

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

609M0247

HOUSE ENGROSSED NO. **HB 1206** - 01/30/2006

Introduced by: Representatives Garnos, Bradford, Hennies, Hills, and Turbiville and
Senators Adelstein, Dempster, and Lintz

1 FOR AN ACT ENTITLED, An Act to provide contractors' excise, sales, and use tax refunds for
2 the filming of certain motion pictures, documentaries, or television films.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Department," the Department of Revenue and Regulation;

6 (2) "Film," any portion of a commercial production of a motion picture, documentary,
7 or television film;

8 (3) "Filming date," the first date a person commits to the Department of Tourism and
9 State Development that South Dakota will be the primary location for shooting
10 footage for a film;

11 (4) "Person," any individual, firm, copartnership, joint venture, association, limited
12 liability company, limited liability partnership, corporation, estate, trust, business
13 trust, receiver, unit of government, political subdivision of any state, or any group or
14 combination acting as a unit;

15 (5) "Project," the building of sets, purchase of materials, and other costs associated with



1 the filming or production of a motion picture, documentary, or television film;

2 (6) "Project cost," the amount paid in money, credits, property, or other money's worth
3 for a project;

4 (7) "Secretary," the secretary of the Department of Revenue and Regulation.

5 Section 2. As provided in this Act, any person holding a permit issued pursuant to this Act
6 may apply for and obtain a refund or credit for sales or use tax imposed and paid by such person
7 under the provisions of chapter 10-45 or 10-46 and contractors' excise taxes imposed and paid
8 under the provisions of chapter 10-46A or 10-46B on the project costs.

9 Section 3. The refund of taxes for a motion picture, documentary, or television film pertains
10 only to project costs incurred and paid after July 1, 2006, and within thirty-six months of the
11 approval of the application required by this Act. No refund may be made unless:

12 (1) The project cost that are occurred in South Dakota exceeds the sum of two hundred
13 fifty thousand dollars; and

14 (2) The person applying for the refund obtains a permit from the secretary as set forth in
15 this Act.

16 Section 4. If the project cost for a new motion picture, documentary, or television film
17 exceeds two hundred fifty thousand dollars, the refund shall be one hundred percent of the taxes
18 attributed to the project cost.

19 Section 5. Any person desiring to claim a refund pursuant to this Act shall apply for a permit
20 from the secretary at least thirty days prior to the shooting of the motion picture, documentary,
21 or television film. The application for a permit shall be submitted on a form prescribed by the
22 secretary. A separate application shall be made and submitted for each project. Upon approval
23 of the application, the secretary shall issue a permit entitling the applicant to submit refund
24 claims as provided by this Act. Such permit or refund claims are not assignable or transferable

1 except as collateral or security pursuant to chapter 57A-9.

2 Section 6. Any claim for refund shall be submitted on forms prescribed by the secretary and
3 shall be supported by such documentation as the secretary may require. The secretary may deny
4 any claim where the claimant has failed to provide information or documentation requested or
5 considered necessary by the secretary to determine the validity of the claim.

6 Section 7. Any person issued a permit pursuant to this Act shall submit a return to the
7 department no more frequently than on or before the last day of each month and no less
8 frequently than on or before the last day of each month following each calendar quarter. The
9 secretary shall determine and pay the amount of the tax refund within thirty days of receipt of
10 the return. Ninety-five percent of the amount of refund shall be paid to the claimant in
11 accordance with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the
12 department. No interest may be paid on the refund amount. If electronic funds transfer is
13 available to the secretary, the secretary shall pay the refund by electronic funds transfer if
14 requested by the claimant.

15 Section 8. The amounts withheld by the department in accordance with this Act shall be
16 retained until the project has been completed and the claimant has met all the conditions of this
17 Act, at which time all sums retained shall be paid to the claimant.

18 Section 9. If any claim has been fraudulently presented or supported as to any item in the
19 claim, or if the claimant fails to meet all the conditions of this Act, then the claim may be
20 rejected in its entirety and all sums previously refunded to the claimant shall constitute a debt
21 to the state and a lien in favor of the state upon all property and rights to property whether real
22 or personal belonging to the claimant and may be recovered in an action of debt.

23 Section 10. Any person, aggrieved by the denial in whole or in part of a refund claimed
24 under this Act, may, within thirty days after service of the notice of such denial by the secretary,

1 demand a hearing, upon notice, before the secretary. The hearing shall be conducted pursuant
2 to chapter 1-26.

3 Section 11. Any person, aggrieved by a decision of the secretary under this Act, may, within
4 thirty days of receipt of written notice of the secretary's decision, make written application to
5 the secretary for a hearing to be conducted pursuant to chapter 1-26. Hearings are to be
6 conducted and appeals taken pursuant to the provisions of chapters 1-26 and 1-26D. A copy of
7 the hearing examiner's proposed decision, findings of fact, and conclusions of law shall be
8 served on all parties when furnished to the secretary. If the secretary, pursuant to chapter 1-26D,
9 accepts the final decision of the hearing examiner, no appeal from a final decision of the
10 secretary upon any additional tax to be paid may be taken unless any amount ordered paid by
11 the secretary is paid or a bond filed to insure payment of the amount. However, if the final
12 decision of the secretary, pursuant to chapter 1-26D, rejects or modifies the decision of the
13 hearing examiner regarding the amount due, an appeal may be taken without payment of the
14 amount ordered to be paid and without filing of a bond. If the secretary's decision is affirmed
15 by the circuit court, no appeal may be taken unless any amount ordered to be paid by the
16 secretary is paid or a bond is filed to insure payment of such amount.

17 Section 12. Any amount refunded pursuant to this Act for a project that is not completed
18 within the time frames prescribed by this Act, including any extensions granted by the secretary,
19 shall be returned to the state without interest. Any refunded amounts not returned pursuant to
20 this section and all sums previously refunded to the claimant constitute a debt to the state and
21 a lien in favor of the state upon all property and rights to property whether real or personal
22 belonging to the claimant and may be recovered in an action of debt.

23 Section 13. The secretary shall promulgate rules, pursuant to chapter 1-26, concerning the
24 procedures for filing refund claims and the requirements necessary to qualify for a refund.