

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

400P0153

## HOUSE BILL NO. 1017

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the taxation of  
2 products transferred electronically.

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

4 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 There is hereby imposed a tax at the same rate as that imposed upon sales of tangible  
7 personal property in this state upon the gross receipts of all sales, leases, or rentals of any  
8 product transferred electronically.

9 The tax is imposed if:

- 10 (1) The sale is to an end user;
- 11 (2) The sale is to a person who is not an end user, unless otherwise exempted by this  
12 chapter;
- 13 (3) The seller grants the right of permanent or less than permanent use of the products  
14 transferred electronically; or
- 15 (4) The sale is conditioned or not conditioned upon continued payment.



For the purposes of this section, the term, end user, does not include any person who received by contract any product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person.

For the purposes of this section, the term, permanent use, means perpetual or for an indefinite or unspecified length of time.

Section 2. That subdivision (4) of § 10-45-1 be amended to read as follows:

(4) "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property, any product transferred electronically, or services including transportation, shipping, postage, handling, crating, and packing;

Section 3. That subdivision (11) of § 10-45-1 be amended to read as follows:

(11) "Retailer," any person engaged in the business of selling tangible goods, wares, or merchandise at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this chapter, and the sale at retail of products transferred electronically.

The term also includes any person subject to the tax imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale of tangible personal property or any product transferred electronically at retail by a person who does not hold himself or herself out as engaging in the business of selling such tangible personal property or products transferred electronically at retail does not constitute such person a retailer;

Section 4. That § 10-45-1 be amended by adding thereto a NEW SUBDIVISION to read as follows:

"Product transferred electronically," any product obtained by the purchaser by means other

1 than tangible storage media.

2 Section 5. That § 10-45-1.3 be amended to read as follows:

3 10-45-1.3. For purposes of the tax imposed by this chapter, if any tangible personal property  
4 or any product transferred electronically is taken in trade or in a series of trades as a credit or  
5 part payment of a retail sale taxable under this chapter, and the tangible personal property or the  
6 product transferred electronically taken in trade is subject to the sales tax imposed by this  
7 chapter when sold, the credit or trade-in value allowed by the retailer may not be included as  
8 gross receipts.

9 Section 6. That § 10-45-1.5 be amended to read as follows:

10 10-45-1.5. For the purposes of the tax imposed by this chapter, the term, lease or rental,  
11 means any transfer of possession or control of tangible personal property or any product  
12 transferred electronically for a fixed or indeterminate term for consideration. A lease or rental  
13 may include future options to purchase or extend. Lease or rental does not include:

- 14 (1) A transfer of possession or control of property under a security agreement or deferred  
15 payment plan that requires the transfer of title upon completion of the required  
16 payments;
- 17 (2) A transfer or possession or control of property under an agreement that requires the  
18 transfer of title upon completion of required payments and payment of an option  
19 price does not exceed the greater of one hundred dollars or one percent of the total  
20 required payments; or
- 21 (3) Providing tangible personal property along with an operator for a fixed or  
22 indeterminate period of time. A condition of this exclusion is that the operator is  
23 necessary for the equipment to perform as designed. For the purpose of this  
24 subdivision, an operator shall do more than maintain, inspect, or set-up the tangible

personal property.

Section 7. That § 10-45-1.12 be amended to read as follows:

10-45-1.12. For the purposes of this chapter, the term, bundled transaction, does not include:

(1) A transaction that includes the retail sale of real property or services to real property;

(2) A transaction that includes the retail sale of any products in which the gross receipts varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction;

(3) A transaction that includes the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

(4) A transaction that includes the retail sale of any product transferred electronically and a service where the product transferred electronically is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

(5) A transaction that includes the retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;

~~(5)~~(6) A transaction that includes the retail sale of taxable products and nontaxable products and the purchase price or gross receipts of the taxable products is de minimis; or

~~(6)~~(7) A transaction that includes the retail sale of exempt tangible personal property and taxable tangible personal property where:

(a) The transaction includes food and food ingredients, drugs, durable medical

equipment, mobility enhancing equipment, or prosthetic devices all as defined in chapter 10-45, or over-the-counter drugs or medical supplies; and

- (b) The retailer's purchase price or gross receipts of the taxable tangible personal property is fifty percent or less of the total purchase price or gross receipts of the bundled tangible personal property. No retailer may use a combination of the purchase price and gross receipts of the tangible personal property when making the fifty percent determination for a transaction.

Section 8. That § 10-45-1.14 be amended to read as follows:

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

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

Section 9. That § 10-45-1.16 be amended to read as follows:

10-45-1.16. Gross receipts, as defined in § 10-45-1.14, do not include:

- (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a retailer and taken by a purchaser on a sale;
- (2) Interest, financing, and carrying charges from credit extended on the sale of tangible

personal property, any product transferred electronically, or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

- (3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

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

10-45-5. There is imposed a tax at the rate of four percent upon the gross receipts of any person from engaging or continuing in any of the following businesses or services in this state: abstracters; accountants; architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply; membership or entrance fees for the use of a facility or for the right to purchase tangible personal property, any product transferred electronically, or services; photography; photo developing and enlarging; tire recapping; welding and all repair services, except farm machinery, farm attachment units, or irrigation equipment repair services; cable television; and rentals of tangible personal property except leases of tangible personal property between one telephone company and another telephone company, motor vehicles as defined by § 32-5-1 leased under a single contract for more than twenty-eight days and mobile homes. However, the specific enumeration of businesses and professions made in this section does not, in any way, limit the scope and effect of § 10-45-4.

Section 11. That § 10-45-7.1 be amended to read as follows:

10-45-7.1. There are hereby exempted from the provisions of this chapter and the computation of the tax imposed by it, gross receipts from membership fees paid to any lodging house and hotel membership organization operated for the benefit of its members. However, this

1 exemption does not apply to any membership fee that represents payment for tangible personal  
2 property, any product transferred electronically, and services provided by the membership  
3 organization.

4 Section 12. That § 10-45-9 be amended to read as follows:

5 10-45-9. There are hereby specifically exempted from the provisions of this chapter and  
6 from the computation of the amount of tax imposed by it, the gross receipts from sales of  
7 tangible personal property and any product transferred electronically which this state is  
8 prohibited from taxing under the Constitution or laws of the United States or under the  
9 Constitution or laws of the State of South Dakota.

10 Section 13. That § 10-45-9.1 be amended to read as follows:

11 10-45-9.1. Gross receipts from the sale of tangible personal property and any product  
12 transferred electronically to a person who intends to lease the property to persons in this state  
13 and actually does so are exempted from the provisions of this chapter and the tax composed by  
14 it.

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

16 10-45-10. There are hereby specifically exempted from the provisions of this chapter and  
17 from the computation of the amount of tax imposed by it, the gross receipts from sales of  
18 tangible personal property, any product transferred electronically, and ~~the sale, furnishing or~~  
19 ~~service of electrical energy, natural and artificial gas and communication service~~ services to the  
20 United States, to the State of South Dakota or to any other state of the United States or the  
21 District of Columbia if the other state provides a reciprocal exemption for South Dakota, to  
22 public or municipal corporations of the State of South Dakota or of any other state of the United  
23 States or the District of Columbia if the other state provides a reciprocal exemption to South  
24 Dakota public or municipal corporations, to any nonprofit charitable organization which devotes

its resources exclusively to the relief of the poor, distressed or underprivileged, and has been recognized as an exempt organization under § 501(c)(3) of the Internal Revenue Code, or to any Indian tribe.

Section 15. That § 10-45-11.1 be amended to read as follows:

10-45-11.1. There are hereby specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, the gross receipts from furnishing goods or services to the purchaser or ~~his~~ the purchaser's successor in interest of tangible personal property and any product transferred electronically to fulfill a warranty obligation of the manufacturer to the extent that ~~such~~ the goods or services are not charged to ~~such~~ the purchaser or ~~his~~ the purchaser's successor in interest.

Section 16. That § 10-45-12.5 be amended to read as follows:

10-45-12.5. Unless otherwise specifically subject to tax, the gross receipts resulting from fees or commissions received for rendering a service which provides for the sale of tangible personal property, any product transferred electronically, or services is exempt from the tax imposed by this chapter.

Section 17. That § 10-45-13 be amended to read as follows:

10-45-13. There are specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, the gross receipts from the following:

- (1) Sales of tickets or admissions to the grounds and grandstand attractions of state, county, district, regional, and local fairs;
- (2) Admissions to nonprofit historic sites and repertory theater performances operated by nonprofit organizations;
- (3) Admissions to community operated celebrations and shows sponsored by a chamber of commerce or other similar nonprofit organization if the county or municipality in



1 which the activity takes place officially sponsors the activity and no charge is made  
2 to the operators of the celebration or show for the use of county, city or town  
3 facilities or services;

4 (4) Admissions to events or receipts from activities sponsored and operated by colleges  
5 or vocational schools or elementary or high schools or related clubs or supporting  
6 organizations approved or supervised by a school or college when the entire net  
7 proceeds are spent for educational purposes and any associations of them and receipts  
8 from tangible personal property or any product transferred electronically sold at such  
9 events. However, receipts from tangible personal property or any product transferred  
10 electronically sold at such events or activities are included in the measure of sales tax  
11 at the time of purchase by the college or school or related club or supporting  
12 organization;

13 (5) Religious, benevolent, fraternal, youth association or charitable activities, including  
14 any bingo or lottery conducted pursuant to § 22-25-25, where the entire amount of  
15 such receipts after deducting all costs directly related to the conduct of such activities  
16 is expended for religious, benevolent, fraternal, youth association or charitable  
17 purposes, and, except for any bingo or lottery, the receipts are not the result of  
18 engaging in business for more than three consecutive days. However, receipts from  
19 tangible personal property, any product transferred electronically, or services  
20 purchased for use in the activity are included in the measure of sales tax;

21 (6) Sales of tangible personal property or any product transferred electronically when the  
22 net receipts therefrom are used primarily for the restoration or maintenance of the  
23 Governor's mansion and capitol grounds;

24 (7) Any charge or entry fee made to persons for engaging in participatory events limited

1 to tournaments, contests and league activities. However, receipts from tangible  
2 personal property, any product transferred electronically, or services purchased for  
3 use in tournaments, contests and league activities shall be included in the measure of  
4 the tax imposed by this chapter;

5 (8) Admissions to events or receipts from activities sponsored and operated by county  
6 or municipal historical societies or centennial committees when the entire net  
7 proceeds are spent for centennial celebration purposes. However, receipts from  
8 tangible personal property, any product transferred electronically, or services  
9 purchased for use in the activity are included in the measure of sales tax;

10 (9) Religious, benevolent, fraternal, youth association or charitable activities conducted  
11 at county fairs, if the entire amount of such receipts after deducting all costs directly  
12 related to the conduct of such activities is expended for religious, benevolent,  
13 fraternal, youth association or charitable purposes, and the receipts are not the result  
14 of engaging in business for more than five consecutive days. However, receipts from  
15 tangible personal property, any product transferred electronically, or services  
16 purchased for use in the activity are included in the measure of sales tax;

17 (10) Admissions to circus performances sponsored or operated by religious, benevolent,  
18 fraternal or youth associations, if the entire amount of the receipts after deducting all  
19 costs directly related to the conduct of the circus performances is expended for  
20 religious, benevolent, fraternal, youth associations or charitable purposes;

21 (11) Admissions to events or receipts from activities sponsored and operated by religious,  
22 benevolent, or charitable organizations for a period not to exceed thirty days in any  
23 calendar year, if the entire amount of the receipts after deducting all costs directly  
24 related to the conduct of the event or activity is expended for the benefit of homeless

1 persons.

2 Section 18. That § 10-45-13.1 be amended to read as follows:

3 10-45-13.1. Membership organizations, major group 86, as enumerated in the Standard  
4 Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the  
5 Office of Management and Budget, Office of the President, are exempt from the tax imposed  
6 by this chapter on receipts from sales of services by them and their membership fees. This  
7 exemption does not apply to the tax imposed upon the gross receipts of sales of tangible  
8 personal property or any product transferred electronically by such organizations. This section  
9 does not exempt the gross receipts of a retailer which are the result of sales to organizations in  
10 major group 86 or exempt such organizations from payment of use tax on goods and services  
11 used in the conduct of their activities.

12 Section 19. That § 10-45-13.2 be amended to read as follows:

13 10-45-13.2. There are specifically exempted from the provisions of this chapter and the  
14 computation of the tax imposed by it, the fair market value of any tangible personal property,  
15 product transferred electronically, or service given without charge to an institution, organization,  
16 or group exempt from the tax imposed by this chapter.

17 Section 20. That § 10-45-14 be amended to read as follows:

18 10-45-14. There are specifically exempted from the provisions of this chapter and from the  
19 computation of the amount of tax imposed by it, the gross receipts from sales of tangible  
20 personal property, any product transferred electronically, and ~~the gross receipts from sales,~~  
21 ~~furnishing, or service of electrical energy, natural and artificial gas, water, and communication~~  
22 ~~service~~ services to and for use by religious educational institutions, private educational  
23 institutions currently recognized as exempt under section 501(c)(3) of the Internal Revenue  
24 Code as in effect on January 1, 1983, and nonprofit, charitable hospitals when purchases are

1 made by authorized officials, payment made from the institution funds and title to the property  
2 retained in the name of such institution. For the purposes of this section, a private educational  
3 institution shall be defined as an institution currently recognized as exempt under section  
4 501(c)(3) of the Internal Revenue Code as in effect on January 1, 1995, maintaining a campus  
5 physically located within this state; and accredited by the South Dakota Department of  
6 Education or the North Central Association of Colleges and Schools.

7 This exemption does not extend to sales to or purchases of tangible personal property or any  
8 product transferred electronically for the personal use of officials, members or employees of  
9 such institutions or to sales to or purchases of tangible personal property or any product  
10 transferred electronically used in the operation of a taxable retail business.

11 The exemption provided in this section does not, in any manner, relieve the institution from  
12 the payment of the additional and further license fee imposed on the registration of motor  
13 vehicles.

14 All institutions claiming this exemption shall prepare and maintain a list of all purchases on  
15 which exemption was claimed, fully itemized, showing name and address of vendors,  
16 description of property purchased, date or dates of purchase, purchase price and brief  
17 explanation of use or intended use.

18 Section 21. That § 10-45-20.1 be amended to read as follows:

19 10-45-20.1. Payments made by one member of the controlled group to another member of  
20 a controlled group which represent an allocation, reimbursement, or charge for services  
21 provided by or rendered by the members of the controlled group are specifically exempted from  
22 the provisions of this chapter and the computation of the tax imposed by it. The exemption  
23 provided in this section does not apply to the lease of tangible personal property or any product  
24 transferred electronically unless the sales or use tax has been paid on the property by the lessor.

Section 22. That § 10-45-20.5 be amended to read as follows:

10-45-20.5. There are specifically exempted from the provisions of this chapter and the computation of the tax imposed by it, gross receipts from the sale of services rendered by a related corporation as defined in subdivision 10-43-1(11) for use by a financial institution as defined in subdivision 10-43-1(4) or on any service rendered by a financial institution as defined in subdivision 10-43-1(4) for use by a related corporation as defined in subdivision 10-43-1(11). For the purposes of this section, the term, related corporation, includes a corporation which together with the financial institution is part of a controlled group of corporations as defined in 26 U.S.C. § 1563 as in effect on January 1, 1989, except that the eighty percent ownership requirements set forth in 26 U.S.C. § 1563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent. The exemption provided in this section does not apply to the lease of tangible personal property or any product transferred electronically unless the sales or use tax has been paid on the property by the lessor.

Section 23. That § 10-45-29.1 be amended to read as follows:

10-45-29.1. In determining the amount of tax due under this chapter, attorneys licensed pursuant to chapter 16-16 and accountants licensed pursuant to chapter 36-20A may deduct from gross receipts amounts which represent charges to clients for tangible personal property, any product transferred electronically, or services purchased by the attorney or accountant on behalf of a client. However, the sale of the property or service to the attorney or accountant is not a sale for resale if this deduction is taken. This deduction may only be taken if the amount to be deducted represents an expense specifically incurred for a particular client and the amount is itemized and separately billed as a reimbursable expense by the attorney or accountant.

Section 24. That § 10-45-61 be amended to read as follows:

10-45-61. Notwithstanding § 10-54-1, a seller, who possesses an exemption certificate from

1 a purchaser of tangible personal property, any product transferred electronically, or services  
2 which indicates the items or services being purchased are exempt, may rely on the exemption  
3 certificate and not charge sales tax to the provider of the exemption certificate until the provider  
4 of the exemption certificate gives notice that the items or services being purchased are no longer  
5 exempt by filing a new exemption certificate with the seller.

6 The exemption certificate shall be signed by the purchaser, provide the purchaser's name,  
7 address, and valid state tax license number, if applicable, and shall describe the types of tangible  
8 personal property, any product transferred electronically, and services being purchased exempt  
9 by the purchaser. However, any person filing an electronic exemption certificate is not required  
10 to sign the exemption certificate.

11 The purchaser claiming the protection of an exemption certificate is responsible for assuring  
12 that the goods and services delivered thereafter are of a type covered by the exemption  
13 certificate. If there are items covered under the exemption certificate which are not being  
14 purchased exempt, it is the responsibility of the purchaser when ordering goods from a seller  
15 to indicate if any of the items purchased are not exempt, and the appropriate sales tax shall be  
16 charged on the portion of the sale that is not exempt. A seller of property, any product  
17 transferred electronically, or services which are generally described under the exemption  
18 certificate is not responsible for the collection of the tax unless otherwise directed by the  
19 purchaser.

20 If the purchaser later determines there is any tax due and owing, the purchaser shall remit  
21 the tax owed by the purchaser to the state. If the purchaser makes an exempt purchase and later  
22 determines that the goods or services purchased are not exempt, the purchaser shall report the  
23 transaction and pay the use tax on the next filing of the purchaser's return.

24 Any purchaser who knowingly and intentionally lists on an exemption certificate personal

1 property, any product transferred electronically, or services which the purchaser knows, at the  
2 time the exemption certificate is filed with the seller, are not exempt, or provides an invalid  
3 exemption certificate with the intent to evade payment of the tax, and fails to timely report the  
4 same with the department is guilty of a Class 1 misdemeanor. The secretary of revenue and  
5 regulation may assess a penalty of up to fifty percent of the tax owed, in addition to the tax  
6 owed. No interest may be charged on the penalty.

7 The seller shall retain the exemption certificate for a period of three years from the date it  
8 is filed by the purchaser and provide the exemption certificate to the department upon request.

9 The secretary may promulgate rules pursuant to chapter 1-26 to adopt forms for exemption  
10 certificates.

11 Section 25. That § 10-45-83 be amended to read as follows:

12 10-45-83. The provisions of §§ 10-45-82 and 10-46-62 do not apply to the gross receipts  
13 from interest paid any pawnbroker from the tax imposed by chapters 10-45 and 10-46. For the  
14 purposes of this section, a pawnbroker means any person who is engaged in the business of  
15 lending money and who accepts the possession of tangible personal property or any product  
16 transferred electronically as security for the loan.

17 Section 26. That § 10-45-84 be amended to read as follows:

18 10-45-84. Any fee or commission received by a retailer for arranging or assisting in the  
19 arrangement of a loan for a customer to pay for tangible personal property or any product  
20 transferred electronically sold by such retailer does not constitute gross receipts subject to the  
21 tax imposed by this chapter.

22 Section 27. That § 10-45-92 be amended to read as follows:

23 10-45-92. In determining the amount of tax due under this chapter, auctioneers may deduct  
24 from gross receipts amounts which represent direct expense charges for clients for tangible

1 personal property, any product transferred electronically, or services purchased by the auctioneer  
2 on behalf of a client. However, the sale of the property or service to the auctioneer is not a sale  
3 for resale if this deduction is taken. This deduction may only be taken if the amount to be  
4 deducted represents an expense specifically incurred for a particular client and the amount is  
5 itemized and paid from the client's auction proceeds by the auctioneer or closing agent. The  
6 deduction shall be disallowed if the auctioneer receives any profit or remuneration directly or  
7 indirectly from the client's expense.

8 Section 28. That § 10-45-92.1 be amended to read as follows:

9 10-45-92.1. All auction sales and consignment sales of tangible personal property, any  
10 product transferred electronically, and services are sales at retail. The auction clerk shall file the  
11 return and remit the tax imposed by this chapter on the gross receipts from each auction after  
12 applying the deductions provided by § 10-45-92. However, the auctioneer is responsible for the  
13 payment of the tax imposed by this chapter if the auction clerk is an employee of the auctioneer  
14 or if the auction clerk does not have a permit as required by this chapter. In addition to any other  
15 information required to be kept by this chapter, each auction clerk shall keep records that  
16 identify the owner of the property sold at auction and the auctioneer who conducts the sale of  
17 such property.

18 Section 29. That § 10-45-108 be amended to read as follows:

19 10-45-108. For purposes of the tax imposed by this chapter, a retailer shall source sales of  
20 tangible personal property, any product transferred electronically, and services to the location  
21 where the tangible personal property, the product transferred electronically, or service is  
22 received. The department shall promulgate rules, pursuant to chapter 1-26, defining the location  
23 of receipt. The rules promulgated pursuant to this section may provide an alternative method  
24 of sourcing telecommunication services.



1       Section 30. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       An excise tax is hereby imposed on the use, storage, or consumption in this state of any  
4 product transferred electronically purchased for use in this state at the same rate of percent of  
5 the purchase price of any product transferred electronically as is imposed pursuant to chapter  
6 10-45.

7       The tax is imposed if:

8       (1)    The sale is to an end user;

9       (2)    The sale is to a person who is not an end user, unless otherwise exempted by this  
10           chapter;

11       (3)    The seller grants the right of permanent or less than permanent user of the products  
12           transferred electronically; or

13       (4)    The sale is conditioned or not conditioned upon continued payment.

14       For the purposes of this section, the term, end user, does not include any person who  
15 received by contract any product transferred electronically for further commercial broadcast,  
16 rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or  
17 exhibition of the product, in whole or in part, to another person.

18       For the purposes of this section, the term, permanent use, means perpetual or for an  
19 indefinite or unspecified length of time.

20       Section 31. That subdivision (3) of § 10-46-1 be amended to read as follows:

21       (3)    "Delivery charges," charges by the retailer for preparation and delivery to a location  
22           designated by the purchaser of tangible personal property, any product transferred  
23           electronically, or services including transportation, shipping, postage, handling,  
24           crating, and packing;

Section 32. That subdivision (4) of § 10-46-1 be amended to read as follows:

(4) "Fair market value," the price at which a willing seller and willing buyer will trade. Fair market value shall be determined at the time of purchase. If a public corporation is supplying tangible personal property or any product transferred electronically that will be used in the performance of a contract, fair market value shall be determined pursuant to § 5-18-5.1. This definition also applies to chapter 10-45;

Section 33. That subdivision (6) of § 10-46-1 be amended to read as follows:

(6) "Included in the measure of tax," the tangible personal property, any product transferred electronically, or the service was purchased from a retailer licensed under chapter 10-45 and that retailer has included the tax in the amount received from the sale;

Section 34. That subdivision (11) of § 10-46-1 be amended to read as follows:

(11) "Retailer," any person performing services in this state or engaged in the business of selling tangible personal property or products transferred electronically for use, storage or other consumption within the meaning of this chapter. However, if in the opinion of the secretary of revenue and regulation, it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property or any product transferred electronically sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the secretary of revenue and regulation may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter;

Section 35. That subdivision (17) § 10-46-1 be amended to read as follows:

(17) "Use," the exercise of right or power over tangible personal property or any product transferred electronically incidental to the ownership of that property, except that it does not include the sale of that property in the regular course of business. Use also includes the use of the types of services, the gross receipts from the sale of which are to be included in the measure of the tax imposed by chapter 10-45, ~~and any amendments thereto~~ and the delivery or causing delivery into this state of tangible personal property or any product transferred electronically intended to advertise ~~products or services~~ any product or service or promote or facilitate ~~sales~~ any sale to South Dakota residents.

Section 36. That § 10-46-1 be amended by adding thereto a NEW SUBDIVISION to read as follows:

"Product transferred electronically," any product obtained by the purchaser by means other than tangible storage media.

Section 37. That § 10-46-1.1 be amended to read as follows:

10-46-1.1. For the purpose of the tax imposed by this chapter, the term, lease or rental, means any transfer of possession or control of tangible personal property or any product transferred electronically for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. Lease or rental does not include:

- (1) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
- (2) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option

price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

- (3) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator shall do more than maintain, inspect, or set-up the tangible personal property.

Section 38. That § 10-46-2.2 be amended to read as follows:

10-46-2.2. An excise tax is imposed upon the privilege of the use of rented tangible personal property and any product transferred electronically in this state at the rate of four percent of the rental payments upon the property.

Section 39. That § 10-46-2.3 be amended to read as follows:

10-46-2.3. The use, storage, or consumption of tangible personal property and any product transferred electronically actually leased to persons in this state is exempted from the provisions of this chapter and the tax imposed by it.

Section 40. That § 10-46-3 be amended to read as follows:

10-46-3. An excise tax is imposed on the privilege of the use, storage or consumption in this state of tangible personal property or any product transferred electronically not originally purchased for use in this state, but thereafter used, stored or consumed in this state, at the same rate of percent of the fair market value of the property at the time it is brought into this state as is imposed by § 10-45-2. The use, storage, or consumption of tangible personal property or any product transferred electronically more than seven years old at the time it is brought into the state by the person who purchased such property for use in another state is exempt from the tax imposed herein. The secretary may promulgate rules pursuant to chapter 1-26 relating to the

1 determination of the age and value of the tangible personal property or the product transferred  
2 electronically brought into this state.

3 Section 41. That § 10-46-5 be amended to read as follows:

4 10-46-5. If a contractor or subcontractor, as defined in chapters 10-46A and 10-46B, uses  
5 tangible personal property or any product transferred electronically in the performance of ~~his~~  
6 a contract or to fulfill contract or subcontract obligations, whether the title to the property is in  
7 the name of the contractor, subcontractor, contractee, subcontractee, or any other person, or  
8 whether the titleholder of the property would be subject to pay the sales or use tax, the  
9 contractor or subcontractor shall pay a tax at the rate prescribed by § 10-45-2, measured by the  
10 purchase price or fair market value of the property, whichever is greater, unless the property has  
11 been previously subjected to a sales or use tax, in this state and the tax due thereon has been  
12 paid. However, if the contractor or subcontractor fabricates tangible personal property for use  
13 in the performance of ~~his~~ a contract, fair market value excludes the value of the contractor's or  
14 subcontractor's fabrication costs.

15 Section 42. That § 10-46-5.4 be amended to read as follows:

16 10-46-5.4. Notwithstanding the provisions of § 10-46-5, the use in this state of tangible  
17 personal property and any product transferred electronically that becomes an integral and  
18 component part of a final product manufactured by a business classified in signs and advertising  
19 specialties, (industry no. 3993) in the Standard Industrial Classification Manual, 1987, as  
20 prepared by the Statistical Policy Division of the Office of Management and Budget, Office of  
21 the President, that is installed by ~~such~~ the manufacturer outside of this state is exempt from the  
22 tax imposed by this chapter.

23 Section 43. That § 10-46-6 be amended to read as follows:

24 10-46-6. The use in this state of tangible personal property, any product transferred

1 electronically, or services, the gross receipts from the sale of which are to be included in the  
2 measure of the tax imposed by chapter 10-45, and any amendments made or which may  
3 hereafter be made thereto, is hereby specifically exempted from the tax imposed by this chapter.

4 Section 44. That § 10-46-6.1 be amended to read as follows:

5 10-46-6.1. The amount of any use tax imposed with respect to tangible personal property,  
6 any product transferred electronically, or services shall be reduced by the amount of any sales  
7 or use tax previously paid by the taxpayer with respect to the property on account of liability to  
8 another state or its political subdivisions. ~~Provided, however~~ However, no credit ~~shall~~ may be  
9 given under this section where taxes paid on tangible personal property, any product transferred  
10 electronically, or services in another state or its political subdivisions of that state does not  
11 reciprocally grant a credit for taxes paid on similar tangible personal property or any product  
12 transferred electronically.

13 Section 45. That § 10-46-7 be amended to read as follows:

14 10-46-7. Tangible personal property and any product transferred electronically, the storage,  
15 use, or other consumption of which this state is prohibited from taxing under the Constitution  
16 or laws of the United States of America or under the Constitution of this state, or tangible  
17 personal property and any product transferred electronically sold to the United States, the State  
18 of South Dakota, or any public or municipal corporation of the state which is for the use,  
19 storage, or consumption of such public corporations is hereby specifically exempt from the tax  
20 imposed by this chapter.

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

22 10-46-8. The use in this state of all articles of tangible personal property and any product  
23 transferred electronically brought into the State of South Dakota by a nonresident individual  
24 thereof for his or her personal use or enjoyment while within the state, is hereby specifically

exempted from the tax imposed by this chapter.

Section 47. That § 10-46-9.5 be amended to read as follows:

10-46-9.5. Unless otherwise specifically subject to tax, the gross receipts resulting from fees or commissions received for rendering a service which provides for the sale of tangible personal property, any product transferred electronically, or services is exempt from the tax imposed by this chapter.

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

10-46-15. The gross receipts from sales of tangible personal property, any product transferred electronically, and the gross receipts from sales, furnishing or service of electrical energy, natural and artificial gas, water and communication service to and for use by religious educational institutions and private educational institutions currently recognized as exempt under section 501(c)(3) of the Internal Revenue Code as in effect on January 1, 1983, and nonprofit, charitable hospitals when purchases are made by authorized officials, payment made from the institution's funds and title to the property retained in the name of the institutions, are specifically exempted from the tax imposed by this chapter. For the purposes of this section, a private educational institution shall be defined as an institution currently recognized as exempt under section 501(c)(3) of the Internal Revenue Code as in effect on January 1, 1995, maintaining a campus physically located within this state; and accredited by the South Dakota Department of Education or the North Central Association of Colleges and Schools.

This exemption does not extend to sales to or purchases of tangible personal property or any product transferred electronically for the personal use of officials, members, or employees of such institutions or to sales to or purchases of tangible personal property or any product transferred electronically used in the operation of a taxable retail business. The exemption provided in this section does not, in any manner, relieve the institution from the payment of the

1 additional and further license fee imposed on the registration of motor vehicles. All institutions  
2 claiming this exemption shall, at the end of each quarter of each calendar year, file with the  
3 Department of Revenue and Regulation a list of all purchases on which exemption was claimed,  
4 fully itemized, showing name and address of vendors, description of property purchased,  
5 purchase price, and brief explanation of use or intended use.

6 Section 49. That § 10-46-15.4 be amended to read as follows:

7 10-46-15.4. There are specifically exempted from the provisions of this chapter and the  
8 computation of the tax imposed by it, the fair market value of any tangible personal property,  
9 product transferred electronically, or service given without charge to an institution, organization,  
10 or group exempt from the tax imposed by this chapter.

11 Section 50. That § 10-46-18 be amended to read as follows:

12 10-46-18. For the purpose of the proper administration of this chapter and to prevent the  
13 evasion of the tax, evidence that tangible personal property or any product transferred  
14 electronically was sold by any person for delivery in this state shall be prima facie evidence that  
15 ~~such the~~ tangible personal property or the product transferred electronically was sold for use in  
16 this state.

17 Section 51. That § 10-46-20 be amended to read as follows:

18 10-46-20. Any retailer maintaining a place of business in this state, and making sales of  
19 tangible personal property, any product transferred electronically, or services for storage, use  
20 or other consumption in this state, not exempted under the provisions of §§ 10-46-6 to 10-46-  
21 17.5, inclusive, shall, at the time of making such sale, whether within or without the state,  
22 collect the tax imposed by this chapter from the purchaser, and give to the purchaser a receipt  
23 therefor in the manner and form prescribed by the secretary of revenue and regulation, if the  
24 secretary of revenue and regulation ~~shall~~, by rule promulgated pursuant to chapter 1-26, ~~require~~



1 ~~such requires a receipt. Such~~ The retailer shall list with the secretary of revenue and regulation  
2 the name and address of all ~~his~~ the retailer's agents operating in this state, and the location of  
3 any ~~and all his~~ of the retailer's distribution or sales houses or offices or other places of business  
4 in this state.

5 Section 52. That § 10-46-21 be amended to read as follows:

6 10-46-21. Every retailer maintaining a place of business in this state and making sales of  
7 tangible personal property or any product transferred electronically for storage, use, or other  
8 consumption in this state, shall, twice annually furnish the secretary of revenue and regulation  
9 with a list, covering the six-month period just preceding the submission of such list, which shall  
10 contain the names and addresses of all persons within the State of South Dakota who have made  
11 purchases of tangible personal property or any product transferred electronically from ~~said the~~  
12 retailer for use, storage, or consumption, ~~and which.~~ The list shall contain the total amount of  
13 the purchase price of all such personal property so purchased during ~~said the~~ period by such  
14 persons. ~~Said~~ The list required to be submitted ~~as above stated~~ need not contain any information  
15 on the sale of tangible personal property ~~when~~ or any product transferred electronically if  
16 exempt under §§ 10-46-6 to 10-46-15, inclusive.

17 Section 53. That § 10-46-22 be amended to read as follows:

18 10-46-22. The secretary of revenue and regulation may, upon application, authorize the  
19 collection of the tax imposed by this chapter by any retailer not maintaining a place of business  
20 within this state, who, to the satisfaction of the secretary of revenue and regulation furnishes  
21 adequate security to ensure collection and payment of the tax. ~~Such~~ The retailer shall be issued,  
22 without charge, a permit to collect ~~such the~~ tax in such manner, and subject to such  
23 requirements as the secretary of revenue and regulation may prescribe by rule promulgated  
24 pursuant to chapter 1-26. If so authorized, the retailer shall collect the tax upon ~~at~~ any tangible

1 personal property or any product transferred electronically sold to ~~his~~ the retailer's knowledge  
2 for use, storage, or other consumption within this state, in the same manner and subject to the  
3 same requirements as a retailer maintaining a place of business within this state. ~~Such~~ The  
4 authority and permit may be canceled ~~when~~ if, at any time, the secretary of revenue and  
5 regulation considers the security inadequate, or that such tax can more effectively be collected  
6 from the person using ~~such~~ the property in this state.

7 Section 54. That § 10-46-23 be amended to read as follows:

8 10-46-23. The tax upon the use, storage, or other consumption of all tangible personal  
9 property or any product transferred electronically which is sold by a retailer maintaining a place  
10 of business in this state, or by such other retailer as the secretary of revenue and regulation shall  
11 authorize pursuant to § 10-46-22, shall be collected by ~~such~~ the retailer and remitted to the  
12 Department of Revenue and Regulation pursuant to the provisions of §§ 10-46-24 to 10-46-31,  
13 inclusive.

14 Section 55. That § 10-46-28 be amended to read as follows:

15 10-46-28. At the time specified in § 10-46-27, the retailer shall file with the secretary of  
16 revenue and regulation a return for the preceding reporting period in such form as may be  
17 prescribed by the secretary of revenue and regulation showing the sales price of any ~~or all~~  
18 tangible personal property, any product transferred electronically, or services sold by the retailer  
19 during ~~such~~ the preceding reporting period, the use, storage, or consumption of which is subject  
20 to the tax imposed by this chapter, and such other information as the secretary of revenue and  
21 regulation may deem necessary for the proper administration of this chapter. ~~Returns~~ Each  
22 return shall be accompanied by a remittance of the amount of such tax for the period covered  
23 by the return.

24 Section 56. That § 10-46-31 be amended to read as follows:

1        10-46-31. If tangible personal property or any product transferred electronically is sold under  
2        a conditional sales contract, or under any other form of sale wherein the payment of the  
3        principal sum, or a part thereof, is extended over a period longer than sixty days from the date  
4        of the sale thereof, the retailer may collect and remit for each month that portion of the tax equal  
5        to the rate of tax as provided for in this chapter of that portion of the purchase price actually  
6        received during ~~such~~ the month.

7        Section 57. That § 10-46-33 be amended to read as follows:

8        10-46-33. The tax upon the use, storage, or consumption of ~~all~~ any tangible personal  
9        property or any product transferred electronically not paid pursuant to §§ 10-46-23 and 10-46-32  
10       shall be paid to the secretary of revenue and regulation directly by any person using such  
11       property within this state, pursuant to the provisions of § 10-46-34.

12       Section 58. That § 10-46-34.1 be amended to read as follows:

13       10-46-34.1. The amount of use tax imposed with respect to tangible personal property and  
14       any product transferred electronically in the form of equipment brought into this state on a  
15       permanent basis for direct use in a manufacturing, fabricating, or processing business shall be  
16       reduced by the amount of any sales or use tax previously paid by the taxpayer with respect to  
17       the property on account of liability to another state or its political subdivisions to the extent that  
18       such tax equals or exceeds the rate of the tax in this state. If the sales or use tax of the other state  
19       is less than the tax of this state, the taxpayer shall be subject to the payment of the balance to  
20       this state. No credit ~~shall~~ may be given under this section for taxes paid on tangible personal  
21       property or any product transferred electronically subject to the credit of this section in another  
22       state or its political subdivisions if that state does not reciprocally grant a credit for taxes paid  
23       on similar tangible personal property or any product transferred electronically in this state.

24       Section 59. That § 10-46-43 be amended to read as follows:

1        10-46-43. ~~Every~~ Each retailer required or authorized to collect taxes imposed by this chapter  
2        and ~~every~~ each person using, storing or otherwise consuming in this state tangible personal  
3        property or any product transferred electronically purchased on or after July 1, 1939, shall keep  
4        such records, receipts, invoices, and other pertinent papers as the secretary of revenue and  
5        regulation shall require, in such form as the secretary of revenue and regulation shall require.  
6        The secretary of revenue and regulation and any of ~~his~~ the secretary's duly authorized agents ~~are~~  
7        ~~hereby authorized to~~ may examine the books, papers, records, and equipment of any person  
8        either selling tangible personal property or products transferred electronically or liable for the  
9        tax imposed by this chapter, and investigate the character of the business of any such person in  
10       order to verify the accuracy of any return made, or if ~~such~~ the return was made by such person,  
11       to ascertain and determine the amount due under the provisions of this chapter. Any such books,  
12       papers, and records shall be made available within this state for such examination upon  
13       reasonable notice ~~when~~ if the secretary of revenue and regulation ~~shall deem~~ deems it advisable  
14       and ~~shall~~ so order orders.

15       Section 60. That § 10-46-66 be amended to read as follows:

16       10-46-66. All auction sales and consignment sales of tangible personal property, any product  
17       transferred electronically, and services are sales at retail. The auction clerk shall file the return  
18       and remit the tax imposed by this chapter on the gross receipts from each auction after applying  
19       the deductions provided by § 10-45-92. However, the auctioneer is responsible for the payment  
20       of the tax imposed by this chapter if the auction clerk is an employee of the auctioneer or if the  
21       auction clerk does not have a permit as required by this chapter. In addition to any other  
22       information required to be kept by this chapter, each auction clerk shall keep records that  
23       identify the owner of the property sold at auction and the auctioneer who conducts the sale of  
24       such property.

Section 61. That § 10-46-68 be amended to read as follows:

10-46-68. There are hereby exempted from the provisions of this chapter and the computation of the tax imposed by it, gross receipts from membership fees paid to any lodging house and hotel membership organization operated for the benefit of its members. However, this exemption does not apply to any membership fee that represents payment for tangible personal property, any product transferred electronically, and services provided by the membership organization.

Section 62. That subdivision (7) of § 10-45D-1 be amended to read as follows:

(7) "Visitor intensive business," any antique shop, book store, candy store, flea market, gift shop, indigenous arts and crafts shop, jewelry, lapidary shop, leather goods shop, marina, novelty shop, pottery shop, rock shop, souvenir shop, and tee shirt shop if fifty percent or more of annual total receipts are derived from the sale of tangible personal property or any product transferred electronically, during the months of June, July, August, and September. No postsecondary, college, and university book store is, however, included.

Section 63. That § 10-45D-2 be amended to read as follows:

10-45D-2. There is hereby imposed a tax of one percent on the gross receipts from any lodging establishment, campground, motor vehicle rental, visitor attraction, recreational equipment rental, recreational service, spectator event, and visitor-intensive business. The tax imposed by this section on the gross receipts of any visitor-intensive business shall apply to the gross receipts received by such business during the months of June, July, August, and September. The tax imposed by this section is in addition to any other tax imposed by chapters 10-45 and 10-46. Tangible personal property, any product transferred electronically, services, and admissions are subject to the tax imposed by this section only if subject to tax by chapters

1 10-45 and 10-46.

2 Section 64. That § 10-45D-6 be amended to read as follows:

3 10-45D-6. The tax imposed by § 10-45D-2 applies to the gross receipts from admission to  
4 a visitor attraction and from the sale of tangible personal property, any product transferred  
5 electronically, services, parking, or transportation at a visitor attraction.

6 Section 65. That § 10-45D-7 be amended to read as follows:

7 10-45D-7. The tax imposed by § 10-45D-2 applies to the gross receipts from admission to  
8 a spectator event and from the sale of tangible personal property, any product transferred  
9 electronically, services, parking, or transportation at a spectator event.

10 Section 66. That § 10-52A-1.1 be amended to read as follows:

11 10-52A-1.1. For the purposes of this chapter, the term, gross receipts, means the total  
12 amount or consideration, including cash, credit, property, and services, for which tangible  
13 personal property, any product transferred electronically, or services are sold, leased, or rented,  
14 valued in money, whether received in money or otherwise, without any deduction for the  
15 following:

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

23 Section 67. That § 10-52A-1.3 be amended to read as follows:

24 10-52A-1.3. Gross receipts, as defined in § 10-52A-1.1, do not include:

- 1 (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party  
2 that are allowed by a retailer and taken by a purchaser on a sale;
- 3 (2) Interest, financing, and carrying charges from credit extended on the sale of tangible  
4 personal property, any product transferred electronically, or services, if the amount  
5 is separately stated on the invoice, bill of sale, or similar document given to the  
6 purchaser; and
- 7 (3) Any taxes legally imposed directly on the consumer that are separately stated on the  
8 invoice, bill of sale, or similar document given to the purchaser.

9 Section 68. That § 10-43-5 be amended to read as follows:

10 10-43-5. The tax referred to in §§ 10-43-2 and 10-43-2.1 is in lieu of all other taxes and  
11 licenses, state, county and local, except taxes upon the institutions' real property, taxes upon the  
12 institutions' leased sites, and tangible personal property and products transferred electronically  
13 not normally used in extension of credit or acceptance of deposits and the retail ~~occupational~~  
14 sales tax or the use tax on tangible personal property; ~~provided, however, that~~ and any product  
15 transferred electronically. However, tangible personal property and any product transferred  
16 electronically acquired by the financial institution through a foreclosure proceeding ~~shall be~~ are  
17 exempt from such other taxes. The institutions taxed by §§ 10-43-2 and 10-43-2.1 are exempt  
18 from other net income taxation by this state.

19 Section 69. That § 10-44-8 be amended to read as follows:

20 10-44-8. ~~Every~~ Each company required to pay a tax under this chapter is exempt from all  
21 other taxes, state and local, except taxes upon real property as may be owned by ~~such~~ the  
22 company and the retail ~~occupational~~ sales tax and the use tax on tangible personal property and  
23 any product transferred electronically. An insurance policy or annuity contract is considered  
24 intangible personal property for the purposes of this section.