



2025 South Dakota Legislature

House Bill 1136

Introduced by: **Representative** Weisgram

1 **An Act to repeal the alternate realty improvement contractor's excise tax.**

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

3 **Section 1. That § 10-46B-1 be REPEALED.**

4 ~~There is imposed an excise tax upon the gross receipts of all prime contractors and~~
5 ~~subcontractors engaged in realty improvement contracts for those persons subject to tax~~
6 ~~under chapter 10-28, 10-33, 10-34, 10-35, 10-36, or 10-36A or any municipal telephone~~
7 ~~company subject to chapter 9-41 or any rural water system, at the rate of two percent.~~

8 **Section 2. That § 10-46B-1.1 be REPEALED.**

9 ~~The secretary of revenue shall allow contractors to report and pay contractor's~~
10 ~~excise tax measured by gross receipts upon an accrual basis if:~~
11 ~~(1) The contractor has not changed his basis in the previous calendar year;~~
12 ~~(2) The contractor's records are kept in a manner which may be audited to determine~~
13 ~~whether contractor's excise tax and use tax are paid for all realty improvement~~
14 ~~contracts;~~
15 ~~(3) The contractor has made a written request to the secretary of revenue for authority~~
16 ~~to pay tax on the accrual basis; and~~
17 ~~(4) Authority to pay tax on the accrual basis applies only to realty improvement~~
18 ~~contracts commencing after the authority is granted.~~

19 **Section 3. That § 10-46B-1.2 be REPEALED.**

20 ~~If the secretary of revenue has granted a contractor the authority to report and~~
21 ~~pay contractor's excise tax on the accrual basis and the contractor requests in writing for~~
22 ~~the authority to report and pay the tax on the cash basis, the secretary may grant such~~
23 ~~authority if assessment and collection of taxes are not jeopardized.~~

1 **Section 4. That § 10-46B-1.3 be REPEALED.**

2 ~~Taxes paid on gross receipts represented by accounts found to be worthless and~~
3 ~~actually charged off for income tax purposes, may be credited upon a subsequent payment~~
4 ~~of the tax. If such accounts are thereafter collected by the contractor, the tax shall be~~
5 ~~paid upon the amount so collected.~~

6 **Section 5. That § 10-46B-1.6 be REPEALED.**

7 ~~Any person who holds a license issued pursuant to this chapter or who is a person~~
8 ~~whose receipts are subject to the tax imposed by this chapter shall, except as otherwise~~
9 ~~provided in this section, file a return, and pay any tax due, to the Department of Revenue~~
10 ~~on or before the twentieth day of the month following each monthly period. The return~~
11 ~~shall be filed on forms prescribed and furnished by the department.~~

12 ~~If the person remits the tax by electronic transfer to the state, the person shall file~~
13 ~~the return by electronic means on or before the twentieth day of the month following each~~
14 ~~period and remit the tax on or before the twenty fifth day of the month following each~~
15 ~~period.~~

16 ~~The secretary may require or allow a person to file a return, and pay any tax due,~~
17 ~~on a basis other than monthly. The return and remittance is due the twentieth day of the~~
18 ~~month following the reporting period or at a time otherwise determined by the secretary.~~

19 ~~The secretary may grant an extension of not more than five days for filing a return~~
20 ~~and remittance.~~

21 ~~Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid~~
22 ~~if a return or remittance is not made on time.~~

23 **Section 6. That § 10-46B-2 be REPEALED.**

24 ~~Prime contractors and subcontractors subject to the tax imposed by § 10-46B-1~~
25 ~~include without limitation those enumerated in the Standard Industrial Classification~~
26 ~~Manual of 1987 as prepared by the Statistical Policy Division of the Office of Management~~
27 ~~and Budget, Office of the President: construction (division c). If a contractor engages in~~
28 ~~services not specifically listed in division c of the Standard Industrial Classification Manual,~~
29 ~~1987, then the services must entail the construction, building, installation, or repair of a~~
30 ~~fixture to realty before the gross receipts are subject to the tax imposed by § 10-46B-1.~~

31 **Section 7. That § 10-46B-3 be REPEALED.**

1 ~~The tax imposed by this chapter shall apply to the total contract price including all~~
2 ~~labor and materials.~~

3 **Section 8. That § 10-46B-4 be REPEALED.**

4 ~~For the purpose of this chapter, the term, gross receipts, means the amount~~
5 ~~received in money, credits, property, or other money's worth in consideration of the~~
6 ~~performance of realty improvement contracts within this state, without any deduction on~~
7 ~~account of the cost of the property sold, the cost of materials used, the cost of services~~
8 ~~or labor purchased, amounts paid for interest or discounts, or any other expenses~~
9 ~~whatsoever, nor shall any deduction be allowed for losses.~~

10 **Section 9. That § 10-46B-5 be REPEALED.**

11 ~~If any person, except for a person making an isolated or occasional realty~~
12 ~~improvement and who does not hold himself out as engaging in the business of making~~
13 ~~realty improvements, makes a realty improvement without a realty improvement contract~~
14 ~~and subsequently sells the property containing the realty improvement or the realty~~
15 ~~improvement at any time subsequent to the commencement of the project and within four~~
16 ~~years of its completion, the gross receipts from the sale of the realty improvement shall~~
17 ~~be subject to the excise tax imposed on the gross receipts of contractors engaged in realty~~
18 ~~improvement contracts. In determining the gross receipts from the sale of such realty~~
19 ~~improvements when land or land and improvements completed four years prior to sale~~
20 ~~are included in the sale, land and such improvements shall be valued at cost or fair market~~
21 ~~value, whichever is greater, and the portion of the gross receipts attributable to land or~~
22 ~~land and improvements completed four years prior to sale shall be deducted from the sale~~
23 ~~price.~~

24 **Section 10. That § 10-46B-6 be REPEALED.**

25 ~~The secretary of revenue is hereby charged with the enforcement and~~
26 ~~administration of the provisions of this chapter, and as to licensing and reports, it shall be~~
27 ~~administered in the same manner as the tax imposed by chapter 10-45. For enforcement~~
28 ~~and interest purposes §§ 10-45-24 to 10-45-52, inclusive, and all amendments that may~~
29 ~~hereafter be made thereto shall apply to and be available and said sections are by~~
30 ~~reference incorporated herein.~~

31 **Section 11. That § 10-46B-7 be REPEALED.**

1 ~~The tax imposed shall be reported and paid pursuant to § 10-46B-1.6 upon the~~
2 ~~receipts received under the contract during the period.~~

3 **Section 12. That § 10-46B-9 be REPEALED.**

4 ~~Any municipality may impose an excise tax on contractors gross receipts in a~~
5 ~~similar manner as imposed by this chapter; provided however, that the same shall be~~
6 ~~adopted in conformity with chapter 10-52 and the rate thereof shall not exceed one-half~~
7 ~~percent. Municipalities that have a non-ad valorem tax in effect as provided for in chapter~~
8 ~~10-52 may not continue the tax imposed by this section on or after April 1, 1980.~~

9 **Section 13. That § 10-46B-10 be REPEALED.**

10 ~~A contractor may list the contractor's excise tax and any use tax imposed under~~
11 ~~chapter 10-45, 10-46, or 10-52 as a separate line item on all contracts and bills, both for~~
12 ~~public and private entities. The line item for excise and use taxes is a part of the~~
13 ~~contractor's total bill and is collectible from all entities, both public and private.~~

14 **Section 14. That § 10-46B-10.1 be REPEALED.**

15 ~~A contractor shall post his excise tax license number assigned pursuant to this~~
16 ~~chapter with the building permit for a realty improvement contract.~~

17 ~~The provisions of § 10-46A-12.1 and this section do not require a building permit~~
18 ~~if the political subdivision where the realty improvement is located does not require a~~
19 ~~building permit.~~

20 **Section 15. That § 10-46B-11 be REPEALED.**

21 ~~If a corporation, limited liability company, limited partnership, limited liability~~
22 ~~partnership, or limited liability limited partnership subject to tax under this chapter fails~~
23 ~~for any reason to file the required returns or to pay the tax due, any of the corporate~~
24 ~~officers, member managers or managers of limited liability companies, or partners of~~
25 ~~partnerships that control, supervise, or are charged with the responsibility of filing the~~
26 ~~returns or remitting tax payments shall be personally liable for the failure. The dissolution~~
27 ~~of a corporation, limited liability company, limited partnership, limited liability partnership,~~
28 ~~or limited liability limited partnership does not discharge an officer, member manager,~~
29 ~~manager, or partner's liability for a prior failure of the corporation, limited liability~~
30 ~~company, limited partnership, limited liability partnership, or limited liability limited~~

partnership to file a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

If the corporate officers, limited liability company member managers or managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership shall provide the Department of Revenue with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials of a municipality if bonded pursuant to §§ 9-14-6 and 9-14-6.1.

Section 16. That § 10-46B-11.1 be REPEALED.

Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this chapter is guilty of a Class 6 felony;
- (2) Fails to pay tax due under this chapter within sixty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these records to the secretary of revenue or the secretary's agents for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this chapter within sixty days from the date the return is due is guilty of a Class 1 misdemeanor;
- (5) Engages in business under this chapter without obtaining a contractor's excise tax license is guilty of a Class 1 misdemeanor;
- (6) Engages in business under this chapter after the person's contractor's excise tax license has been revoked by the secretary of revenue is guilty of a Class 6 felony;
- (7) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-month period is guilty of a Class 6 felony; or
- (8) Engages in business under this chapter without obtaining a contractor's excise tax license after having been notified in writing by the secretary of revenue that the person is a contractor subject to the provisions of the contractors' excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the person engaging in business files an application for a contractor's excise tax license and

1 ~~meets all lawful prerequisites for obtaining such license within three days from~~
2 ~~receipt of written notice from the secretary.~~

3 ~~For purposes of this section, the term, person, includes corporate officers,~~
4 ~~member managers or managers of limited liability companies, or partners that control,~~
5 ~~supervise, or are charged with the responsibility of filing tax returns or remitting tax~~
6 ~~payments pursuant to § 10-46B-11.~~

7 **Section 17. That § 10-46B-12 be REPEALED.**

8 ~~No tax increase imposed after March 9, 1984, may be levied on the gross receipts~~
9 ~~of realty improvement contracts bid or entered into on or before the effective date of the~~
10 ~~tax increase.~~

11 **Section 18. That § 10-46B-13 be REPEALED.**

12 ~~Every contractor or person engaging in a business in this state whose receipts are~~
13 ~~subject to tax under this chapter shall file with the Department of Revenue an application~~
14 ~~for a contractor's excise tax license. Every application shall be made upon a form~~
15 ~~prescribed by the secretary of revenue and shall set forth the name under which the~~
16 ~~applicant transacts or intends to transact business, the location of the applicant's place or~~
17 ~~places of business, and such other information as the secretary of revenue may require.~~

18 **Section 19. That § 10-46B-14 be REPEALED.**

19 ~~The secretary of revenue shall grant and issue to each applicant a contractor's~~
20 ~~excise tax license. A license is not assignable and shall be valid only for the person in~~
21 ~~whose name it is issued. Any license issued is valid and effective without further payment~~
22 ~~of fees until canceled or revoked.~~

23 **Section 20. That § 10-46B-15 be REPEALED.**

24 ~~The secretary of revenue may, at his discretion, refuse to issue a license to any~~
25 ~~person who is delinquent in payment of contractor's excise tax or use tax levied by the~~
26 ~~State of South Dakota. He may also, in his discretion, require an applicant to furnish bond~~
27 ~~to the state, or other adequate security, as security for payment of any contractor's excise~~
28 ~~tax and use tax that may become due, or require a bond or security as a condition~~
29 ~~precedent to continuing in business as a contractor.~~

Section 21. That § 10-46B-16 be REPEALED.

~~The following service enumerated in the Standard Industrial Classification Manual of 1987 as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, is exempt from the provisions of this chapter: industry no. 1752 floor laying and other floor work, not elsewhere classified.~~

Section 22. That § 10-46B-16.1 be REPEALED.

~~The following services enumerated in the Standard Industrial Classification Manual of 1987 as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President, are exempt from the provisions of this chapter: repair shops and related services, not elsewhere classified (industry no. 7699) but only locksmiths and locksmith shops.~~

Section 23. That § 10-46B-17 be REPEALED.

~~Any contractor's excise taxes imposed and paid under the provisions of chapters 10-46A and 10-46B for the construction of water development projects included in the state water resources management system whose cost exceeds the sum of twenty million dollars shall be deposited into the water and environment fund. The secretary of revenue shall promulgate rules pursuant to chapter 1-26 concerning the procedures for reporting and paying the tax collected under this section.~~

Section 24. That § 10-46B-18 be REPEALED.

~~The secretary of revenue may promulgate rules pursuant to chapter 1-26 concerning:~~

- ~~(1) Licensing, including bonding and filing license applications;~~
- ~~(2) The filing of returns and payment of the tax;~~
- ~~(3) Determining the application of the tax and exemptions;~~
- ~~(4) Taxpayer record-keeping requirements; and~~
- ~~(5) Determining auditing methods.~~

Section 25. That § 1-16G-56 be AMENDED:

1-16G-56. Terms used in §§ 1-16G-56 to 1-16G-68, inclusive, mean:

- (1) "Board," the Board of Economic Development;

- (2) "Commissioner," the commissioner of the Governor's Office of Economic Development;
- (3) "Completed the project" or "completion of the project," the first date when the project is operational;
- (4) "Construction date," the first date earth is excavated or a contractor has initiated work for the purpose of constructing a new or expanded facility or the first date new equipment is located on the project site or existing equipment is removed from the project site for the purpose of equipment upgrades, whichever occurs first;
- (5) "Data center," any facility established for the purpose of processing, storage, retrieval, or communication of data;
- (6) "Department," the Department of Revenue;
- (7) "Equipment upgrades," the installation of new equipment or the replacement or improvement of existing equipment, which is subject to the sales or use tax imposed by chapters 10-45 or 10-46 or contractor's excise tax imposed by ~~chapters~~ chapter 10-46A or 10-46B;
- (8) "GOED," the Governor's Office of Economic Development;
- (9) "New or expanded facility," a new building or structure, or the expansion, renovation, or retrofitting of an existing building or structure, which is subject to the contractor's excise tax imposed by ~~chapters~~ chapter 10-46A or 10-46B;
- (10) "Person," any individual, firm, copartnership, joint venture, association, cooperative, nonprofit development corporation, limited liability company, limited liability partnership, corporation, estate, trust, business trust, receiver, or any group or combination acting as a unit;
- (11) "Project," a new or expanded facility with a project cost which exceed twenty million dollars, or equipment upgrades with a project cost which exceed two million dollars. A project includes laboratory and testing facilities, manufacturing facilities, advanced telecommunications capability, data centers, power generation facilities, power transmission facilities, agricultural processing facilities, wind energy facilities, and facilities defined by GOED as targeted industries. A project does not include any building or structure:
- (a) Used predominantly for the sale of products at retail, other than the sale of electricity at retail, or the provision of advanced telecommunications capability, to individual consumers;
- (b) Used predominantly for residential housing or transient lodging;

- 1 (c) Used predominantly to provide health care services;
2 (d) Used predominantly for the transportation or transmission of natural gas,
3 oil, or crude oil by means of a pipeline; or
4 (e) That is not subject to ad valorem real property taxation or equivalent taxes
5 measured by gross receipts;
6 (12) "Project cost," the amount paid by the project owner in money, credits, property,
7 or other consideration associated with a project including, without limitation, land,
8 labor, materials, furniture, equipment, fees, or fixtures;
9 (13) "Wind energy facility," any new facility or facility expansion that:
10 (a) Consists of a commonly managed integrated system of towers, wind turbine
11 generators with blades, power collection systems, and electric
12 interconnection systems, that convert wind movement into electricity, and
13 is subject to the tax imposed by §§ 10-35-18 and 10-35-19; and
14 (b) The construction of which is subject to contractors' excise tax pursuant to
15 chapter 10-46A ~~or 10-46B~~;
16 (14) "Advanced telecommunications capability," without regard to any transmission
17 media or technology, is high-speed, switched, broadband telecommunications
18 capability that enables users to originate and receive high-quality voice, data,
19 graphics, and video telecommunications using any technology that provides a
20 minimum actual download speed of at least twenty-five megabits per second and
21 actual upload speed of at least three megabits per second.

22 **Section 26. That § 5-18B-17 be AMENDED:**

23 **5-18B-17.** No purchasing agency may award any contract for the construction of
24 any public improvement unless the purchasing agency has verified with the Department
25 of Revenue that the contractor has a contractor's excise tax license pursuant to chapter
26 10-46A ~~or 10-46B~~.

27 **Section 27. That § 5-21-3 be AMENDED:**

28 **5-21-3.** If a contract is entered into for the construction, alteration, or repair of
29 improvements to be located in this state, including public improvements, and the
30 contractor or subcontractor furnishes surety for the faithful performance of the contract,
31 there is hereby imposed an additional obligation upon the surety to the State of South
32 Dakota that the contractor or subcontractor shall promptly pay all taxes which may accrue
33 to the State of South Dakota under the provisions of chapters 10-46, and 10-46A, ~~and~~

1 ~~10-46B~~. For the purposes of this section and § 5-21-4 the term, surety, means a bond or
2 undertaking executed by a surety company authorized to do business in the State of South
3 Dakota.

4 **Section 28. That § 10-45-1.14 be AMENDED:**

5 **10-45-1.14.** For the purposes of this chapter, the term, gross receipts, means the
6 total amount or consideration, including cash, credit, property, and services, for which
7 tangible personal property, any product transferred electronically, or services are sold,
8 leased, or rented, valued in money, whether received in money or otherwise, without any
9 deduction for the following:

- 10 (1) The retailer's cost of the property or service sold;
11 (2) The cost of materials used, labor or service cost, interest, losses, all costs of
12 transportation to the retailer, all taxes imposed on the retailer, and any other
13 expense of the retailer; and
14 (3) Except as provided in chapter 10-46A ~~or 10-46B~~, charges by the retailer for any
15 services necessary to complete the sale whether or not separately stated, including
16 delivery charges.

17 **Section 29. That § 10-46-5 be AMENDED:**

18 **10-46-5.** If a contractor or subcontractor, as defined in ~~chapters~~ chapter 10-46A
19 ~~and 10-46B~~, uses tangible personal property or any product transferred electronically in
20 the performance of a contract or to fulfill contract or subcontract obligations, whether the
21 title to the property is in the name of the contractor, subcontractor, contractee,
22 subcontractee, or any other person, or whether the titleholder of the property would be
23 subject to pay the sales or use tax, the contractor or subcontractor shall pay a tax at the
24 rate prescribed by § 10-45-2, measured by the purchase price or fair market value of the
25 property, whichever is greater, unless the property has been previously subjected to a
26 sales or use tax, in this state and the tax due thereon has been paid. However, if the
27 contractor or subcontractor fabricates tangible personal property for use in the
28 performance of a contract, fair market value excludes the value of the contractor's or
29 subcontractor's fabrication costs.

30 **Section 30. That § 10-46A-12.1 be AMENDED:**

1 **10-46A-12.1.** A contractor shall post ~~his~~ the contractor's excise tax license
2 number assigned pursuant to this chapter with the building permit for a realty
3 improvement project.

4 ~~The provisions of this section and 10-46B-10.1 do~~ This section does not require a
5 building permit if the political subdivision ~~where~~ in which the realty improvement is located
6 does not require a building permit.

7 **Section 31. That a NEW SECTION be added to chapter 10-46A:**

8 Any contractor's excise taxes imposed and paid under the provisions of this
9 chapter, for the construction of water development projects that are included in the state
10 water resources management system and have a cost in excess of twenty million dollars,
11 must be deposited into the water and environment fund.

12 The secretary of revenue shall promulgate rules pursuant to chapter 1-26
13 concerning the procedures for reporting and paying the taxes collected under this section.

14 **Section 32. That § 10-52-17 be AMENDED:**

15 **10-52-17.** A municipality imposing a sales or use tax under this chapter may by
16 ordinance enacted by its local governing body provide for a refund of such taxes to a
17 contractor or subcontractor licensed pursuant to chapter 10-46A ~~or 10-46B~~, if the
18 contractor or subcontractor meets the requirements provided in § 10-61-1. The ordinance
19 shall provide a procedure for filing an application for the refund and receiving the payment
20 of the refund by the municipality.

21 **Section 33. That § 10-52A-1.1 be AMENDED:**

22 **10-52A-1.1.** For the purposes of this chapter, the term, gross receipts, means the
23 total amount or consideration, including cash, credit, property, and services, for which
24 tangible personal property, any product transferred electronically, or services are sold,
25 leased, or rented, valued in money, whether received in money or otherwise, without any
26 deduction for the following:

- 27 (1) The retailer's cost of the property or service sold;
28 (2) The cost of materials used, labor or service cost, interest, losses, all costs of
29 transportation to the retailer, all taxes imposed on the retailer, and any other
30 expense of the retailer; and

- 1 (3) Except as provided in chapter 10-46A ~~or 10-46B~~, charges by the retailer for any
2 services necessary to complete the sale whether or not separately stated, including
3 delivery charges.

4 **Section 34. That § 10-56-1 be AMENDED:**

5 **10-56-1.** The procedures provided for in this chapter apply to the collection of any
6 delinquent taxes imposed by chapters 10-43, 10-44, 10-45, 10-46, 10-46A, ~~10-46B~~, 10-
7 47B, 10-50, 10-52, 32-3, 32-5, and 32-5B and §§ 50-11-19 and 50-4-13 to 50-4-17,
8 inclusive.

9 **Section 35. That § 10-59-1 be AMENDED:**

10 **10-59-1.** The provisions of this chapter may only apply to proceedings commenced
11 under this chapter concerning the taxes, the fees, the surcharges, or the persons subject
12 to the taxes, fees, or surcharges imposed by, or any civil or criminal investigation
13 authorized by, chapters 10-33A, 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-45D, 10-46,
14 10-46A, ~~10-46B~~, 10-46E, 10-47B, 10-50C, 10-52, 10-52A, 10-62, 32-3, 32-3A, 32-5, 32-
15 5B, 32-6B, 32-9, 32-10, 34-45, and 34A-13, and §§ 10-50-61, 49-31-51, and 50-4-13 to
16 50-4-17, inclusive.

17 **Section 36. That § 10-59-32 be AMENDED:**

18 **10-59-32.** The secretary may authorize any person required to file returns or
19 reports and remit taxes or fees under chapters 10-45, 10-45D, 10-46, 10-46A, ~~10-46B~~,
20 10-46E, 10-52, 10-52A, 10-33A, and 10-62, to remit the taxes or fees by electronic
21 transmission. Any person required to file returns and remit taxes who remits taxes by
22 electronic transmission pursuant to this section, as authorized by the secretary, shall file
23 returns by electronic means on or before the twentieth day of the month following each
24 period. If the due date falls on a Saturday, Sunday, legal holiday enumerated in § 1-5-1,
25 or a day the Federal Reserve Bank is closed, the return is due on the next succeeding day
26 that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal
27 Reserve Bank is closed. Remittances transmitted electronically pursuant to this section
28 shall be made on or before the twenty-fifth day of the month following each period.
29 Remittances are considered to have been made on the date that the remittance is credited
30 to the bank account designated by the treasurer of the State of South Dakota. If the due
31 date falls on a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal

1 Reserve Bank is closed, the remittance is due on the next succeeding day that is not a
2 Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve
3 Bank is closed.

4 **Section 37. That § 10-59-32.1 be AMENDED:**

5 **10-59-32.1.** Any return, report, or remittance which is required to be filed under
6 the taxes specified in chapters 10-33A, 10-45, 10-45D, 10-46, 10-46A, ~~10-46B~~, 10-46E,
7 10-52, 10-52A, and 10-62, is timely filed if mailed, postage prepaid, on or before the due
8 date of the reporting period, and is received by the department. If the due date falls on a
9 Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the Federal Reserve
10 Bank is closed, the return, report, or remittance is timely filed if mailed, postage prepaid,
11 on the next succeeding day which is not a Saturday, Sunday, legal holiday enumerated in
12 § 1-5-1, or a day the Federal Reserve Bank is closed. A United States Postal Service
13 postmark is evidence of the date of mailing for the purpose of timely filing of returns,
14 reports, or remittances. The provisions of this section do not apply to a return filed by
15 electronic means.

16 **Section 38. That § 10-59-40 be AMENDED:**

17 **10-59-40.** Any person licensed pursuant to chapter 10-33A, 10-45, 10-45D, 10-
18 46A, ~~10-46B~~, or 10-52A shall file the applicable tax return whether or not the person has
19 gross receipts subject to tax.

20 **Section 39. That § 10-59-44 be AMENDED:**

21 **10-59-44.** The secretary may, by order, revoke or cancel the license of any person
22 licensed pursuant to chapter 10-33A, 10-45, 10-45D, 10-46, 10-46A, ~~10-46B~~, 10-46E,
23 10-52, 10-52A, or 10-62 and who has failed to file a return, or who has filed a return and
24 has failed to remit the tax due the state on or before the times specified in § 10-33A-10.1,
25 10-45-27.3, 10-45D-10.2, 10-46-27.1, 10-46A-1.8, ~~10-46B-1.6~~, 10-46E-7, 10-52-18,
26 10-52A-4.2, or 10-62-4, respectively, or any other reporting period authorized.

27 **Section 40. That § 10-59-46 be AMENDED:**

28 **10-59-46.** The secretary of revenue may prepare a list of at least one hundred
29 delinquent persons who owe the largest amount of tax for chapters 10-45, 10-45D, 10-
30 46, 10-46E, 10-46A, ~~10-46B~~, 10-52, 10-52A, 10-58, and 10-33A and § 32-5B-20, and

that are delinquent in the payment of tax for chapters 10-45, 10-45D, 10-46, 10-46E, 10-46A, ~~10-46B~~, 10-52, 10-52A, 10-58, and 10-33A and § 32-5B-20 to the department, if a lien has been filed against the person. The list shall include at least the top one hundred persons with total delinquent final liabilities for tax in chapters 10-45, 10-45D, 10-46, 10-46E, 10-46A, ~~10-46B~~, 10-52, 10-52A, 10-58, and 10-33A and § 32-5B-20, including penalties and interest. The list shall contain the person's name; the business name, if any; address; and the amount of total tax, penalties and interest outstanding of each delinquent person.

Section 41. That § 10-61-1 be AMENDED:

10-61-1. A contractor or subcontractor licensed pursuant to chapter 10-46A ~~or~~
~~10-46B~~ may apply for a refund of South Dakota sales and use tax paid by such contractor if:

- (1) The sales and use tax subject to the refund request was paid by the contractor or subcontractor requesting the refund for the use of tangible personal property;
- (2) The tangible personal property upon which the sales and use tax was paid was purchased by the contractor or subcontractor requesting the refund;
- (3) The tangible personal property upon which the sales and use tax was paid was fabricated by the contractor or subcontractor in South Dakota;
- (4) The fabricated tangible personal property was used outside of South Dakota by the contractor or subcontractor in the performance of a contract;
- (5) The fabricated tangible personal property is not returned to South Dakota; and
- (6) The fabricated tangible personal property is exempt from sales or use tax in the state where the contract is performed.

Section 42. That § 15-6-23(a) be AMENDED:

15-6-23(a). One or more members of a class may sue or be sued as representative parties on behalf of all only if:

- (1) The class is so numerous that joinder of all members is impracticable;
- (2) There are questions of law or fact common to the class;
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (4) The representative parties will fairly and adequately protect the interests of the class; and

- 1 (5) The suit is not against this state for the recovery of a tax imposed by chapter 10-
2 39, 10-39A, 10-43, 10-44, 10-45, 10-46, 10-46A, ~~10-46B~~, or 10-52.

3 **Section 43. That § 49-34A-82 be AMENDED:**

4 **49-34A-82.** Terms used in §§ 49-34A-80 to 49-34A-92, inclusive, mean:

- 5 (1) "Department," the Department of Revenue;
6 (2) "New or expanded facility," a new commercial small power production facility, as
7 defined in § 49-34A-80, or an addition to an existing commercial small power
8 production facility, the construction or installation of which is subject to contractors'
9 excise tax pursuant to chapter 10-46A or 10-46B;
10 (3) "Project," the installation or construction of the first ten megawatts of generation
11 capacity of a new or expanded facility;
12 (4) "Project cost," the amount paid in money for a project;
13 (5) "Secretary," the secretary of the Department of Revenue.

14 **Section 44. That § 49-34A-83 be AMENDED:**

15 **49-34A-83.** Any person may apply for and obtain a refund or credit for contractors'
16 excise taxes imposed and paid under the provisions of chapter 10-46A ~~or 10-46B~~ for the
17 construction of a new or expanded facility that is a commercial small power production
18 facility that is defined in § 49-34A-80.

19 **Section 45. That § 10-46A-1.2 be REPEALED.**

20 ~~The tax imposed upon contractors performing realty improvement contracts for~~
21 ~~those persons subject to tax under chapter 10-28, 10-33, 10-35, 10-36 or 10-36A or any~~
22 ~~municipal telephone company subject to chapter 9-41 or any rural water system is not~~
23 ~~subject to this chapter and the contracts are subject to the contractors' excise tax imposed~~
24 ~~by chapter 10-46B.~~

25 **Section 46. That § 10-46A-12.2 be REPEALED.**

26 ~~The provisions of §§ 10-46A-12.1 and 10-46B-10.1 do not require a building permit~~
27 ~~if the political subdivision where the realty improvement is located does not require a~~
28 ~~building permit.~~