



## 2020 South Dakota Legislature

# House Bill 1202

Introduced by: **Representative Finck**

1 **An Act to revise provisions regarding certain sales and use tax rates.**

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

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

4 **10-45-2.01. Tax rate imposed.**

5 The rate of tax imposed under §§ 10-45-2, 10-45-5, 10-45-5.3, 10-45-6, 10-45-  
 6 6.1, 10-45-6.2, 10-45-8, 10-45-71, 10-46-2.1, 10-46-2.2, 10-46-58, 10-46-69, 10-46-  
 7 69.1, 10-46-69.2, 10-46E-1, and 10-58-1 is four and one-half percent. For each fiscal  
 8 year in which growth in gross sales tax revenue as compared with its immediately  
 9 preceding fiscal year, exceeds the adjusted cost of living plus twenty million dollars, the  
 10 rate of tax imposed by this section is reduced by one-tenth percent, effective on the next  
 11 fiscal year. The rate of tax under this section may not be reduced below two percent.

12 For purposes of this section, adjusted cost of living, means a calendar year's annual  
 13 average consumer price index consisting of all items in the United States city average of  
 14 all urban consumers which is seasonally adjusted as compiled by the bureau of labor  
 15 statistics, United States Department of Labor for the state of South Dakota.

16 **Section 2.** That § 10-45-2 be AMENDED:

17 **10-45-2. Tax on sale of tangible property.**

18 ~~There is hereby~~ imposed a tax upon the privilege of engaging in business as a  
 19 ~~retailer, a tax of four and one-half percent~~ upon the gross receipts of all sales of tangible  
 20 personal property consisting of goods, wares, or merchandise, except as otherwise  
 21 provided in this chapter, sold at retail in ~~the State of South Dakota~~ this state to consumers  
 22 or users. The rate of tax under this section is the same as provided under § 10-45-2.01.

23 **Section 3.** That § 10-45-5 be AMENDED:

1           **10-45-5. Tax on receipts from specific enumerated businesses and services.**

2           There is imposed a tax ~~at the rate of four and one-half percent upon~~ the gross  
3 receipts of any person from engaging or continuing in any of the following businesses or  
4 services in this state: abstracters; accountants; ancillary services; architects; barbers;  
5 beauty shops; bill collection services; blacksmith shops; car washing; dry cleaning;  
6 dyeing; exterminators; garage and service stations; garment alteration; cleaning and  
7 pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel  
8 supply; membership or entrance fees for the use of a facility or for the right to purchase  
9 tangible personal property, any product transferred electronically, or services;  
10 photography; photo developing and enlarging; tire recapping; welding and all repair  
11 services, except repair services for farm machinery, attachment units, and irrigation  
12 equipment used exclusively for agricultural purposes; cable television; and rentals of  
13 tangible personal property except leases of tangible personal property between one  
14 telephone company and another telephone company, motor vehicles as defined pursuant  
15 to § 32-5-1 leased under a single contract for more than twenty-eight days and mobile  
16 homes. ~~However, the specific~~ Specific enumeration of ~~businesses and professions made~~  
17 ~~in any business or profession under~~ this section does not, in any way, limit the scope and  
18 effect of the provisions of § 10-45-4. The rate of tax under this section is the same as  
19 provided under § 10-45-2.01.

20       **Section 4.** That § 10-45-5.3 be AMENDED:

21           **10-45-5.3. Tax on oil and gas field services.**

22           There is imposed, ~~at the rate of four and one-half percent,~~ an excise tax on the  
23 gross receipts of any person engaging in oil and gas field services (group no. 138) as  
24 enumerated in the Standard Industrial Classification Manual, 1987, as prepared by the  
25 Statistical Policy Division of the Office of Management and Budget, Office of the President.  
26       The rate of the tax under this section is the same as provided under § 10-45-2.01.

27       **Section 5.** That § 10-45-6 be AMENDED:

28           **10-45-6. Tax on utility services.**

29           There is ~~hereby~~ imposed a tax ~~of four and one-half percent~~ upon the gross receipts  
30 from sales, furnishing, or service of gas, electricity, and water, including the gross receipts  
31 from such sales by any municipal corporation furnishing gas, and electricity, to the public  
32 in its proprietary capacity, except as otherwise provided in this chapter, when sold at retail

1 ~~in the State of South Dakota~~ this state to consumers or users. The rate of tax under this  
2 section is the same as provided under § 10-45-2.01.

3 **Section 6.** That § 10-45-6.1 be AMENDED:

4 **10-45-6.1. Tax on intrastate, interstate, or international**  
5 **telecommunications service--Exemptions.**

6 Except as provided in § 10-45-6.2, there is ~~hereby~~ imposed a tax of ~~four and one-~~  
7 ~~half percent~~ upon the gross receipts from providing any intrastate, interstate, or  
8 international telecommunications service that originates or terminates in this state and  
9 that is billed or charged to a service address in this state, or that both originates and  
10 terminates in this state. ~~However, the~~ The tax imposed by this section does not apply to:

- 11 (1) Any eight hundred or eight hundred type service unless the service both originates  
12 and terminates in this state;
- 13 (2) Any sale of a telecommunication service to a provider of telecommunication  
14 services, including access service, for use in providing any telecommunication  
15 service; or
- 16 (3) Any sale of interstate telecommunication service provided to a call center that has  
17 been certified by the secretary of revenue to meet the criterion established in § 10-  
18 45-6.3 and the call center has provided to the telecommunications service provider  
19 an exemption certificate issued by the secretary indicating that it meets the  
20 criterion.

21 If a call center uses an exemption certificate to purchase services not meeting the  
22 criterion established in § 10-45-6.3, the call center is liable for the applicable tax, penalty,  
23 and interest. The rate of tax under this section is the same as provided under § 10-45-  
24 2.01.

25 **Section 7.** That § 10-45-6.2 be AMENDED:

26 **10-45-6.2. Tax on certain mobile telecommunications services.**

27 There is ~~hereby~~ imposed a tax of ~~four and one-half percent~~ upon the gross receipts  
28 of mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1,  
29 2002, that originate and terminate in the same state and are billed to a customer with a  
30 place of primary use in this state or are deemed to have originated or been received in  
31 this state and to be billed or charged to a service address in this state if the customer's  
32 place of primary use is located in this state regardless of where the service actually  
33 originates or terminates. Notwithstanding any other provision of this chapter and for

1 purposes of the tax imposed by this section, the tax imposed upon mobile  
2 telecommunication services shall be administered in accordance with 4 U.S.C. §§ 116-126  
3 as in effect on July 28, 2000. The rate of tax under this section is the same as provided  
4 under § 10-45-2.01.

5 **Section 8.** That § 10-45-8 be AMENDED:

6 **10-45-8. Tax on admissions to amusements and athletic contests or events.**

7 There is imposed a tax ~~of four and one-half percent~~ upon the gross receipts from  
8 all sales of tickets or admissions to places of amusement and athletic contests or events,  
9 except as otherwise provided in this chapter. The rate of tax under this section is the same  
10 as provided under § 10-45-2.01.

11 **Section 9.** That § 10-45-71 be AMENDED:

12 **10-45-71. Passenger transportation gross receipts tax imposed--**  
13 **Transportation to be within state.**

14 There is imposed a tax ~~of four and one-half percent~~ on the gross receipts from the  
15 transportation of passengers. The tax imposed by this section shall apply to any  
16 transportation of passengers if the passenger boards and exits the mode of transportation  
17 within this state. The rate of tax under this section is the same as provided under § 10-  
18 45-2.01.

19 **Section 10.** That § 10-46-2.1 be AMENDED:

20 **10-46-2.1. Tax imposed on use of services--Exemptions--Related**  
21 **corporation defined.**

22 For the privilege of using services in ~~South Dakota~~ this state, except ~~those types~~  
23 ~~of any~~ services exempted by § 10-46-17.3, there is imposed on the person using the  
24 service an excise tax ~~equal to four and one-half percent of~~ on the value of the services at  
25 the time they are rendered. ~~However, this~~ The tax under this section may not be imposed  
26 on any service rendered by a related corporation as defined in subdivision 10-43-1(11)  
27 for use by a financial institution as defined in subdivision 10-43-1(4) or on any service  
28 rendered by a financial institution as defined in subdivision 10-43-1(4) for use by a related  
29 corporation as defined in subdivision 10-43-1(11). For the purposes of this section, the  
30 term related corporation includes a corporation which together with the financial  
31 institution is part of a controlled group of corporations as defined in 26 U.S.C. § 1563 as

1 in effect on January 1, 1989, except that the eighty percent ownership requirements set  
2 forth in 26 U.S.C. § 563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-  
3 one percent. For the purpose of this chapter, services rendered by an employee for the  
4 use of his employer are not taxable. The rate of tax under this section is the same as  
5 provided under § 10-45-2.01.

6 **Section 11.** That § 10-46-2.2 be AMENDED:

7 **10-46-2.2. Tax on use of rented property and products transferred**  
8 **electronically.**

9 An excise tax is imposed upon the privilege of the use of rented tangible personal  
10 property and any product transferred electronically in this state ~~at the rate of four and~~  
11 ~~one-half percent of.~~ The rate of tax under this section is the same as provided under § 10-  
12 45-2.01 as applied to the rental payments upon the property.

13 **Section 12.** That § 10-46-58 be AMENDED:

14 **10-46-58. Passenger transportation tax imposed--Transportation to be**  
15 **within state.**

16 There is imposed a tax ~~of four and one-half percent~~ on the privilege of the use of  
17 any transportation of passengers. The tax imposed by this section shall apply to any  
18 transportation of passengers if the passenger boards and exits the mode of transportation  
19 within this state. The rate of tax under this section is the same as provided under § 10-  
20 45-2.01.

21 **Section 13.** That § 10-46-69 be AMENDED:

22 **10-46-69. Tax on use of certain mobile telecommunications services.**

23 There is ~~hereby~~ imposed a tax ~~of four and one-half percent~~ upon the privilege of  
24 the use of mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of  
25 January 1, 2002, that originate and terminate in the same state and are billed to a  
26 customer with a place of primary use in this state. Notwithstanding any other provision of  
27 this chapter and for purposes of the tax imposed by this section, the tax imposed upon  
28 mobile telecommunication services shall be administered in accordance with 4 U.S.C.  
29 §§ 116-126 as in effect on July 28, 2000. The rate of tax under this section is the same  
30 as provided under § 10-45-2.01.

31 **Section 14.** That § 10-46-69.1 be AMENDED:

1           **10-46-69.1. Tax on intrastate, interstate, or international**  
 2           **telecommunications service--Exemptions.**

3           Except as provided in § 10-46-69, there is hereby imposed a tax ~~of four and one-~~  
 4           ~~half percent~~ upon the privilege of the use of any intrastate, interstate, or international  
 5           telecommunications service that originates or terminates in this state and that is billed or  
 6           charged to a service address in this state, or that both originates and terminates in this  
 7           state. However, the tax imposed by this section does not apply to:

- 8           (1) Any eight hundred or eight hundred type service unless the service both originates  
 9           and terminates in this state;
- 10          (2) Any sale of a telecommunication service to a provider of telecommunication  
 11          services, including access service, for use in providing any telecommunication  
 12          service; or
- 13          (3) Any sale of interstate telecommunication service provided to a call center that has  
 14          been certified by the secretary of revenue to meet the criterion established in § 10-  
 15          45-6.3 and the call center has provided to the telecommunications service provider  
 16          an exemption certificate issued by the secretary indicating that it meets the  
 17          criterion.

18          If a call center uses an exemption certificate to purchase services not meeting the  
 19          criterion established in § 10-45-6.3, the call center is liable for the applicable tax, penalty,  
 20          and interest. The rate of tax under this section is the same as provided under § 10-45-  
 21          2.01.

22       **Section 15.** That § 10-46-69.2 be AMENDED:

23           **10-46-69.2. Tax on ancillary services.**

24           There is ~~hereby~~ imposed a tax ~~of four and one-half percent~~ upon the privilege of  
 25           the use of any ancillary services. The rate of tax under this section is the same as provided  
 26           under § 10-45-2.01.

27       **Section 16.** That § 10-46E-1 be AMENDED:

28           **10-46E-1. Tax imposed on gross receipts from sale, resale, or lease of farm**  
 29           **machinery, attachment units, and irrigation equipment--Rate--Trade-ins.**

30           There is ~~hereby~~ imposed an excise tax ~~of four and one-half percent~~ on the gross  
 31           receipts from the sale, resale, or lease of farm machinery, attachment units, and irrigation  
 32           equipment used exclusively for agricultural purposes. ~~However, if~~ If any trade-in or  
 33           exchange of used farm machinery, attachment units, and irrigation equipment is involved

1 in the transaction, the excise tax is only due and may only be collected on the cash  
2 difference. The rate of tax under this section is the same as provided under § 10-45-2.01.

3 **Section 17.** That § 10-58-1 be AMENDED:

4 **10-58-1. Imposition of tax--Rate.**

5 There is imposed upon owners and operators a special amusement excise tax ~~of~~  
6 ~~four and one-half percent of~~ on the gross receipts from the operation of any mechanical  
7 or electronic amusement device. The rate of tax under this section is the same as provided  
8 under § 10-45-2.01.

9 **Section 18.** That § 10-64-9 be REPEALED.

10 **10-64-9. Use of sales taxes collected from sellers located outside of state.**