

## Sales/Use/Indirect:

### South Dakota High Court Says Use Tax Imposition on Equipment's One-Day Use In-State is Constitutional

*Case No. 30280, S.D. (2/7/24).* In a case involving a Minnesota-based construction company's use of equipment for one day in South Dakota, which was originally purchased outside South Dakota without having paid sales taxes on the property out-of-state, the South Dakota Supreme Court (Court) affirmed that South Dakota's use tax imposition on the equipment was valid, satisfying all four prongs of the Complete Auto test, and did not violate the Commerce Clause or Due Process Clause. In doing so, the Court rejected the company's claim otherwise based on an "at-rest theory," and concluded that "use is use." Specifically, the company claimed that its one-day use of the equipment in South Dakota showed that South Dakota's use tax is not fairly related to any benefit it experienced, and that it did not "receive commensurate value for the tax it paid." The Court reasoned that while working in South Dakota, the company enjoyed the same benefits as any other person or business present in South Dakota. Moreover, "having paid the use tax on its equipment that had otherwise not been subject to sales or use tax in another state," the Court explained that the company is free to bring the equipment back to work on in-state jobs where it will continue to enjoy the privilege of conducting its business without being subject to additional South Dakota use tax. Please contact us with any questions.

**URL:** <https://ujs.sd.gov/uploads/sc/opinions/302805f0f87d.pdf>

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