

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

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HOUSE TAXATION ENGROSSED NO. **HB 1053** - 01/21/2016

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

1 FOR AN ACT ENTITLED, An Act to repeal the provisions imposing and administering the
2 amusement device tax and registration.

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

4 Section 1. That § 10-58-1 be repealed.

5 ~~—10-58-1. There is imposed upon owners and operators a special amusement excise tax of~~
6 ~~four percent of the gross receipts from the operation of any mechanical or electronic amusement~~
7 ~~device.~~

8 Section 2. That § 10-58-2 be repealed.

9 ~~—10-58-2. Every machine or device referred to in § 10-58-1 shall be registered by the owner~~
10 ~~or person in possession thereof before it is offered to the public or any person for use.~~

11 Section 3. That § 10-58-3 be repealed.

12 ~~—10-58-3. Such owner or operator shall pay an annual registration fee of twelve dollars per~~
13 ~~machine. Payment of the registration fee allows the machine to be offered to the public or any~~
14 ~~person until June thirtieth. Each person tendering a registration fee shall indicate whether the~~
15 ~~machine is being operated within an incorporated municipality and which municipality. The~~



1 registration fee is in lieu of municipal sales or use tax incurred on account of the sale or use of
2 the machine and is also in lieu of all other permits, licenses, permit fees, or license fees imposed
3 by political subdivisions of the state.

4 Section 4. That §§ 10-58-2.1, 10-58-2.2, and 10-58-4 to 10-58-13, inclusive, be repealed.

5 Section 5. That ARSD 64:10:01:01 be repealed.

6 ~~64:10:01:01. Definitions. Terms used in this article mean:~~

- 7 ~~—(1) "Department," the South Dakota Department of Revenue and Regulation;~~
8 ~~—(2) "Secretary," the secretary of the South Dakota Department of Revenue and Regulation;~~
9 ~~—(3) "Amusement device" or "amusement machine," any coin-operated electronic,~~
10 ~~electromechanical, or mechanical device or machine offered to the public for amusement or~~
11 ~~entertainment.~~

12 Section 6. That ARSD 64:10:01:02 be repealed.

13 ~~64:10:01:02. Displaying decal. A registration decal is properly displayed by affixing it,~~
14 ~~using adhesive supplied on the decal, in a prominent and highly visible location on the~~
15 ~~registered amusement device so that the decal may be readily inspected by law enforcement~~
16 ~~officers and agents of the department.~~

17 Section 7. That ARSD 64:10:02:01 be repealed.

18 ~~64:10:02:01. Record keeping requirements for coin-operated mechanical or electronic~~
19 ~~amusement devices. Distributors and owners or operators of coin-operated mechanical or~~
20 ~~electronic amusement devices, which include pinball machines, games of chance, and video~~
21 ~~arcade games, shall keep at each licensed place of business complete and accurate records for~~
22 ~~that place of business. The records required include invoices of coin-operated mechanical or~~
23 ~~electronic amusement devices held, purchased, leased, manufactured, brought in or caused to~~
24 ~~be brought in from outside of South Dakota, or shipped or transported to operators in South~~

1 ~~Dakota and of all sales of coin-operated mechanical or electronic amusement devices made.~~

2 ~~—Records of names, addresses, and license numbers of operators to whom coin-operated~~
3 ~~mechanical or electronic amusement devices are sold or leased shall be maintained.~~

4 ~~—Operators with access to or control of coin-operated mechanical or electronic amusement~~
5 ~~devices shall maintain records for each game including gross receipts, credits or refunds, and~~
6 ~~profits, as well as the meter readings of each coin-operated mechanical or electronic amusement~~
7 ~~device based on a coins-in, nonresettable internal meter.~~

8 Section 8. That § 10-1-44 be amended to read:

9 10-1-44. There shall be established within the state treasury the sales and use tax collection
10 fund for the purpose of administering the sales, use, municipal non-ad valorem, and ~~contractors'~~
11 contractor's excise taxes. Charges for the administration and collection of taxes collected
12 pursuant to chapter 10-52 shall be deposited into the sales and use tax collection fund. In
13 addition, the secretary of the Department of Revenue shall, on a monthly basis, deposit revenue
14 collected as a result of taxes imposed in chapters 10-45; and 10-46; ~~and 10-58~~ in the sales and
15 use tax collection fund. The total amount deposited in the sales and use tax collection fund may
16 not exceed the amount budgeted for such purposes. All money in the fund created by this section
17 shall be budgeted and expended in accordance with the provisions of ~~Title~~ title 4 on warrants
18 drawn by the state auditor on vouchers approved by the secretary of the Department of Revenue.

19 At the end of each fiscal year any cash balance left in the sales and use tax collection fund
20 shall be transferred to the general fund.

21 Section 9. That § 10-12A-4 be amended to read:

22 10-12A-4. The department may enter into tax collection agreements with any Indian tribe
23 under the provisions of this chapter and chapter 1-24. These agreements may provide for the
24 collection of any of the following state taxes and any tribal taxes imposed by a tribe that are

1 identical to the following state taxes:

- 2 (1) The retail sales and service tax imposed by chapter 10-45;
- 3 (2) The use tax imposed by chapter 10-46;
- 4 (3) The contractors' excise tax imposed by chapter 10-46A;
- 5 (4) The alternate contractors' excise tax imposed by chapter 10-46B;
- 6 (5) The cigarette tax imposed by chapter 10-50;
- 7 (6) The motor vehicle excise tax imposed by chapter 32-5B;
- 8 (7) The fuel excise tax imposed by chapter 10-47B;
- 9 (8) The wholesale tax on tobacco products imposed by chapter 10-50;
- 10 (9) ~~The amusement device tax imposed by chapter 10-58;~~

11 ~~—(10)—~~The gross receipts tax on visitor related businesses imposed by chapter 10-45D;

12 ~~(11)~~(10) The excise tax on farm machinery, attachment units, and irrigation equipment
13 imposed by chapter 10-46E.

14 The agreement may provide for the retention by the department of an agreed-upon
15 percentage of the gross revenue as an administrative fee.

16 Section 10. That § 10-45-27.2 be amended to read:

17 10-45-27.2. Any person required to file a return and remit the tax imposed by chapter 10-45,
18 who holds a license issued pursuant to chapter 10-45, who timely files the return due, and who
19 timely remits the tax due, is allowed, as compensation for the expense of collecting and paying
20 the tax, a credit equal to one and one-half percent of the gross amount of the tax due. However,
21 the credit may not exceed seventy dollars per return period.

22 If a person is required to file a return and to remit tax more than once within a thirty day
23 period, the collection allowance credit may not exceed seventy dollars for all returns filed and
24 all remittances made within the thirty day period.

1 The collection allowance credit authorized by this section only applies to taxes reported on
2 the sales and use tax return, including the taxes imposed by chapters 10-45, 10-45D, 10-46, 10-
3 46E, 10-52, 10-52A, ~~10-58~~, and 10-33A, and §§ 32-5B-20 and 10-62-2.

4 The collection allowance credit authorized by this section shall be granted for any return to
5 be filed and for any tax to be remitted after January 1, 2014.

6 The collection allowance credit authorized by this section shall only be granted to a person
7 who timely files the return due by electronic means and who timely remits the tax due by
8 electronic means.

9 For any tax collected by the department on behalf of another entity, upon which the
10 collection allowance credit is calculated, the entities shall negotiate in good faith to share in the
11 payment of the collection allowance credit. The department may implement such allocation of
12 collection allowance credit directly or through the adjustment of any administrative fee charged
13 pursuant to § 10-59-52.

14 No person that has selected a certified service provider as its agent as set forth in § 10-45C-1
15 is entitled to the collection allowance credit authorized by this section if the certified service
16 provider receives a monetary allowance as provided by the Streamlined Sales and Use Tax
17 Agreement authorized by chapter 10-45C for performing the retailer's sales and use tax
18 functions in this state.

19 No collection allowance credit authorized by this section may be granted to any person who
20 has outstanding tax returns due to the department or who has outstanding tax remittances due
21 to the department.

22 Section 11. That § 10-59-46 be amended to read:

23 10-59-46. The secretary of revenue may prepare a list of at least one hundred delinquent
24 persons who owe the largest amount of tax for chapters 10-45, 10-45D, 10-46, 10-46E, 10-46A,

1 10-46B, 10-52, 10-52A, ~~10-58~~, and 10-33A and § 32-5B-20, and that are delinquent in the
2 payment of tax for chapters 10-45, 10-45D, 10-46, 10-46E, 10-46A, 10-46B, 10-52, 10-52A,
3 ~~10-58~~, and 10-33A and § 32-5B-20 to the department, if a lien has been filed against the person.
4 The list shall include at least the top one hundred persons with total delinquent final liabilities
5 for tax in chapters 10-45, 10-45D, 10-46, 10-46E, 10-46A, 10-46B, 10-52, 10-52A, ~~10-58~~, and
6 10-33A and § 32-5B-20, including penalties and interest. The list shall contain the person's
7 name; the business name, if any; address; and the amount of total tax, penalties and interest
8 outstanding of each delinquent person.

9 Section 12. That the code be amended by adding a NEW SECTION to read:

10 No political subdivision of the state may require any permits, licenses, permit fees, or license
11 fees upon the operation of a mechanical or electronic amusement device except for the tax
12 imposed upon the gross receipts derived from such devices pursuant to chapter 10-52.