

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

816P0399

HOUSE BILL NO. 1229

Introduced by: Representatives Howie, Brunner, Olson (Betty), and Van Etten and Senator Schmidt (Dennis)

1 FOR AN ACT ENTITLED, An Act to increase sales and use taxes, to dedicate the additional
2 revenue for the purpose of property tax relief, and to create the county property tax relief
3 fund.

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

5 Section 1. That § 10-45-2 be amended to read as follows:

6 10-45-2. There is hereby imposed a tax upon the privilege of engaging in business as a
7 retailer, a tax of ~~four~~ six percent upon the gross receipts of all sales of tangible personal property
8 consisting of goods, wares, or merchandise, except as otherwise provided in this chapter, sold
9 at retail in the State of South Dakota to consumers or users.

10 Section 2. That § 10-45-5 be amended to read as follows:

11 10-45-5. There is imposed a tax at the rate of ~~four~~ six percent upon the gross receipts of any
12 person from engaging or continuing in any of the following businesses or services in this state:
13 abstracters; accountants; architects; barbers; beauty shops; bill collection services; blacksmith
14 shops; car washing; dry cleaning; dyeing; exterminators; garage and service stations; garment
15 alteration; cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry;



1 linen and towel supply; membership or entrance fees for the use of a facility or for the right to
2 purchase tangible personal property or services; photography; photo developing and enlarging;
3 tire recapping; welding and all repair services, except farm machinery, farm attachment units,
4 or irrigation equipment repair services; cable television; and rentals of tangible personal
5 property except leases of tangible personal property between one telephone company and
6 another telephone company, motor vehicles as defined by § 32-5-1 leased under a single contract
7 for more than twenty-eight days and mobile homes. However, the specific enumeration of
8 businesses and professions made in this section does not, in any way, limit the scope and effect
9 of § 10-45-4.

10 Section 3. That § 10-45-5.3 be amended to read as follows:

11 10-45-5.3. There is imposed, at the rate of ~~four~~ six percent, an excise tax on the gross
12 receipts of any person engaging in oil and gas field services (group no. 138) as enumerated in
13 the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy
14 Division of the Office of Management and Budget, Office of the President.

15 Section 4. That § 10-45-6 be amended to read as follows:

16 10-45-6. There is hereby imposed a tax of ~~four~~ six percent upon the gross receipts from
17 sales, furnishing, or service of gas, electricity, and water, including the gross receipts from such
18 sales by any municipal corporation furnishing gas, and electricity, to the public in its proprietary
19 capacity, except as otherwise provided in this chapter, when sold at retail in the State of South
20 Dakota to consumers or users.

21 Section 5. That § 10-45-6.1 be amended to read as follows:

22 10-45-6.1. Except as provided in § 10-45-6.2, there is hereby imposed a tax of ~~four~~ six
23 percent upon the gross receipts from providing any telecommunication service that originates
24 or terminates in this state and that is billed or charged to a service address in this state, or that

both originates and terminates in this state. However, the tax imposed by this section does not apply to:

- (1) Any eight hundred or eight hundred type service unless the service both originates and terminates in this state;
- (2) Any sale of a telecommunication service to a provider of telecommunication services, including access service, for use in providing any telecommunication service; or
- (3) Any sale of interstate telecommunication service provided to a call center that has been certified by the secretary of revenue to meet the criterion established in § 10-45-6.3 and the call center has provided to the telecommunications service provider an exemption certificate issued by the secretary indicating that it meets the criterion.

If a call center uses an exemption certificate to purchase services not meeting the criterion established in § 10-45-6.3, the call center is liable for the applicable tax, penalty, and interest.

For the purposes of this section, the term, telecommunication service, is the transmission of signs, signals, writings, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, electromagnetic means.

Section 6. That § 10-45-6.2 be amended to read as follows:

10-45-6.2. There is hereby imposed a tax of ~~four~~ six percent upon the gross receipts of mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that originate and terminate in the same state and are billed to a customer with a place of primary use in this state or are deemed to have originated or been received in this state and to be billed or charged to a service address in this state if the customer's place of primary use is located in this state regardless of where the service actually originates or terminates. Notwithstanding any other provision of this chapter and for purposes of the tax imposed by this section, the tax

1 imposed upon mobile telecommunication services shall be administered in accordance with 4
2 U.S.C. §§ 116-126 as in effect on July 28, 2000.

3 Section 7. That § 10-45-8 be amended to read as follows:

4 10-45-8. There is imposed a tax of ~~four~~ six percent upon the gross receipts from all sales of
5 tickets or admissions to places of amusement and athletic contests or events, except as otherwise
6 provided in this chapter.

7 Section 8. That § 10-45-71 be amended to read as follows:

8 10-45-71. There is imposed a tax of ~~four~~ six percent on the gross receipts from the
9 transportation of passengers. The tax imposed by this section shall apply to any transportation
10 of passengers if the passenger boards and exits the mode of transportation within this state.

11 Section 9. That § 10-46-2.1 be amended to read as follows:

12 10-46-2.1. For the privilege of using services in South Dakota, except those types of services
13 exempted by § 10-46-17.3, there is imposed on the person using the service an excise tax equal
14 to ~~four~~ six percent of the value of the services at the time they are rendered. However, this tax
15 may not be imposed on any service rendered by a related corporation as defined in subdivision
16 10-43-1(11) for use by a financial institution as defined in subdivision 10-43-1(4) or on any
17 service rendered by a financial institution as defined in subdivision 10-43-1(4) for use by a
18 related corporation as defined in subdivision 10-43-1(11). For the purposes of this section, the
19 term related corporation includes a corporation which together with the financial institution is
20 part of a controlled group of corporations as defined in 26 U.S.C. § 1563 as in effect on January
21 1, 1989, except that the eighty percent ownership requirements set forth in 26 U.S.C.
22 § 563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent. For the
23 purpose of this chapter, services rendered by an employee for the use of his employer are not
24 taxable.

1 Section 10. That § 10-46-2.2 be amended to read as follows:

2 10-46-2.2. An excise tax is imposed upon the privilege of the use of rented tangible personal
3 property in this state at the rate of ~~four~~ six percent of the rental payments upon the property.

4 Section 11. That § 10-46-58 be amended to read as follows:

5 10-46-58. There is imposed a tax of ~~four~~ six percent on the privilege of the use of any
6 transportation of passengers. The tax imposed by this section shall apply to any transportation
7 of passengers if the passenger boards and exits the mode of transportation within this state.

8 Section 12. That § 10-46-69 be amended to read as follows:

9 10-46-69. There is hereby imposed a tax of ~~four~~ six percent upon the privilege of the use of
10 mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that
11 originate and terminate in the same state and are billed to a customer with a place of primary
12 use in this state. Notwithstanding any other provision of this chapter and for purposes of the tax
13 imposed by this section, the tax imposed upon mobile telecommunication services shall be
14 administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

15 Section 13. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 There is hereby created in the state treasury the county property tax relief fund. One-third
18 of the tax revenue collected pursuant to chapters 10-45 and 10-46 shall be deposited in the
19 county property tax relief fund for the purpose of reducing property taxes. The fund shall be
20 invested as provided by law, and the interest earned shall be credited to the fund.

21 Section 14. That § 10-45-52 be amended to read as follows:

22 10-45-52. All taxes and license fees collected by the secretary of revenue and regulation
23 pursuant to this chapter, shall immediately be turned over to the state treasurer and credited to
24 the state general fund, except as otherwise provided. One-third of the tax revenue collected

1 pursuant to this chapter shall be credited to the county property tax relief fund created pursuant
2 to section 13 of this Act.

3 Section 15. That § 10-46-48 be amended to read as follows:

4 10-46-48. All revenue ~~arising under the operation of~~ collected pursuant to this chapter shall
5 immediately be turned over to the state treasurer and ~~by him~~ credited to the general fund, except
6 as otherwise provided. One-third of the tax revenue collected pursuant to this chapter shall be
7 credited to the county property tax relief fund created pursuant to section 13 of this Act.

8 Section 16. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 The secretary shall distribute to each county an amount equal to the money deposited in the
11 county property tax relief fund times the ratio of property taxes payable in the county to the total
12 property taxes payable of all counties. The secretary shall base the allocation of money on the
13 most recent information available. The secretary shall make distributions from the county
14 property tax relief fund by November first, February first, May first, and August first, of each
15 year to the county treasurer. The secretary shall approve vouchers and the state auditor shall
16 draw warrants to pay each county its share of the distribution. The county shall use the revenue
17 received pursuant to this section to lower the property taxes paid by all property tax payers in
18 the county by lowering the levies of all taxing districts, except for the general fund levy of
19 school districts.

20 Section 17. That § 10-13-35 be amended to read as follows:

21 10-13-35. This section does not apply to school districts. For taxes payable in 1997, and
22 each year thereafter, the total amount of revenue received pursuant to section 16 of this Act and
23 payable from taxes on real property within a taxing district, excluding the levy pursuant to § 10-
24 13-36, may increase no more than the lesser of three percent or the index factor, as defined in

1 § 10-13-38, over the amount of revenue received pursuant to section 16 of this Act and payable
2 from taxes on real property in the preceding year, excluding the amount of taxes levied pursuant
3 to § 10-13-36. After applying the index factor, a taxing district may increase the revenue payable
4 from taxes on real property above the limitations provided by this section by the percentage
5 increase of value resulting from any improvements or change in use of real property, annexation,
6 minor boundary changes, and any adjustments in taxation of property separately classified and
7 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B,
8 except § 10-6-31.4, only if assessed the same as property of equal value. A taxing district may
9 increase the revenue it receives from taxes on real property above the limit provided by this
10 section for taxes levied to pay the principal, interest, and redemption charges on any bonds
11 issued after January 1, 1997, which are subject to referendum, scheduled payment increases on
12 bonds and for a levy directed by the order of a court for the purpose of paying a judgment
13 against such taxing district. Any taxing district created after the effective date of this section is
14 exempt from the limitation provided by this section for a period of two years immediately
15 following its creation.