and the hope of a most-prosperous New Year!

Peterson Plays Major Role in Streamlined Sales Tax Project

By Kelly Thompson

For nearly 9 years, the Department of Revenue & Regulation's Scott Peterson has focused on the assessment and collection of sales, use and contractors' excise tax in South Dakota. As director of the department's Business Tax Division, it has also been his job to keep an eye on how other states are accomplishing the same task.

In March of 2000, Peterson, along with his counterparts in other states, began taking a comprehensive look at state tax structures nationwide with the creation of the Streamlined Sales Tax Project (SSTP). SSTP is designed to simplify the sales tax system in the United States by creating uniform means of taxing products and services from one state to the next. Legislators, executive branch employees and representatives from the private sector have all joined forces to discuss, analyze and implement the project.

Peterson has been an active member of the process since the very beginning, serving on the project's steering committee, co-chairing a variety of project committees, and serving as co-chair of the Streamlined Sales Tax Project since January of 2003. In September of 2004, that involvement led to his being named as the Interim Executive Director of the Streamlined Conforming States Committee, a position which currently has Peterson dividing his time between Pierre and Washington, D.C.



Scott Peterson, Director of Business Tax

Scott was born and raised in Rapid City but has called Pierre home for more than 20 years. He holds a Bachelors Degree in Political Science and a Masters in Public Administration from the University of South Dakota. Scott has been with the Department of Revenue & Regulation since 1995, serving his entire tenure as the Director of Business Tax.

(CONTINUED ON PAGE 7)

Business Education Program

Come join our Business Education Program at one of the workshops or seminars in your area. The department offers a number of educational opportunities that cover different tax issues facing new and existing business owners. For the most current list of seminars or to register, visit our website at www.state.sd.us/drr. All seminars and workshops are free of charge.

Border Issues Seminars

Border Issues Seminars cover the difference in the tax application and reporting process between South Dakota and bordering states. Sales Tax is from 1pm-4pm and Contractors' Tax is from 9am-Noon, unless noted otherwise. To sign up for one of our seminars, log on the web at www.state.sd.us/drr.

March 9-10, 2005 March 9: Sales Tax
SD/MN Border Issues March 10: Contractors' Tax
St. Paul, MN

Tax Filing Deadlines

January

- January 17 - Martin Luther King Jr. Day, Department Offices Closed.
- January 20 - Paper returns and payments due for monthly filers.
- January 23 - SD QUEST returns due.
- January 28 - SD QUEST electronic payments due.
- January 31 - Paper returns and payments due for bi-monthly, semi-annual and annual filers.

February

- February 21 - President's Day, Department Offices Closed.
- February 22 - Paper returns and payments due for monthly filers.
- February 23 - SD QUEST returns due.
- February 25 - SD QUEST electronic payments due.

March

- March 21 - Paper returns and payments due for monthly filers.
- March 23 - SD QUEST returns due.
- March 30 - SD QUEST electronic payments due.
- March 31 - Paper returns due for bi-monthly filers.

T² Where Technology Meets Taxes

By Dr. Revenue

SD QUEST is the quick, easy and secure way to file your state and municipal sales and contractors' excise taxes. Call 1-800-TAX-9188 for more information today!

All SD QUEST filers should remember that the 23rd of the month is the **last day** to file for the previous reporting period. You may file anytime **between** the 24th of the previous month and the 23rd of the current month for the previous reporting period.

SD QUEST Vitals

- efficient and convenient filing
- file online or by phone
- pay electronically
- safe and secure
- reduce filing errors
- eliminate paperwork

SD QUEST internet filers: when you file your return, the out-of-business box on the first page is **only** for those businesses going **out of business**. If you enter a date here, you will cancel your tax license. The reporting period date is automatically entered for you. Please check that date to make sure you are filing for the proper period.

Specialty Builders

Are you a spec builder – someone who holds title to the land and builds new buildings or remodels existing structures with the intent to sell or lease? If so, you need to know the following:

1. You are a spec builder even if you do not do any of the work yourself.
2. All spec builders must have a contractors' excise tax license.
3. You are responsible for paying sales or use tax on all construction material.
4. You are responsible for remitting the 2% contractors' excise tax at the time of the closing, if sold within four years of completion. Contractors' excise tax is due on the selling price, less the cost of the land and land improvements when excise tax was paid to the contractor completing the improvements. If land improvements were made four years prior to the sale, the fair market value of the land will be deducted instead of the cost.

Understanding Your Tax Obligation *By Rob Witte*

Mailing Services

Does the exemption of transportation and small package delivery services affect mailing services?

Yes. A mailing service company does not owe sales tax on itemized delivery charges that are set by the small package delivery company (i.e., UPS, FedEx, DHL, etc.)

If a mailing service company does not itemize their services and the delivery charges,

then the entire transaction amount charged by the mailing service company is subject to sales tax. The application of the tax is the same as when utilizing the United States Postal service.

Delivery Services

Businesses that accept customer's packages for shipment with a small package delivery company (i.e., UPS, FedEx, DHL, etc.) owe sales tax on any fees that they may charge for their service.

Since July 1, 2004, the delivery charge by the small package delivery company is exempt from sales tax. The mailing service business does not need to provide an exemption certificate to the small package delivery company.

For example, John Doe brings a package to Onida Grocery to be shipped via UPS. Onida Grocery collects the delivery fee of \$5.00 and charges \$.50 for handling.

Because Onida Grocery itemized the delivery fee and handling fee on

the invoice, only the \$.50 is subject to sales tax. If Onida Grocery charged \$5.50 for the delivery and did not itemize the charges, the entire \$5.50 is subject to sales tax.

Retailers

Retailers who ship products they sell via a small package delivery company are responsible for the sales tax on the price of the item and the delivery charge.

Taxpayers who have questions on any of the above issues may call the department toll-free at 1-800-TAX-9188.

Did You Know...

Motor Vehicles Subject to Tourism Tax and the Gross Receipts Tax - Automobiles, pickups or vans that are licensed under the noncommercial licensee fee schedule SDCL 32-5-6 with a manufacturer shipping weight, including accessories, of 10,000 pounds or less, that are rented in the state for 28 days or less are subject to the state sales tax (4%), the state gross receipts tax (4.5%), the state tourism tax (1%), plus applicable municipal sales tax. The total state tax on the rental of such motor vehicles is 9.5% plus applicable municipal sales tax. This tax is based on the amount of the rental payments.

Trailers with an unladen weight of 9,000 pounds or more and which are rented for more than 28 days, but less than 6 months, are only subject to the gross receipts tax of 4.5%. If these trailers are rented for less than 28 days, they are subject to the state sales tax, the gross receipts tax, and applicable municipal tax. Tourism tax does not apply to the rental of trailers.

The state sales tax, municipal sales tax and tourism tax also applies to the rental of the following recreational vehicles when rented for 28 days or less: ATV's, recreational vehicles, camping trailers, snowmobiles, snowmobile trailers, mopeds, motorcycles, motor coaches, watercraft and watercraft trailers. All other motor vehicles that are rented for 28 days or less are subject to the 4% state sales tax and municipal sales tax.

Manure Hauling/Spreading and Barn Cleaning Companies - Companies who are in the business of contracting to clean livestock pens, load the manure and then spread it on fields or truck to an off-farm location must charge state and applicable municipal sales tax on their services.

Companies that are contracted to only transport the manure from Point A to Point B (some other company or the rancher/farmer is cleaning pens and loading the manure in your trailer) are considered exempt from charging state and municipal tax.

Correction to October 2004 Issue of Taxation News - The department reported erroneously in the October 2004 issue of Taxation news in the article, *Use Tax: Repair Services and Architects* that "Wyoming charges sales tax on the parts, but not the labor." Wyoming does charge sales tax on parts and labor for services performed for the repair, alteration or improvement of tangible personal property.

Use Tax Obligations or Violations

By Rob Witte and Jody Bartels

The U.S. Government has been working diligently on passing free trade agreements with countries all over the world. Although we are only a small state in the middle of the country, South Dakotans know all about working across borders. Whether you're operating a plastics company in Sioux Falls or running a ranch in McIntosh, you will at some time make purchases in a bordering state or beyond.

The 4% South Dakota use tax is the counterpart of the 4% South Dakota sales tax. Although the two taxes apply to the sales of the same goods and services and utilize the same tax rates and similar laws, there is a difference in the circumstances in which they apply.

Sales tax applies to the gross receipts resulting from a sale of services or tangible personal property at the time of the sale and is reported by the seller of the goods or services.

Use tax, on the other hand, applies only on goods and services on which South Dakota sales tax was not paid. The purchaser or consumer of the goods or services is responsible for reporting and remitting the 4% state use tax, plus applicable municipal use tax in the filing period in which the purchaser receives the goods or services. The use tax is due on the purchase price, including delivery charges.

Tangible personal property delivered to a purchaser in South Dakota is subject to the South Dakota sales or use tax, even if the supplier charges another state's sales tax. The purchaser may request a refund from their supplier for incorrect tax charged.

When a purchaser takes possession of the product out-of-state, then brings the item to South Dakota, the supplier may legally 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 owed. If it is less than South Dakota's, the difference must be paid to South Dakota. The state plus applicable municipal taxes must be added together to determine if additional tax is due.

Businesses using services in South Dakota owe use tax on those services, even if the service provider completes their work outside the state.

Top 10 Sales and Use Tax Violations

(From the Audit Division)

1. Not paying use tax on equipment and supplies purchased from out-of-state unlicensed vendors.
2. Not paying sales tax on sales to customers who did not provide a valid exemption certificate.
3. Not paying sales tax on sales to non-exempt entities (i.e. churches, nursing homes, clinic, booster clubs, service clubs, etc.).
4. Collecting more tax then remitting (errors in the preparation of the sales tax returns).
5. Not paying use tax on services performed by unlicensed out-of-state companies (i.e. consulting services, accounting services, legal services, architectural).
6. Not paying use tax on items consumed in providing a service, that don't become an integral component part of the final product.
7. Not paying use tax on promotional items given away (i.e. free caps, key chains, free food, meals, etc.).
8. Not collecting and remitting city tax.
9. Not paying use tax on brochures, catalogs, flyers, inserts.
10. Not paying use tax on items removed from inventory for your own use.

Services performed on tangible personal property are subject to use tax where the service is used.

Use tax may be complex, depending upon your business. We encourage you to contact the department at 1-800-TAX-9188 if you have any questions.

Examples of Use Tax

1. A South Dakota business hires an unlicensed Iowa accountant to do their monthly payroll. Everything is done through the mail or by phone. The South Dakota business owes use tax on the payroll services.

2. Tech Support offers clients phone support for computer problems for a monthly fee. Tech Support does not have a South Dakota tax permit. South Dakota clients owe use tax on the monthly fee because they use this service in South Dakota.

3. An architect completes plans and sends them to the client in Nebraska. The plans are for a building to be built in Yankton. Sales tax is not due because the plans are received in Nebraska. However, because the plans are used to construct a building in Yankton, the client owes the 4% state use tax plus Yankton municipal use tax on the architect's service.

New Bid Factor Calculator

By Rob Witte

Given the recent explosion in new home building and the expansion of commercial buildings in South Dakota, many individuals have viewed this as an opportunity to start new construction businesses.

Contractors can be inundated with paper work that may slow down construction and in some cases, bring a project to a screeching halt.

The department recently created a Bid Factor Calculator which can be an excellent tool for calculating South Dakota Contractors' Excise Tax.

"We only get a few minutes of time with contractors to explain South Dakota's tax code. The Bid Factor Calculator can save a contractor hours of frustration," states Betty Morford, Senior Revenue Agent.

The calculator is a form that can be viewed with Adobe Acrobat Reader. The user will input 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.

Morford says that this calculator is only as good as the contractor's receipts and records. "We have always stressed the importance of keeping good records but now we can offer taxpayers a quick and easy way to calculate their contractors' excise tax," said Morford.

SD EForm - 1895 V1

HELP

Contractors' Excise Tax Bid Factor Calculator		
South Dakota Department of Revenue & Regulation 445 E. Capitol Avenue Pierre, SD 57501-3185 1-800-TAX-9188		
Revised 11/04		
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 materials 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 invoice for your customer. This factor allows you to recover the excise tax you will owe.		
The example below demonstrates how to use the bid factor. You can also enter you own figures and the form will calculate the appropriate amount of contractors' excise tax to include in your bid or invoice based on the information you entered.		
For additional information regarding contractors' excise tax, please read our Contractors' Excise Tax Guide Book or call us at 1-800-829-9188.		
Customer Name _____		
Project Location _____		
ITEMS INCLUDED IN BID	EXAMPLE	ENTER YOUR FIGURES HERE
Cost of materials	\$ 50,000.00	<input type="text"/>
4% state sales or use tax on materials (include municipal tax if applicable)	+ \$ 3,000.00	+ <input type="text"/>
Mark up on materials	+ \$ 12,500.00	+ <input type="text"/>
Value of owner furnished materials (including sales tax)	+ \$ 5,000.00	+ <input type="text"/>
Labor	+ \$ 50,000.00	+ <input type="text"/>
Subcontractors	+ \$ 25,000.00	+ <input type="text"/>
Permits, fees, etc.	+ \$ 5,000.00	+ <input type="text"/>
Mobilization, travel, gas, food, lodging, etc.	+ \$ 4,500.00	+ <input type="text"/>
All other expenses	+ \$ 2,600.00	+ <input type="text"/>
Total (automatically calculated from figures entered above)	= \$ 157,600.00	= <input type="text" value="0.00"/>
Times bid factor	x 2.041 %	x 2.041%
Amount of tax to invoice to customer	= \$ 3,216.62	= <input type="text" value="0.00"/>
Amount to report on line 1 of the return	+/= \$ 160,816.62	+/= <input type="text" value="0.00"/>
Amount to report on line 2 of the return	\$ 5,000.00	<input type="text"/>
Note: The factor 2.041% is used to prepare a bid or invoice, however, a straight 2% rate is used when calculating the excise tax on your return.		

The Bid Factor Calculator can be found on the department's homepage under News You Can Use, at www.state.sd.us/drr.

Contractors are urged to call the department at 1-800-TAX-9188 with any comments or questions about the Bid Factor Calculator.

Municipal Tax Update

The municipal tax rate of some municipalities will change effective January 1, 2005. Construction materials for construction contracts bid or awarded prior to January 1, 2005 are not subject to the tax rate increase if the contract was awarded or bid prior to the effective date of the rate increase.

Written documentation verifying that the contract was bid prior to the rate change must be provided to the supplier/vendor at the time of the purchase of materials. The supplier/vendor will charge municipal sales tax at the rate in effect at the time of the bid. This only applies to the purchase of materials for construction contracts.

Recently we sat down with Scott Peterson to discuss the current status of the SSTP and what the project means for South Dakota.

When SSTP was initiated in 2000, the project's goal was to radically simplify the nation's sales tax system. After four years, is that goal still realistic?

“To some extent, that’s still our charge but we realized rather quickly that some of this stuff was very difficult to simplify. Today, we simplify what we can make simple and we make uniform everything else. We don’t deal with single state issues; there has to be a multiplicity of ways states are doing a particular thing before we add it to our list of things to do. Just because State A does something a business doesn’t like doesn’t create a multistate tax administration problem. When you have three states doing the same thing three different ways, that’s a multistate tax compliance problem where we need to figure out how to get down to one way.”

How many states are involved in SSTP and what is South Dakota's level of involvement?

“Currently 42 states and the District of Columbia are involved in the project. There are four levels of involvement: a state can be not involved at all, like Colorado; be an observer state like New Mexico and Idaho; a participating state, which is every other state involved in the project; or an implementing state, which means that your state’s legislature has enacted some SSTP legislation. South Dakota is an implementing state.”

Working with the SSTP has given you the opportunity to really take an in-depth look at what problems other states were experiencing with their tax structures. How does South Dakota compare?

“Our problems are pretty normal. We have multiple tax rates, which a number of states do. We had definitions that we’ve had to change – most states have had to change definitions. We had some administrative practices that we’ve had to change which most states have to change. We’re pretty much in the middle of issues. When we started this, most of us were pretty amazed at how much we had in common and yet how peculiarly we had done things. Definitions and interpretation are still the biggest problems among states.”

What's the timeline for implementation of the SSTP and what, if anything, will South Dakota businesses need to do to prepare for that implementation?

“It becomes effective when 10 states representing 20% of the country’s population have changed their laws to be in conformance with what the agreement requires.

Today, that will occur on July 1, 2005. The agreement itself doesn’t go into effect until 60 days after that. We have a lot of work packed into the next year. There really isn’t a lot left for South Dakota to do because we’ve passed all our laws. All the changes the retailers were required to make under this thing, they’ve been making. South Dakota retailers are in good shape.”

And finally, as we get closer to the implementation date next July, is there any one thing you feel is needed to ensure the success of the project?

“This is going to take a tremendous amount of patience because we have a ways to go yet. There’s a bunch of people out there who have believed in this thing and made commitments based upon this thing being done. I don’t worry about it getting done but people need to be patient because this is not a simple feat to accomplish.”

For the latest information on the Streamlined Sales Tax Project, visit their web site at: www.streamlinedsalestax.org.



The Project consists of 42 participating states and the District of Columbia. The Project is focused on improving sales and use tax administration systems for both Main Street and remote sellers for all types of commerce.

Business Tax Director Scott Peterson has been involved with the Project since it’s inception in March 2000. His involvement has led to his recent appointment as the Interim Executive Director of the Streamlined Conforming States Committee, a position which has Peterson dividing his time between Pierre and Washington, D.C.