

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

609M0247

SENATE ENGROSSED NO. **HB 1206** - 02/16/2006

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, television advertisements, or
3 television films.

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

5 Section 1. Terms used in this Act mean:

- 6 (1) "Department," the Department of Revenue and Regulation;
- 7 (2) "Filming date," the first date a person begins the production in South Dakota;
- 8 (3) "Person," any person who is engaged in the business of producing nationally or
9 regionally distributed productions;
- 10 (4) "Production," a nationally or regionally distributed motion picture, documentary,
11 single television advertisement, or television film made in South Dakota, in whole
12 or in part, for theatrical, television, video, internet, or other viewing. The term does
13 not include the production of television coverage of news and athletic events or any
14 production that contains any obscene material or performance as described in § 22-
15 24-27;



1 (5) "Project cost," the amount paid in money, credits, property, or other money's worth
2 for a production. The term does not include expenditures made for marketing or
3 advertising a production, other than a television advertisement. Nor does the term
4 include expenditures made for goods and services obtained out of state for which no
5 sales and use taxes were paid pursuant to chapters 10-45 or 10-46;

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

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

11 Section 3. The refund of taxes for a production pertains only to project costs incurred and
12 paid after July 1, 2006, and within thirty-six months of the approval of the application required
13 by this Act. No refund may be made unless:

14 (1) The project costs that are incurred in South Dakota exceed the sum of two hundred
15 fifty thousand dollars in taxable costs; and

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

18 Section 4. If the project cost for a production exceeds two hundred fifty thousand dollars in
19 taxable costs, the refund shall be one hundred percent of the taxes attributed to the taxable
20 project costs in excess of two hundred fifty thousand dollars.

21 Section 5. Any person desiring to claim a refund pursuant to this Act shall apply for a permit
22 from the secretary at least thirty days prior to the filming date of the production. The application
23 for a permit shall be submitted on a form prescribed by the secretary. A separate application
24 shall be made and submitted for each production. Upon approval of the application, the

1 secretary shall issue a permit entitling the applicant to submit refund claims as provided by this
2 Act. Such permit or refund claims are not assignable or transferable except as collateral or
3 security pursuant to chapter 57A-9.

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

8 Section 7. Any person issued a permit pursuant to this Act shall submit a return to the
9 department within sixty days after the completion of the project in South Dakota. At the
10 discretion of the secretary, the person may apply for and obtain a refund more frequently than
11 prescribed. The secretary shall determine and pay the amount of the tax refund within thirty days
12 of receipt of the return. Ninety-five percent of the amount of refund shall be paid to the claimant
13 in accordance with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the
14 department. No interest may be paid on the refund amount. If electronic funds transfer is
15 available to the secretary, the secretary shall pay the refund by electronic funds transfer if
16 requested by the claimant.

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

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

1 Section 10. Any person, aggrieved by the denial in whole or in part of a refund claimed
2 under this Act, may, within thirty days after service of the notice of such denial by the secretary,
3 demand a hearing, upon notice, before the secretary. The hearing shall be conducted pursuant
4 to chapter 1-26.

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

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

1 Section 13. This Act is repealed on June 30, 2011.