



## 2020 South Dakota Legislature

# Senate Bill 68

Introduced by: **Senator** Steinhauer

1 **An Act to authorize a county gross receipts tax.**

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

3 **Section 1.** That a NEW SECTION be added:

4 **10-52B-1. County non-ad valorem tax--Authorization--Rate--Purpose.**

5 Any county may impose a non-ad valorem tax at the rate of one percent upon the  
6 gross receipts of:

7 (1) All lease or rentals of hotel, motel, campsites, or other lodging accommodations  
8 with the county for periods of less than twenty-eight consecutive days;

9 (2) Sales of alcoholic beverages as defined in § 35-1-1;

10 (3) Establishments where the public is invited to eat, dine, or purchase and carry out  
11 prepared food for immediate consumption;

12 (4) Ticket sales or admissions to places of amusement, athletic, and cultural events;

13 or

14 (5) Any combination of subdivisions (1) to (4).

15 Any tax collected under this chapter may only be used by the county to cover  
16 protection costs, including costs for law enforcement, incarceration, judicial services, the  
17 rehabilitation of those convicted of crimes, intervention services for persons needing  
18 substance abuse or mental health treatment, and emergency medical services.

19 **Section 2.** That a NEW SECTION be added:

20 **10-52B-2. Gross receipts determined.**

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

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

8       **Section 3.** That a NEW SECTION be added:

9                **10-52B-3. Gross receipts--Inclusion of consideration from third parties.**

10              Gross receipts under § 10-52B-2 include consideration received by the retailer from  
11      third parties if:

- 12      (1) The retailer actually receives consideration from a party other than the purchaser  
13      and the consideration is directly related to a price reduction or discount on the  
14      sale;
- 15      (2) The retailer has an obligation to pass the price reduction or discount through to  
16      the purchaser;
- 17      (3) The amount of the consideration attributable to the sale is fixed and determinable  
18      by the retailer at the time of the sale of the item to the purchaser; and
- 19      (4) One of the following criteria is met:
  - 20      (a) The purchaser presents a coupon, certificate, or other documentation to the  
21      retailer to claim a price reduction or discount where the coupon, certificate,  
22      or documentation is authorized, distributed, or granted by a third party with  
23      the understanding that the third party will reimburse any retailer to whom  
24      the coupon, certificate, or documentation is presented;
  - 25      (b) The purchaser identifies himself or herself to the retailer as a member of a  
26      group or organization entitled to a price reduction or discount (a preferred  
27      customer card that is available to any patron does not constitute  
28      membership in such a group); or
  - 29      (c) The price reduction or discount is identified as a third party price reduction  
30      or discount on the invoice received by the purchaser or on a coupon,  
31      certificate, or other documentation presented by the purchaser.

32      **Section 4.** That a NEW SECTION be added:

1           **10-52B-4. Gross receipts--Exclusions.**

2           Gross receipts under § 10-52B-2 do not include:

3           (1) Discounts, including cash, term, or coupons that are not reimbursed by a third  
4           party that are allowed by a retailer and taken by a purchaser on a sale;

5           (2) Interest, financing, and carrying charges from credit extended on the sale of  
6           tangible personal property, any product transferred electronically, or services, if  
7           the amount is separately stated on the invoice, bill of sale, or similar document  
8           given to the purchaser; and

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

11       **Section 5.** That a NEW SECTION be added:

12           **10-52B-5. Exclusion of other taxes.**

13           Notwithstanding any other provision of law, gross receipts under this chapter do  
14           not include any tax imposed by this chapter and chapters 10-45, 10-45D, 10-52, and 10-  
15           52A that is separately stated on the invoice, bill of sale, or similar document given to the  
16           purchaser.

17       **Section 6.** That a NEW SECTION be added:

18           **10-52B-6. Collection and administration by Department.**

19           The tax imposed by § 10-52B-1 shall be collected and administered by the  
20           Department of Revenue.

21       **Section 7.** That a NEW SECTION be added:

22           **10-52B-7. Filing return and remitting tax--Timing--Extension--Penalty.**

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

28           If the person remits the tax by electronic transfer to the state, the person shall file  
29           the return by electronic means on or before the twentieth day of the month following each  
30           period and remit the tax on or before the twenty-fifth day of the month following each  
31           period.

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

4           The secretary may grant an extension of not more than five days for filing a return  
5           and remittance.

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

8   **Section 8.** That a NEW SECTION be added:

9           **10-52B-8. Applicability of other provisions.**

10           The definitions, administrative, collection, and enforcement provisions of chapters  
11           10-45 and 10-46 apply to the tax imposed by this chapter, where applicable.

12   **Section 9.** That a NEW SECTION be added:

13           **10-52B-9. Promulgation of rules--Scope.**

14           The secretary of revenue may promulgate rules under chapter 1-26 concerning:

15           (1) Licensing, including bonding and filing license applications;

16           (2) The filing of returns and payment of the tax;

17           (3) Determining the application of the tax and exemptions;

18           (4) Taxpayer record-keeping requirements; and

19           (5) Determining auditing methods.

20   **Section 10.** That a NEW SECTION be added:

21           **10-52B-10. Penalties for violations--Felony--Misdemeanor.**

22           Any person who:

23           (1) Makes any false or fraudulent return in attempting to defeat or evade the tax  
24           imposed by this chapter is guilty of a Class 6 felony;

25           (2) Fails to pay tax due under this chapter within sixty days from the date the tax  
26           becomes due is guilty of a Class 1 misdemeanor;

27           (3) Fails to keep the records and books required by § 10-52B-11 or refuses to exhibit  
28           these records to the secretary of revenue or the secretary's agents for the purpose  
29           of examination is guilty of a Class 1 misdemeanor;

30           (4) Fails to file a return required by this chapter within sixty days from the date the  
31           return is due is guilty of a Class 1 misdemeanor;

- 1 (5) Willfully violates any rule of the secretary of revenue for the administration and  
2 enforcement of the provisions of this chapter is guilty of a Class 1 misdemeanor;  
3 or  
4 (6) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-  
5 month period is guilty of a Class 6 felony.

6 **Section 11.** That a NEW SECTION be added:

7 **10-52B-11. Books and records kept--Inspection--Retention period.**

8 Each person subject to tax under this chapter shall keep records and books of all  
9 receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other  
10 pertinent papers and documents. The books and records and other papers and documents  
11 are, at all times, during business hours of the day, subject to inspection by the secretary  
12 of revenue or the secretary's agents and employees to determine the amount of tax due.  
13 The books and records shall be preserved for a period of three years unless the secretary  
14 of revenue, in writing, authorized their destruction or disposal at an earlier date.

15 **Section 12.** That a NEW SECTION be added:

16 **10-52B-12. Referral to voters.**

17 Any tax imposed by the governing board of any county pursuant to the provisions  
18 of this chapter, may be referred to a vote of the people for its approval or disapproval in  
19 the same manner as provided in §§ 7-18A-9 and 7-18A-17.

20 Any amendment made by the county to comply with the provisions of this chapter  
21 or the determination to continue the tax under the provisions of this chapter is an  
22 administrative decision pursuant to § 7-18A-15.1 and not subject to referendum.

23 **Section 13.** That a NEW SECTION be added:

24 **10-52B-13. Administration of taxes--Forms and rules--Records.**

25 The administration of the taxes adopted under this chapter shall be by the  
26 Department of Revenue. The department may prescribe forms and promulgate rules under  
27 chapter 1-26 for the making of returns and for the ascertainment, assessment, and  
28 collection of the tax imposed pursuant to this chapter. The department shall keep full and  
29 accurate records of all moneys received and distributed under this chapter.

30 **Section 14.** That a NEW SECTION be added:

1           **10-52B-14. Moneys received credited to special county tax fund.**

2           All moneys received and collected on behalf of a county by the Department of  
3 Revenue, under this chapter, shall be credited to a special county tax fund and after  
4 deducting the amount of refunds made, the amounts necessary to defray the cost of  
5 collecting the tax, and the administrative expenses incident thereto, shall be paid within  
6 thirty days after collection to the county.

7           **Section 15.** That a NEW SECTION be added:

8           **10-52B-15. Ordinance or amendment enacted under chapter--Notification--**  
9 **Effective date.**

10           Notwithstanding § 7-18A-8, any new ordinance or amendment to an ordinance  
11 enacted under the authority of this chapter, and any tax rate affected thereby, can be  
12 effective only on January first or July first of a calendar year. The ordinance or amendment  
13 shall be effective on the earlier of January first or July first following at least ninety days  
14 notification by the county to the secretary of revenue that the ordinance or amendment  
15 has been enacted unless the ordinance or amendment is suspended by operation of a  
16 referendum. If an ordinance or amendment enacted under this chapter is referred and the  
17 referred ordinance or amendment is approved the effective date shall be the earlier of  
18 January first or July first following at least ninety days notification by the county to the  
19 secretary of revenue that the ordinance or amendment has been approved  
20 notwithstanding § 7-18A-22. Notification of the enactment or approval of the ordinance  
21 shall be in writing and mailed, along with a copy of the ordinance or amendment, by  
22 registered or certified mail to the secretary of revenue.

23           **Section 16.** That a NEW SECTION be added:

24           **10-52B-16. Issuance of bonds--Duration of tax--Purposes of tax proceeds.**

25           Any county imposing a tax pursuant to this chapter may issue county non-ad  
26 valorem tax revenue bonds under this section and chapter 6-8B in anticipation of the  
27 collection of the taxes. The bonds shall be payable solely from the collections of the taxes  
28 imposed by the county under this chapter, as determined by the governing body. The  
29 governing body shall, in the resolution or ordinance authorizing the bonds, agree that it  
30 will continue to impose and collect the taxes so long as the bonds are outstanding. The  
31 governing body shall also pledge so much of the collections of the taxes as may be  
32 necessary to pay the principal premium and interest on the bonds and to maintain any  
33 debt service reserve established for the bonds. If the proceeds of the tax imposed by this

1 chapter are pledged to payment of the bonds, the programs financed with the proceeds  
2 of the bonds shall relate to the purposes enumerated in § 10-52B-1.

3 No election is required to authorize the issuance of county non-ad valorem tax  
4 revenue bonds. The bonds shall be issued and sold as provided in chapter 6-8B.

5 **Section 17.** That § 10-45-1.19 be AMENDED:

6 **10-45-1.19. Gross receipts--Exclusions.**

7 Notwithstanding any other provision of law, gross receipts as defined in this chapter  
8 do not include any tax imposed by this chapter and chapters 10-45D, 10-52, ~~and~~ 10-52A,  
9 and 10-52B, and §§ 49-34A-45 and 49-34A-46 that is separately stated on the invoice,  
10 bill of sale, or similar document given to the purchaser.

11 **Section 18.** That § 10-45-27.2 be AMENDED:

12 **10-45-27.2. Collection allowance credit for collecting sales tax.**

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

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

22 The collection allowance credit authorized by this section only applies to taxes reported  
23 on the sales and use tax return, including the taxes imposed by chapters 10-45, 10-45D,  
24 10-46, 10-46E, 10-52, 10-52A, 10-52B, 10-58, and 10-33A, and §§ 32-5B-20 and 10-62-  
25 2.

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

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

31 For any tax collected by the department on behalf of another entity, upon which the  
32 collection allowance credit is calculated, the entities shall negotiate in good faith to share  
33 in the payment of the collection allowance credit. The department may implement such

1 allocation of collection allowance credit directly or through the adjustment of any  
2 administrative fee charged pursuant to § 10-59-52.

3 No person that has selected a certified service provider as its agent as set forth in  
4 § 10-45C-1 is entitled to the collection allowance credit authorized by this section if the  
5 certified service provider receives a monetary allowance as provided by the Streamlined  
6 Sales and Use Tax Agreement authorized by chapter 10-45C for performing the retailer's  
7 sales and use tax functions in this state.

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

11 **Section 19.** That § 10-45D-2.1 be AMENDED:

12 **10-45D-2.1. Gross receipts--Exclusions.**

13 Notwithstanding any other provision of law, gross receipts as defined in this chapter  
14 do not include any tax imposed by this chapter and chapters 10-45, 10-52, ~~and~~ 10-52A  
15 and 10-52B that is separately stated on the invoice, bill of sale, or similar document given  
16 to the purchaser.

17 **Section 20.** That § 10-52-1.1 be AMENDED:

18 **10-52-1.1. Gross receipts--Exclusions.**

19 Notwithstanding any other provision of law, gross receipts as defined in this chapter  
20 do not include any tax imposed by this chapter and chapters 10-45, 10-45D, ~~and~~ 10-52A  
21 and 10-52B that is separately stated on the invoice, bill of sale, or similar document given  
22 to the purchaser.

23 **Section 21.** That § 10-59-1 be AMENDED:

24 **10-59-1. Application of chapter.**

25 The provisions of this chapter may only apply to proceedings commenced under  
26 this chapter concerning the taxes, the fees, the surcharges, or the persons subject to the  
27 taxes, fees, or surcharges imposed by, or any civil or criminal investigation authorized by,  
28 chapters 10-33A, 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-45D, 10-46, 10-46A, 10-46B,  
29 10-46E, 10-47B, 10-52, 10-52A, 10-52B, 10-62, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9,  
30 32-10, 34-45, and 34A-13 and §§ 22-25-48, 49-31-51, and 50-4-13 to 50-4-17, inclusive.

31 **Section 22.** That § 10-59-32.1 be AMENDED:



1           **10-59-32.1. Returns, reports, or remittances--Timely filing--Evidence of**  
2           **mailing.**

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

14       **Section 23.** That § 10-59-40 be AMENDED:

15           **10-59-40. Filing of returns--Requirements.**

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

19       **Section 24.** That § 10-59-44 be AMENDED:

20           **10-59-44. Revocation or cancellation of license--Failure to file return or**  
21           **remit tax.**

22           The secretary may, by order, revoke or cancel the license of any person licensed  
23           pursuant to chapter 10-33A, 10-45, 10-45D, 10-46, 10-46A, 10-46B, 10-46E, 10-52, 10-  
24           52A, 10-52B, or 10-62 and who has failed to file a return, or who has filed a return and  
25           has failed to remit the tax due the state on or before the times specified in § 10-33A-10.1,  
26           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,  
27           10-52A-4.2, or 10-62-4, respectively, or any other reporting period authorized.

28       **Section 25.** That § 10-59-46 be AMENDED:

29           **10-59-46. Delinquent taxpayers--List prepared by Department.**

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

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