

SECTION 5
LEASED AND RENTED VEHICLES

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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.

Closed lease (terms of the lease are known at the time the contract is executed) on vehicles with a gross vehicle weight rating of less than 16,000 pounds, motorcycles and motorized bicycles, and fertilizer vehicles, 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 that is a closed leased (terms of the lease are known at the time the contract is executed) 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 Closed Lease Tax Worksheet (DMV/CLTW). A copy of the worksheet must accompany the application for title and registration (MV608), along with a copy of the actual lease agreement. The purchase price must be certified on the application for title and registration (MV608).
4. If at the end of the lease, the term of the lease is extended for an additional period of time, excise tax is assessed on the additional lease payments and must be paid by the lessor. The South Dakota tax worksheet entitled, South Dakota Extended or Additional Consideration Lease Tax Worksheet (DMV/LTW.1) is to be used to remit the additional tax.
5. If additional consideration is paid during the course of the lease or upon termination of the lease, excise tax is assessed on such amount and is to be paid by the lessor. The South Dakota tax worksheet entitled, South Dakota Extended or Additional Consideration Lease Tax Worksheet (DMV/LTW.1) is to be used to remit the additional tax.
6. 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.
 1. In the event there is no or nominal residual/buy-out value indicated in the lease agreement or certified on the application for title, excise tax is assessed on the book value of the vehicle, as set out in SDCL 32-5B-4(4). Tax is not assessed if the vehicle qualifies under one of the excise tax exemptions (tribal, 11 years old/\$2,200 or less, etc.).
 - 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.
7. 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. Calculation of the tax should be done on the SD Closed Lease Tax worksheet (DMV/CTW), a copy of the lease is required. [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.

Open End Lease (terms of the lease are not certain at the time the lease contract is executed or the lease is open ended) on vehicles with a gross vehicle weight rating of less than 16,000 pounds, motorcycles and motorized bicycles, and fertilizer vehicles, leased for more than 28

days.

1. Purchase price on a leased vehicle on which the terms of the lease are either not certain at the time the lease contract is executed or the lease is open ended shall be the total consideration whether received in money or otherwise. Total consideration includes the price of the vehicle, plus cash, rebates, net trade-in, extended warranties, administrative fees, acquisition fees, or any other fees assessed on the purchase price of the vehicle. Total consideration does not include title fees, registration fees, motor vehicle excise tax, federal excise tax, insurance, and refundable deposits.

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.

Vehicles rented for 28 days or less (includes automobiles, pickups and vans) licensed under the noncommercial license fee schedule (SDCL 32-5-6); trailers with an unladen weight of 9,000 pounds or more that are rented for six months or less. [A vehicle licensed under the declared gross weight fee schedule (tonnage) or commercial license fee schedule does not qualify for rental/gross receipts tax.]

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 qualifying vehicles listed above). This tax is in addition to any sales tax levied pursuant to chapters 10-45 or 10-46 (4% sales tax, 1% tourism tax (effective July 1, 2009, during the months of June, July, August and September until June 30, 2011, the tourism tax rate increases from 1% to 1-1/2%) plus applicable city tax on rentals of 28 days or less).
 - 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 and Regulation 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-608 or MV-609 exemption form, which contains this information, may be used in-lieu-of the affidavit.)

Leased or Rented Boats.

1. Any leasing or rental company that operates within the principle place of a boat dealer is a business separate from the dealership.
 - a. A leasing or rental company must title, license and tax any leased or rented boat in a name that is distinct and separate from that of the dealership.