

Chapter 3.24

RETAIL SALES AND SERVICE TAX AND USE TAX REFUND

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3.24.010 Definitions.

For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CAPITAL ASSETS. Tangible and intangible personal property which is subject to depreciation or amortization under §§ 167 and 168 of the Internal Revenue Code of 1986, as amended to the date of adoption of this ordinance.

CONSTRUCTION COMMENCEMENT. The date earth is first excavated for the purpose of constructing a new business facility.

NEW BUSINESS FACILITY. A new building or structure that is part of a project that satisfies the requirements of 3.24.030 and is not ineligible under the provisions of 3.24.040.

PERSON. Any individual, firm, partnership, joint venture, association, limited liability company, limited liability partnership, corporation, trust or any group or combination thereof acting as a unit.

PROJECT. The construction, equipping and furnishing of a new business facility at a single site, and for which the commencement of construction or the ordering of equipment to be used in a new business facility.

SALES TAX. The sales and service and use taxes imposed by the city pursuant to City Ordinance Chapter 3.12.

3.24.020 Refund of Retail Sales and Service Tax and Use Tax on Capital Assets.

As provided in this subchapter, any person may apply for and obtain a refund or credit for sales tax paid by the person on the costs incurred in the furnishing and equipping of a new business facility that satisfies all requirements of this subchapter. Except as provided in the last sentence of this division (a), the refund allowed under this section pertains only to project costs incurred and paid within twenty-four (24) months of the approval of the application required by 3.24.050. Upon a showing of good cause, the time limits prescribed by this section may be extended by the finance director for a period not to exceed twelve (12) months. The refund shall not apply to capital assets purchased to replace capital assets for which a refund has been claimed during this 24-month period or extended period. There is no refund if the person fails to make application with the City as set forth in 3.24.050.

A. Any new commercial residential structure, or addition to an existing structure, containing four or more units, if the new structure or addition has a full and true value of thirty thousand dollars or more (SDCL § 10-6-35.2(5)).

B. Any new affordable housing structure containing four or more units with a monthly rental rate of the units at or below the annually calculated rent for the state's sixty percent area median income being used by the South Dakota Housing Development Authority, for a minimum of ten years following the date of first occupancy, if the structure has a full and true value of thirty thousand dollars or more (SDCL § 10-6-35.2(6)).

C. Any new residential structure, or addition to or renovation of an existing structure, located within a redevelopment neighborhood established pursuant to SDCL § 10-6-56 if the new structure, addition, or renovation has a full and true value of five thousand dollars or more. The structure shall be located in an area defined and designated as a redevelopment neighborhood based on conditions provided in SDCL § 11-7-2 or 11-7-3 (SDCL § 10-6-35.2(7)).

D. Any commercial, industrial, or nonresidential agricultural property which increases more than ten thousand dollars in full and true value as a result of reconstruction or renovation of the structure (SDCL § 10-6-35.2(8)).

3.24.030 Eligible Projects.

No refund may be made unless:

- (a) The project includes new construction that adds at least \$3,000,000 in taxable value to the city's property tax base, or an investment in non-realty capital assets of not less than \$6,000,000, or if the combination of new construction and non-realty capital assets exceeds \$6,000,000;
- (b) The facility is used directly in:
 - A. The manufacture or processing or fabricating or compounding of personal property which is intended to be sold or leased for final use consumption;
 - B. Research and development in the:
 - 1. Social sciences;
 - 2. Humanities; and
 - 3. Physical, engineering and life sciences as those terms are defined by 2002 NAICS.
- (c) The person makes application for the refund from the City as set forth in 3.24.050; and
- (d) The project is not ineligible under 3.24.040.

3.24.040 Ineligible Projects.

A project shall not be eligible for tax refunds under this subchapter if it is:

- (a) Used predominantly for the sale of products at retail to individual consumers;
- (b) Used predominantly for residential housing or transient lodging;
- (c) Used predominantly to provide health care services; or
- (d) Not subject to ad valorem real property taxation or equivalent taxes measured by gross receipts.

3.24.050 Application for Refund.

Any person desiring to claim a refund pursuant to this subchapter shall make application to the City prior to the earlier of the construction commencement or the ordering of equipment to be used in a new business facility. Should extenuating circumstances exist, the City Council may waive this requirement. The application shall be submitted on a form prescribed by the City. A separate application shall be submitted for each project. Upon the City's approval of the application by the

City Council, the City Administrator or his/her designee shall notify the applicant that they are eligible to submit refund claims and to receive refunds as provided in this subchapter. Refund claims are not assignable or transferable except as collateral or security pursuant to SDCL 57A-9.

3.24.060 Amount of Refund.

The refund of the sales taxes paid to the city with respect to the project shall be determined by the City Council. The person receiving a refund shall be entitled to retain the amount approved by the City Council if the project remains in operation in the City for at least five years. If the project ceases operation in the City before the end of the five-year period, the City shall be entitled to repayment of all or a portion of the amount refunded, the refund being prorated based upon the time remaining in the five-year minimum term. Any amount the City is entitled to recover under this section shall constitute a debt to the City and a lien in favor of the City upon all property and rights to property whether real or personal belonging to the claimant and may be recovered in an action of the debt.

3.24.070 Submission of Returns and Payment.

Any person who is eligible for a refund pursuant to this subchapter shall submit a return to the City no more frequently than on or before the last day of each month and no less frequently than on or before the last day of each month following each calendar quarter. No interest shall be paid on the refund amount.

3.24.080 Payment of Amount Withheld.

The amounts withheld by the City in accordance with 3.24.070 shall be retained until the project has been completed and the claimant has met all the conditions of this subchapter, at which time all sums retained shall be paid to claimant.

3.24.090 Improper Claims.

If any claim has been fraudulently presented or supported as to any item in the claim, or if the claimant fails to meet all the conditions of this subchapter, then the claim may be rejected in its entirety and all sums previously refunded to the claimant shall constitute a debt to the city and a lien in favor of the city upon all property and rights to property whether real or personal belonging to the claimant and may be recovered in an action of debt.