

### Legislative History of Sales Tax rates

<b>1935</b>	South Dakota enacts the sales tax. 1935 S.D. Sess. Laws ch. 205, § 34. The sales tax rate is 2 percent, and applies to the sale of tangible personal property.
<b>1939</b>	South Dakota enacts the use tax. 1939 S.D. Sess. Laws ch. 276, § 3. The use tax rate is 2 percent, and applies to the use, storage, or consumption of tangible personal property. Throughout the history of the use tax, the use tax rate has been the same as the sales tax rate.

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## Legislative History of Sales Tax rates

**1965**

South Dakota increases the sales tax and use tax rate to 3 percent. 1965 S.D. Sess. Laws ch. 288, § 1.

South Dakota expands the sales tax to the sale of many services. 1965 S.D. Sess. Laws ch. 296, §§ 1, 2.

**1969**

South Dakota increases the sales tax and use tax rate to 4 percent. 1969 S.D. Sess. Laws ch. 267, §§ 1, 2.

**1979**

South Dakota expands the use tax to the use of services. 1979 S.D. Sess. Laws ch. 84, § 6D. The sales tax on services was also expanded to include more services. 1979 S.D. Sess. Laws ch. 84, §§ 9, 10.

## Legislative History of Sales Tax rates

**1980**

South Dakota increases the tax rate for the sales tax and the use tax by 1 percent to 5 percent, to fund the state purchase of railroad property.

1980 S.D. Sess. Laws ch. 325, §§ 14, 21. The 1 percent increase was in place from May 1980 to June 1981.

**1987**

South Dakota increases the tax rate for the sales tax and the use tax by 1 percent to 5 percent, to fund the REDI fund.

1987 S.D. Sess. Laws ch. 98, §§ 2, 10. The 1 percent increase was in place from May 1987 to February 1988.

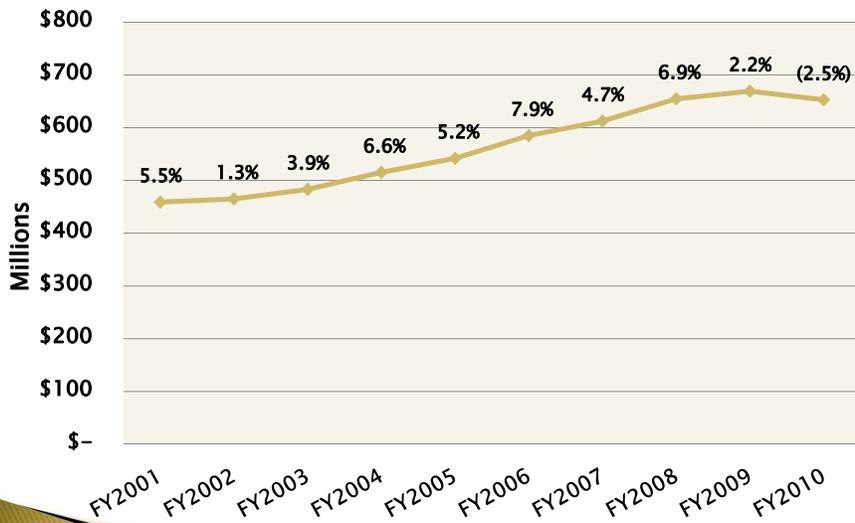
## 10 Year History of Sales Tax Revenue

<u>Fiscal Year</u>	<u>Sales and Use Tax</u>	<u>% increase (decrease) over previous year</u>
FY2001	\$ 459,110,188	5.51%
FY2002	\$ 465,087,661	1.30%
FY2003	\$ 483,258,902	3.91%
FY2004	\$ 515,301,325	6.63%
FY2005	\$ 542,031,635	5.19%
FY2006	\$ 584,938,828	7.92%
FY2007	\$ 612,427,671	4.70%
FY2008	\$ 654,818,650	6.92%
FY2009	\$ 669,118,106	2.18%
FY2010	\$ 652,743,552	(2.45%)

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## 10 Year History of Sales Tax Revenue



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South Dakota  
Department of  
**R**evenue  
Professional, Dependable, Accountable

# Sales Tax Overview

Jan Talley, Business Tax Director

## South Dakota Codified Laws

- 10-1 Department of Revenue
- 10-12A Tribal Agreements
- 10-45 **Sales Tax**
- 10-45A Refunds
- 10-45B Construction Refunds
- 10-45D Tourism Tax
- 10-46 **Use Tax**
- 10-46A Contractors' Excise Tax
- 10-46B Alternative Contractors' Excise Tax
- 10-46E Farm Machinery, Farm Attachment Units, & Irrigation Equipment
- 10-52 Municipal Tax
- 10-52A Municipal Gross Receipts Tax
- 10-58 Amusement Devices
- 10-59 Administration
- 1-26 Administration

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## Sales Tax

- Applied to retailer's gross receipts from all sales of tangible personal property, services & products transferred electronically



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## Point of Taxation



*Tangible Personal Property ~  
Receipt of Purchase applies*



*Services ~  
Where service is received or  
where first use of service applies*

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## Tangible Personal Property (TPP)

### [SDCL 10-45-1\(14\)](#)

Personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses.



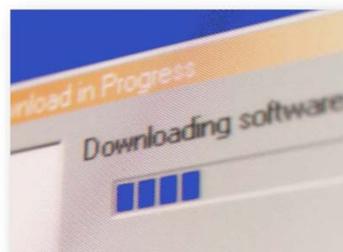
This includes electricity, water, & prewritten computer software.

## Services

- Any activity engaged in for a fee

## Product Transferred Electronically

- Products transferred electronically includes digital goods, such as downloaded books and music.



## Gross Receipts

### *Include:*

- Taxable and Nontaxable Sales
- Special Jurisdiction Sales
- Barters
- Freight Charges
- Reimbursable Expenses  
    Except Accountants and Attorneys
- Lottery Receipts

### *Does not include:*

- Sales Tax Collected
- Trade-Ins
- Late Charge for Overdue Accounts
- Bad Debt Fees
- Cash Discounts
- Luxury Tax
- Interest

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## How is a transaction exempt from sales tax?

- Does not constitute a retail sale
- Buyer exempt such as a school
- Product exempt such as health services & drugs
- The amount is not included in the definition of gross receipts, such as a trade-in.

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## Exempt Transactions

- Sales for resale
- Exempt product or service
- Sales to governmental entities
- Sales to non-profit charitable hospitals
- Sales to accredited educational institutions
- Sales to relief agencies
- Out-of-state deliveries

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## Resale

- Tangible personal property that will be sold at retail can be purchased for resale
- Grocery store purchases food items for resale from a food distributor
- Retail gift shop purchases cards for resale
- Farm equipment can be purchased for resale by the implement dealer
- Must issue an exemption certificate to their supplier

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## Exempt Products or Services

- Prescription drugs
- Late charges on overdue accounts
- Cash discounts
- Trade-ins
- Repair parts & maintenance items for farm machinery
- Health services

## Sales to Government

- Includes federal, state, city and all other political subdivision
- Examples include:
  - Purchases of office equipment by the State
  - Purchases made by a school such as books and computers
  - Purchases made by a city or county for office supplies & equipment



## Sales to Non-Profit Hospitals

- Equipment purchases
- All supplies
- Hospitals do pay tax on comfort kits, cafeteria sales, TV and room rentals, & other conveniences provided to patients.
- Clinics and nursing homes pay sales tax on purchases



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## Sales to Religious Educational Institutions

- Must apply for the exemption
- Operated by a religious society
- Promotes religious beliefs
- Physical location in SD

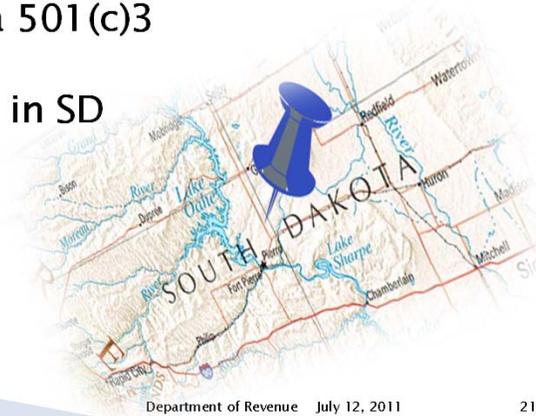


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## Relief Agency

- Provides services to the poor, distressed & underprivileged
- Must qualify as a 501(c)3
- Physical location in SD



## Out-of-State Deliveries

- If a retail sale is delivered outside the state of South Dakota, no sales tax applies.



## Examples of Gross Receipts

Customer purchases canned software. Seller travels to customer's location (Rapid City) to install the software.

### Invoice Example:

Software	\$ 3,000.00	
Installation	\$ 1,500.00	
Lodging/Meals	\$ 500.00	
Sub Total	\$ 5,000.00	
Sales Tax	X	6% (state rate + municipal tax rate)
	\$ 300.00	
<b>Total Invoice</b>	<b>\$ 5,300.00</b>	

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**SALES AND USE TAX RETURN**  
 Reporting Period \_\_\_\_\_  
 Return Due \_\_\_\_\_  
 File Code \_\_\_\_\_

CHECK FOR CHANGE OF ADDRESS BELOW

Check if out of business  
 Last day of business: \_\_\_\_\_

License # \_\_\_\_\_

SALES TAX CALCULATIONS	GROSS	TAXABLE	RATE	TAX DUE
1. Gross Sales	5,000.00			
2. Use Taxable				
3. Non-Taxable Sales				
4. Special Jurisdiction Sales (Detail in City Section)				
5. Net State Sales Taxable (Line 1 plus Line 2, minus Line 3, minus Line 4)		5,000.00	x 4%	200.00
6. City & Special Jurisdiction Tax Calculation Detail:				
7. City/Special Jurisdiction Name	Code	Taxable	Rate	Tax Due
8. Rapid City	298-2	5,000.00	2%	100.00
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22. Total City/Special Jurisdiction Tax (Add Lines 8 through 21)				100.00
23. Total Tax Due (Line 5 plus Line 22)				300.00
24. Penalty/Interest				
25. Adjustment (Previous Credit/Balance Due)				
26. Total Due (Line 23 plus Line 24 plus Line 25)				300.00
27. Amount Remitted				300.00

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 \_\_\_\_\_

## Use Tax: An Overview

- Applies when sales tax is not properly charged
- Same rate as the state and municipal sales tax
- Applies to selling/purchasing price including freight or delivery charges
- Retailer pays sales tax – purchaser pays use tax
- Purchases for resale are exempt from use tax
- Sales tax exemptions apply to use tax



## Streamlined Sales Tax

Jane Page, Assistant Director

## Why doesn't seller always collect sales tax?

- For decades, states have sought to require out-of-state retailers to collect their tax. At stake is who has nexus, a physical presence, in a state.
- Nexus includes:
  - Retail store
  - Office or warehouse
  - Property in the state (such as leased property)
  - Salesman in the state who solicits orders
  - Business that makes deliveries in their own vehicles
  - Independent contractors or agents etc.

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## Why doesn't seller always collect sales tax?

### Two US Supreme Court cases:



- **National Bellas Hess vs Illinois 1967**
  - Mail order company from MO selling a variety of goods
  - IL argued economic presence, not physical presence
  - Court ruled the limited amount of contact was not enough to create nexus under either US Constitution's due process or commerce clause.
    - Due Process 14<sup>th</sup> amendment – state cannot deny any person with its jurisdiction equal protection to its laws.
    - Commerce Clause – Interstate commerce must be free from direct restrictions from states
  - Unjustifiable local entanglements of interstate commerce
  - Note: Bellas Hess went bankrupt in 1971

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## Why doesn't seller always collect sales tax?

### ➤ Quill Corp. vs. North Dakota 1992



- Quill, headquartered in IL is a mail order office supply company selling a over 65,000 products all over the country.
- Did a thriving business in ND and had a large visible presence by volume of sales.
- Supreme Court decision held that: requiring collection of tax by out-of-state retailers **with no physical presence** in a state would be a burden on interstate commerce and would therefore violate Commerce Clause of U.S. Constitution.

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## Why doesn't seller always collect sales tax?

### ➤ Why:

- More than 7,000 taxing jurisdictions
  - No consistency among jurisdictions – including local jurisdictions
  - Too complicated to expect multi-state businesses without nexus to be forced to comply
- Court also ruled that states could try to get Congress to change the law if they simplified the administration
- From this Streamlined was officially born in 2000

*Note:* Quill was purchased by Staples several years ago which created nexus and they are now licensed in every state to collect tax.

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## Remote Sales: What is at stake?

- Compliance with sales tax laws by multi-state companies is too complex
- Local merchants suffer from lack of level playing field
- Significant losses of revenue expected due to growth in electronic commerce and inability of states to administer use tax with consumers

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## Remote Sales: What is at stake?



### ➤ "State and Local Sales Tax Revenue Losses from E-Commerce"

Report by Dr. Bill Fox

of the University of Tennessee:

State & local governments will lose an estimated **\$14.8 billion** in FY 2012 as they are unable to collect sales taxes from remote sales.

- FY 2012 revenue projected loss for South Dakota state & local taxes is estimated at **\$38.8 million**.

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## Goals of the Streamlined Effort:



- Create a simpler system for administering the various state & local sales taxes
- Where something could not be made more simple, make it uniform
- Balance the interests of a state's sovereignty with the interests of simplicity and uniformity
- Leverage the use of technology to ease tax collection

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## Results: Streamlined Sales and Use Tax Agreement (SSUTA)

- SSUTA approved November 2002 by the states, and amended since
- Provisions are based on simplification, uniformity and technology principles
  - Simplification (e.g., state-level administration of tax)
  - Uniformity (e.g., uniform definition of food, lease sourcing rule)
  - Technology (e.g., certification of tax calculation software)
  - Balancing interests of state sovereignty

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## SSUTA: Key Features

- State level administration of local sales & use taxes
  
- Rate simplification
  - Allows one general state rate per state
  - Allows single local rate per jurisdiction



## SSUTA: Key Features

### Uniform Definitions

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>➤ Food and food ingredients</li> <li>➤ Prepared food</li> <li>➤ Candy</li> <li>➤ Soft drinks</li> <li>➤ Dietary supplements</li> <li>➤ Clothing</li> <li>➤ Drugs</li> <li>➤ Durable Medical Equipment</li> <li>➤ Computer Software</li> </ul> | <ul style="list-style-type: none"> <li>➤ Tangible personal property</li> <li>➤ Bundled Transaction</li> <li>➤ Delivered Electronically</li> <li>➤ Lease &amp; Rental</li> <li>➤ Gross Receipts</li> </ul> |
|--|---|

## SSUTA: Gross Receipts

- **Definition: 10-45-1.14. Gross receipts defined.** For the purposes of this chapter, the term, gross receipts, means the total amount or consideration, including cash, credit, property, and services, for which tangible personal property, any product transferred electronically, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
- 1) The retailer's cost of the property or service sold;
  - 2) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer; and
  - 3) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for any services necessary to complete the sale whether or not separately stated, including delivery charges.

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## SSUTA: Key Features



### Gross Receipts

- While included in a transaction's cost, these items are excluded from gross receipts and are therefore not subject to the sales tax

#### NOT INCLUDED:

- Trade-ins
- Late Charges
- NSF fees
- Interest

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## Streamlined Registrations & Revenues

- Total South Dakota Tax collected from Volunteer Sellers – October 2005 through June 2011
  - Total Volunteer Registrations: 1611
  - State Tax: \$6,518,812
  - Municipal Tax: \$2,665,326



## Exemptions

Jan Talley/Jane Page

## Ag Machinery Rates

- July 1978 – March 1980 2%
- April 1980 – June 1981 4%
- July 1981 – Dec 2005 3%
- January 2006 – on 4%
- April 2006 – put in separate chapter

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## Ag Purposes Definition

10-45-1. Definition of terms. Terms used in this chapter mean:

(1) "Agricultural purposes," the producing, raising, growing, or harvesting of food or fiber upon agricultural land, including dairy products, livestock, and crops. The services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders, and cultivators are considered agricultural purposes

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## Repair Parts & Maintenance Items

- Sales taxable prior to 01/01/06
- This was a trade off for the rate increase on farm machinery.
- This was an attempt to make the increase revenue neutral
- Maintenance items were exempted in March 2006



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## Exempt Ag Services



- Soil Preparation services
- Crop Planting
- Crop Harvesting
- This exemption occurred with the passage of HB 1039 during the 1979 legislative session.
- Vet services were removed from the exemption in 1995

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## Farm Product Warehousing

- Grain and corn storage
- Establishments engaged in the storage of farm products
- Exempted during the broadening of the sales tax in 1979



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## Seed and Fertilizer

- Seed & fertilizer exempt since 1939
- Pesticides including insecticides, herbicides, pesticides, rodenticides and fumigants – exempted July 1, 1971



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## Rental of Ag Devices

- Rental of devices used to apply fertilizer, pesticides if sales or use tax was paid on original purchase



- Rental of devices used primarily for ag purposes if such devices are owned by conservation district

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## Sales of Livestock

- Includes cattle, buffalo, poultry, ostriches, emus, rheas, sheep, goats, swine, pheasants, partridges, quail & horses – used as breeding or production stock
- Original exemption in 1951 – some changes made in 1989
- Feed exempted for livestock



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## Other Ag Exemptions

- Sale of non-domestic animals
- Swine and cattle semen exempt 7/1/06
- Fuel used for ag purposes
- Electricity used to power irrigation pumps
- Forestry services such as logging
- Sale of ag and industrial equipment in international commerce

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## Advertising

- Advertising Services if prepared & placed in the media.
  - This service has never been subject to sales tax, but a specific exemption was added in 1979.
- Displays or Signage
  - A contract to place a product or sign in a specific manner or location 2003



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## Reimbursable Expenses

### ➤ Reimbursable expenses for:

- Attorneys/Accountants 1983
- Auctions 1996
- Funeral Services 1980



- These service providers pay tax on the cost of the goods and services they purchase for a particular client, but do not pay tax on the mark-up

## Water

### ➤ Water & Sewer systems have never been subject to tax, but specific exemptions are now in statute

- Water Supply 1981
- Water supply systems for domestic, commercial and industrial use 1976
- Bulk water for domestic use 1983
- Sanitary Systems 1979
- Sewage Systems 1979
- Rural water systems services by non-profits 1986

## Controlled Groups

- **Controlled Groups 10-45-20.3.** "Controlled group" defined. For the purposes of this chapter, a controlled group consists of any corporations or other entities eligible to file a consolidated federal income tax return under the Internal Revenue Code as in effect on January 1, 2002, or entitled to only a single surtax exemption for federal corporate income tax purposes under the Internal Revenue Code as in effect on January 1, 2002, and includes a controlled group of corporations as defined at 26 U.S.C. § 1563 as in effect on January 1, 2002. A controlled group also consists of any subchapter S corporation, limited liability company, limited liability partnership, general partnership, or limited partnership with at least eighty percent common ownership as if the entity was converted to or taxed as a subchapter C corporation under the Internal Revenue Code as in effect on January 1, 2002.
  - Services provided by and sold to one member of a controlled group to another member of the controlled group 1983
  - Service purchased by a controlled group member from a third party and sold to another member of the controlled group 1983

## Lodging

- **Lodging & Parking sites rented for 28 consecutive days or more 1963**
- **Occasional sleeping accommodation rentals of 10 or less days/year 1997**
- **Lodging Membership Fees 2001**  
Membership fee is between lodging facility and lodging membership organization. Goods and services sold by the membership organization are subject to tax.



## Postage & PEO

- Postage sold by a Mailing Service 1998
- US Postage exempt from use tax 1998
- Professional Employer Organization
  - Deductions allowed for wages, payroll taxes & other employee benefits of its co-employees 1999

## Commissions and Credit Agencies

- Commissions for rendering a service which provides for the sale of goods, unless the commission is specifically taxed 1988
  - Real estate and auction commissions are specifically taxed
- Commissions for arranging a loan 1996
- Credit Card Services sold to retailers 1994
- Credit Reporting Agencies 1986

## Property to be Leased or Resold



- **Purchase of property to be leased 1983**
- **Motion Picture Rental to movie theaters 1979**
- **Replacement Parts to be installed in property that will be for resold 1989**

## Business Group

- **Lawn Care Chemicals purchased & used by lawn care service providers 1989**
- **Live game birds sold to nonprofit organizations who release them, or sold to commercial hunting operations 1989**
- **Rodeo Stock & Services – Exempt in 1991, Taxable in 1995, Exempt again in 1996**
- **Amateur Sports Officials – Subject to tax in 1995, Exempt in 2005**

## Business Group

- Radio & Television Broadcasting – never taxed but specific exemption in 1981
- Membership organizations: dues & the sale of services by the organization – never taxed but specific exemption in 1981
- Trading Stamps – never taxed but specific exemption in 1979

## Telecommunications

- Telecommunication
  - Leases between telecommunication companies 1987
  - Telecommunication services between telecommunication companies 1988
  - 800 services beginning or ending outside SD. (Those beginning and ending in SD are taxable.) 2003
  - Interstate telecommunication services to a call center 2003

## Business Group

- **Non-commercial research organizations 1988**
- **Goods and services furnished to meet warranty obligations 1971**
- **Freeport merchandise brought as foreign or domestic merchandise into a foreign trade zone 1988**
- **Ink and newsprint for free shoppers guides 1977**

## Miscellaneous

- **Library copying charges 1990**
- **Coins, currency & bullion 2007**
- **Personal property brought into SD for personal use of non-resident 1939**
- **Engineers & Architects – projects outside the state**



## Manufacturing Exemptions

- Fabrication costs for use tax purposes – labor of a cabinet maker
- Packing material including wrappers, containers, labels, paper, twine, glue, bags, bottles, shipping cases, film, strapping, rope, tape, cans, lids, cases and other similar items consumed by manufacturers– original exemption in 1939 – changes in 1982 & 1984 further defined what was included in exemption
- Use tax on goods more than 7 years old – contractors or manufacturers that bring older equipment into the state

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## Financial Exemptions

- **Commissions earned or service fees paid by an insurance company – Insurance premiums subject to the premiums tax**
- **Exemption of services used by insurance companies**
- **Financial institutions subject to the bank franchise**
- **Sales of credit services by credit bureaus to financial institutions**
- **Services by a related corporation to a financial institution**
- **Bank franchise in lieu of tax on services**
- **Receipts from management services to a revolving loan fund**
- **Commissions from brokers and dealers**

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## Transportation Exemptions

- Railroad
- Rental of railcars
- Fees received by travel agencies and tour operators
- Agents furnishing shipping information and arranging transportation - brokers, freight forwarding
- Local & suburban transportation (i.e. city & school buses)
- Trucking & courier services
- Natural gas transportation
- Pipelines

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## Healthcare Exemptions



- Health services
- Purchases by a non profit hospital
- Drugs
- Insulin
- Durable medical equipment, mobility enhancing equipment
- Medical devices
- Hospital meals paid by a public entity

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## Non-Profits

- Tickets to ground and grandstand events at fairs.
  - Exception: Rodeo admissions at fairs are taxable
- Admissions to non-profit historical sites. 1978
- Admissions to community celebrations sponsored by non-profits. 1961
- Admissions to school events and sale of goods at the events. Tax must be paid on inventory . 1983
- Sales by non-profit and youth organizations when sale lasts 3 or less days. Tax must be paid on inventory. 1990
- Sale of goods when profits are used for restoration or maintenance of Governor's mansion and grounds. 1988

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## Non-Profits

- Entry fee for participatory events such as tournaments and league activity . 1989
- Admissions to events sponsored by historical societies or centennial committees. 1989
- Sales by non-profits & youth at county fairs when sale lasts 5 or less days. Must pay tax on inventory. 1990
- Admissions to circuses sponsored by non-profit organizations. 1991
- Admissions to events sponsored by non-profits if event is 30 days or less and receipts are for benefit of the homeless. 2000
- Donations of goods and services are exempt when given to a sales tax exempt organization. 1987

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## Other Exemptions

- Educational services
- Social services
- Credit counseling
- Services for resale
- Gasoline, motor fuel and special fuel subject to fuel tax
- Large boats taxed at 3% registration
- Long term leases and rentals of motor vehicles > 28 days
- Sales of motor vehicles
- Fee on initial registration of aircraft
- Rentals of mobile homes

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## Other Exemptions

- Sales of Mobile homes and Manufactured homes
- Coin operated washers and dryers \$20 per unit
- Gaming
- Lottery tickets
- Horse and dog racing – exempts purchases of products & services
- Government, tribes and schools



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## Gross Receipt Exclusions

- Late charges
- Refunded sale price
- Trade-ins
- Discounts
- Interest Charges



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## Mini Storage

- Fees charged for self storage units were taxed in 1995
- One taxpayer contested the payment of the tax
- Supreme Court ruled in their favor
- Refunds processed
- Tax amount  
\$1.4 million



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## Business Tax Division Website

▶ Materials available on the Business Tax Division website includes:

- Statistical Reports
  - Sales Tax Guide
  - Contractors' Excise Tax Guide
  - Municipal Tax Publications
  - Newsletter
  - Tax Facts
  - Tax Education information, seminar schedules and registration
- ...and much, much more!!

Check it out at:

<http://www.state.sd.us/drr2/businesstax/bustax.htm>



## Department of Revenue

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