

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

400R0365

SENATE ENGROSSED NO. **HB 1060** - 3/9/2010

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Appropriations at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the refunds for new
2 or expanded agricultural facilities and the refunds for new or expanded business facilities,
3 to repeal the contractors' excise tax on new or expanded power production facilities, and to
4 exempt certain new business facilities from tax refunds.

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

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

7 10-45B-2. Any person As provided in this chapter, any person holding a permit issued
8 pursuant to § 10-45B-6 may apply for and obtain a refund or credit for contractors' excise taxes
9 imposed and paid under the provisions of chapter 10-46A for the construction of a new
10 agricultural processing facility and for sales or use taxes imposed and paid by such person under
11 the provisions of chapters 10-45 and 10-46 for the purchase or use of agricultural processing
12 equipment.

13 Section 2. That § 10-45B-4 be repealed.

14 ~~10-45B-4. The refund of taxes for a new agricultural processing facility pertains only to~~



1 ~~project costs incurred and paid after April 1, 1997, and within thirty-six months of the~~
2 ~~construction date as stated on the application required by § 10-45B-6. No refund may be made~~
3 ~~unless:~~

4 ~~— (1) — The project cost exceeds the sum of four million five hundred thousand dollars; and~~

5 ~~— (2) — The person applying for the refund obtains a permit from the secretary as set forth in~~
6 ~~§ 10-45B-6.~~

7 Section 3. That § 10-45B-4.1 be repealed.

8 ~~— 10-45B-4.1. The refund of taxes pursuant to § 10-45B-2.1 pertains only to project costs~~
9 ~~incurred and paid after February 1, 2005, up to and including thirty-six months from the~~
10 ~~construction date if the project costs are sixty million dollars or less and after February 1, 2005,~~
11 ~~up to and including seventy-two months from the construction date if the project costs are more~~
12 ~~than sixty million dollars. There is no refund if the person applying for the refund does not~~
13 ~~obtain a permit from the secretary as set forth in § 10-45B-6.~~

14 ~~— Upon a showing of good cause, the time limits prescribed by this section may be extended~~
15 ~~by the secretary for a period not to exceed twenty-four months.~~

16 Section 4. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
17 follows:

18 The refund of taxes pursuant to §§ 10-45B-2 and 10-45B-2.1 pertains only to project costs
19 incurred and paid after January 1, 2008, up to and including thirty-six months from the
20 construction date. No refund may be paid unless the person applying for the refund obtains a
21 permit from the secretary as set forth in § 10-45B-6.

22 Section 5. That § 10-45B-5 be repealed.

23 ~~— 10-45B-5. If the project cost for a new agricultural processing facility exceeds four million~~
24 ~~five hundred thousand dollars, the refund shall be one hundred percent of the taxes attributed~~

1 to the project cost.

2 Section 6. That § 10-45B-5.1 be repealed.

3 ~~10-45B-5.1. The amount of the tax refund for a new business facility shall be a percentage~~
4 ~~of the taxes paid, as follows:~~

5 ~~(1) For project costs of less than ten million dollars, there shall be no refund;~~

6 ~~(2) For project costs of ten or more million dollars but less than fifteen million dollars~~
7 ~~there shall be a refund of twenty-five percent of the taxes paid;~~

8 ~~(3) For project costs of fifteen or more million dollars but less than twenty million~~
9 ~~dollars there shall be a refund of thirty-three percent of the taxes paid;~~

10 ~~(4) For project costs of twenty or more million dollars but less than forty million dollars~~
11 ~~there shall be a refund of fifty percent of the taxes paid;~~

12 ~~(5) For project costs of forty or more million dollars but less than sixty million dollars~~
13 ~~there shall be a refund of sixty-seven percent of the taxes paid;~~

14 ~~(6) For project costs of sixty million dollars or more but less than six hundred million~~
15 ~~dollars there shall be a refund of seventy-five percent of the taxes paid; and~~

16 ~~(7) For project costs of six hundred million dollars and greater there shall be a refund of~~
17 ~~ninety percent of the taxes paid.~~

18 Section 7. That § 10-45B-6.1 be repealed.

19 ~~10-45B-6.1. Any person issued a permit pursuant to this chapter prior to March 31, 1997,~~
20 ~~may continue to submit claims for the project.~~

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

23 Notwithstanding any provision of chapter 10-45B or this Act, this section controls the
24 amount of refunds payable under chapter 10-45B for any new agricultural processing facility

1 or new business facility that has a construction date on or after January 1, 2010. For project cost
2 incurred and paid from January 1, 2010, to December 31, 2012, inclusive, the amount of the
3 refund shall be determined by applying the provisions of chapter 10-45B in effect on July 1,
4 2010. The amount of the tax refund for a new agricultural processing facility or new business
5 facility shall be a percentage of the taxes paid, as follows:

- 6 (1) For project costs of less than ten million dollars, there shall be no refund;
- 7 (2) For project costs of ten or more million dollars but less than four hundred million
8 dollars, there shall be a refund of fifty percent of the taxes paid; and
- 9 (3) For projects costs of four hundred million or more dollars, there shall be no refund.

10 No tax refund may be given for any project cost incurred and paid on or after January 1,
11 2013.

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

14 The provisions of chapter 10-45B in effect prior to January 1, 2010, apply to any project
15 where the construction date was before January 1, 2010.

16 Section 10. That § 10-45B-8 be amended to read as follows:

17 10-45B-8. Any person issued a permit pursuant to this chapter shall submit a claim for
18 refund to the department no more frequently than on or before the last day of each month and
19 no less frequently than on or before the last day of each month following each calendar quarter.

20 The secretary shall determine and pay the amount of the tax refund within ninety days of receipt
21 of the claim for refund. Ninety-five percent of the amount of refund shall be paid to the claimant
22 in accordance with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the
23 department. No interest may be paid on the refund amount. ~~If electronic funds transfer is~~
24 ~~available to the secretary, the secretary shall pay the refund by electronic funds transfer if~~

1 ~~requested by the claimant. The secretary shall pay the refund by electronic funds transfer.~~

2 Section 11. That § 10-45B-8.1 be repealed.

3 ~~—10-45B-8.1. No claim for refund pursuant to this chapter may be considered by the~~
4 ~~department if the claim for refund is received after the following applicable time period:~~

5 ~~—(1)—Twelve months after the thirty-six month time period of § 10-45B-4;~~

6 ~~—(2)—Twelve months after the thirty-six month time period of § 10-45B-4.1 for projects~~
7 ~~with project costs of sixty million dollars or less;~~

8 ~~—(3)—Twelve months after the seventy-two month time period of § 10-45B-4.1 for projects~~
9 ~~with project costs of more than sixty million dollars; or~~

10 ~~—(4)—Twelve months after the extended time period of § 10-45B-4.1 for projects that have~~
11 ~~obtained a time limit extension from the secretary.~~

12 ~~Moreover, any such claim is barred from any future refund eligibility.~~

13 Section 12. That chapter 10-45B be amended by adding thereto a NEW SECTION to read
14 as follows:

15 No claim for refund pursuant to this chapter may be considered by the department if the
16 claim for refund is received twelve months after the thirty-six month time period of section 4
17 of this Act. Moreover, any such claim is barred from any future refund eligibility.

18 Section 13. That § 10-45B-8.2 be repealed.

19 ~~—10-45B-8.2. No document or record in support of any claim for refund may be considered~~
20 ~~by the department if the documents or records in support of any claim for refund are received~~
21 ~~after the following applicable time period:~~

22 ~~—(1)—Twelve months after the thirty-six month time period of § 10-45B-4;~~

23 ~~—(2)—Twelve months after the thirty-six month time period of § 10-45B-4.1 for projects~~
24 ~~with project costs of sixty million dollars or less;~~

1 ~~—(3)—~~ Twelve months after the seventy-two month time period of § 10-45B-4.1 for projects
2 with project costs of more than sixty million dollars; or

3 ~~—(4)—~~ Twelve months after the extended time period of § 10-45B-4.1 for projects that have
4 obtained a time limit extension from the secretary.

5 Moreover, any such document or record is barred from any future consideration.

6 ~~—~~ However, if the department requests any additional document or record from the project
7 owner after a review of the claim for refund, and the request is made after the applicable time
8 period provided by this section has expired, the project owner has sixty days to provide the
9 requested document or record. No document or record received after this sixty-day period may
10 be considered by the department. Moreover, any such document or record is barred from any
11 future consideration.

12 Section 14. That chapter 10-45B be amended by adding thereto a NEW SECTION to read
13 as follows:

14 No document or record in support of any claim for refund may be considered by the
15 department if the document or record in support of any claim for refund is received twelve
16 months after the thirty-six month time period of section 4 of this Act. Moreover, any such
17 document or record is barred from any future consideration.

18 However, if the department requests any additional document or record from the project
19 owner after a review of the claim for refund, and the request is made after the applicable time
20 period provided by this section has expired, the project owner has sixty days to provide the
21 requested document or record. No document or record received after this sixty-day period may
22 be considered by the department. Moreover, any such document or record is barred from any
23 future consideration.

24 Section 15. That § 10-45B-8.3 be repealed.

1 ~~10-45B-8.3. The provisions of §§ 10-45B-8.1 and 10-45B-8.2 apply to refunds for projects~~
2 ~~only if the permit was applied for after June 30, 2009.~~

3 Section 16. That § 10-45B-9 be amended to read as follows:

4 10-45B-9. The amounts withheld by the department in accordance with § 10-45B-8 shall be
5 retained until the project has been completed and the claimant has met all the conditions of §~~10-~~
6 ~~45B-4 or 10-45B-4.1~~ section 4 of this Act, at which time all sums retained shall be paid to
7 claimant.

8 Section 17. That chapter 10-46C be repealed.

9 Section 18. That § 10-45B-1.1 be amended to read as follows:

10 10-45B-1.1. For the purposes of this chapter, the term, new business facility, means a new
11 building or structure or the expansion of an existing building or structure, including a power
12 generation facility, the construction of which is subject to the contractor's excise tax pursuant
13 to chapter 10-46A or 10-46B. A new business facility does not include any building or structure:

- 14 (1) Used predominantly for the sale of products at retail, other than the sale of electricity
15 at retail, to individual consumers;
- 16 (2) Used predominantly for residential housing or transient lodging;
- 17 (3) Used predominantly to provide health care services; ~~or~~
- 18 (4) That is not subject to ad valorem real property taxation or equivalent taxes measured
19 by gross receipts; or
- 20 (5) Used predominantly for the transportation or transmission of oil or crude oil by
21 means of a pipeline.