

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

930B0742

HOUSE ENGROSSED NO. **SB193** - 2/24/98

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Senators Staggers, Aker, Albers, Dennert, Flowers, Hainje, Lange, and Vitter and Representatives Windhorst, Broderick, Duenwald, Hassard, Madden, Napoli, Peterson (Bill), Van Gerpen, Weber, Wetz, and Wick

1 FOR AN ACT ENTITLED, An Act to exempt certain gross receipts from sales and use tax.

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

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

5 There are hereby exempted from the provisions of this chapter and the computation of the
6 tax imposed by it, the gross receipts received by a mailing service for the cost of United States
7 postage paid by such mailing service if the cost of postage is listed by the mailing service as a
8 separate line item on the customer's bill and the cost of the postage is no greater than the cost
9 of the postage to the mailing service.

10 For the purposes of this section, a mailing service is any business that uses the United States
11 Postal Service to deliver items for another customer of the mail service, in which said mailing
12 service has no financial interest.

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

1 There are hereby exempted from the provisions of this chapter and the computation of the
2 tax imposed by it, the use of United States postage.

3 Section 3. That § 10-45-12.1 be amended to read as follows:

4 10-45-12.1. The following services enumerated in the Standard Industrial Classification
5 Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and
6 Budget, Office of the President are exempt from the provisions of this chapter: health services
7 (major group 80); educational services (major group 82) except schools and educational services
8 not elsewhere classified (industry no. 8299); social services (major group 83); agricultural
9 services (major group 07) except veterinarian services (group no. 074) and animal specialty
10 services, except veterinary (industry no. 0752); forestry services (group no. 085); radio and
11 television broadcasting (group no. 483); railroad transportation (major group 40); local and
12 suburban passenger transportation (group no. 411) ~~except limousine services; taxicabs (group~~
13 no. 412); intercity and rural bus transportation (group no. 413); bus charter service (group 414);
14 school buses (group no. 415); trucking and courier services, except air (group no. 421); farm
15 product warehousing and storage (industry no. 4221); establishments primarily engaged in
16 transportation on rivers and canals (group no. 444); establishments primarily engaged in air
17 transportation, certified carriers (group no. 451); establishments primarily engaged in air
18 transportation, noncertified carriers (group no. 452) except ~~chartered flights (industry no. 4522)~~
19 and airplane, helicopter, balloon, dirigible and blimp rides for amusement or sightseeing; pipe
20 lines, except natural gas (major group 46); arrangement of passenger transportation (group no.
21 472); arrangement of transportation of freight and cargo (group no. 473); rental of railroad cars
22 (group no. 474); water supply (industry no. 4941); sewerage systems (industry no. 4952);
23 security brokers, dealers and flotation companies (group no. 621); commodity contracts brokers
24 and dealers (group no. 622); credit counseling services provided by individual and family social
25 services (group no. 8322); construction services (division C) except industry no. 1752; consumer

1 credit reporting agencies, mercantile reporting agencies, and adjustment and collection agencies
2 (group no. 732), if the debt was incurred out-of-state and the client does not reside within the
3 state. The following are also specifically exempt from the provisions of this chapter: financial
4 services of institutions subject to tax under chapter 10-43 including loan origination fees, late
5 payment charges, nonsufficient fund check charges, stop payment charges, safe deposit box rent,
6 exchange charges, commission on travelers checks, charges for administration of trusts, interest
7 charges, and "points" charged on loans; commissions earned or service fees paid by an insurance
8 company to an agent or representative for the sale of a policy; services of brokers and agents
9 licensed under Title 47; the sale of trading stamps; rentals of motor vehicles as defined by
10 § 32-5-1 leased under a single contract for more than twenty-eight days; advertising services;
11 services provided by any corporation to another corporation which is centrally assessed having
12 identical ownership and services provided by any corporation to a wholly owned subsidiary
13 which is centrally assessed; continuing education programs, tutoring, vocational counseling,
14 except rehabilitation counseling and motion picture rentals to a commercially operated theater
15 primarily engaged in the exhibition of motion pictures; and charges made by a
16 telecommunications company for the origination, transmission, switching, reception or
17 termination of an interstate telephone or telegraph communication.

18 Section 4. That § 10-45-70 be repealed.

19 ~~10-45-70. There is imposed a tax of four percent on the gross receipts from the~~
20 ~~transportation of tangible personal property. The tax imposed by this section shall apply to any~~
21 ~~transportation of tangible personal property if both the origin and destination of the tangible~~
22 ~~personal property are within this state.~~

23 Section 5. That § 10-45-71 be repealed.

24 ~~10-45-71. There is imposed a tax of four percent on the gross receipts from the~~
25 ~~transportation of passengers. The tax imposed by this section shall apply to any transportation~~

1 of passengers if the passenger boards and exits the mode of transportation within this state.

2 Section 6. That § 10-45-72 be repealed.

3 ~~10-45-72. The tax imposed by §§ 10-45-70 to 10-45-81, inclusive, does not apply to any~~
4 ~~transportation service which the state is prohibited from taxing by federal law or the United~~
5 ~~States Constitution.~~

6 Section 7. That § 10-45-73 be repealed.

7 ~~10-45-73. The transportation of agricultural products by the agricultural producer thereof~~
8 ~~is exempt from the tax imposed by §§ 10-45-70 to 10-45-81, inclusive, if the producer transports~~
9 ~~such products in a mode of transportation which is owned, leased, or rented by the producer.~~
10 ~~However, if an agricultural producer transports another person's products for hire, such~~
11 ~~transportation is subject to the tax imposed by §§ 10-45-70 to 10-45-81, inclusive.~~

12 Section 8. That § 10-45-74 be repealed.

13 ~~10-45-74. Transportation services may only be sold for resale under the following~~
14 ~~circumstances:~~

15 ~~(1) A transportation company may sell its services for resale to another transportation~~
16 ~~company; or~~

17 ~~(2) A retailer that regularly delivers a majority of the tangible personal property which it~~
18 ~~sells to its customers by truck or other mode of transportation owned, leased, or~~
19 ~~rented by such retailer may purchase for resale the services of a transportation~~
20 ~~company for the delivery of such retailer's tangible personal property.~~

21 Section 9. That § 10-45-75 be repealed.

22 ~~10-45-75. Terms used in §§ 10-45-76 to 10-45-78, inclusive, mean:~~

23 ~~(1) "Cargo vessel," a single transport truck as defined in subdivision 10-47B-3(47);~~
24

25 ~~(2) "Fuel," gasoline, ethanol, methanol, liquefied petroleum gas, petroleum distillates,~~

1 ~~lubricating oils and greases, glycol-based antifreezes, fuels used for off-highway~~
 2 ~~racing, solvents such as, but not limited to, petroleum naphtha, mineral spirits, or~~
 3 ~~stoddard solvents, and any other petroleum product delivered to a terminal by~~
 4 ~~pipeline, truck, or rail, any other motor fuel as defined in subdivision 10-47B-3(27),~~
 5 ~~and special fuel as defined in subdivision 10-47B-3(39);~~

6 ~~(3) "Fuel terminal transportation," the transportation of fuel from a terminal to a location~~
 7 ~~in South Dakota at which the fuel is unloaded. Fuel terminal transportation does not~~
 8 ~~include the transportation of fuel from a location other than a terminal;~~

9 ~~(4) "Terminal," as defined in subdivision 10-47B-3(42);~~

10 ~~(5) "Trip," the distance in road miles traveled by a cargo vessel from the fuel terminal at~~
 11 ~~which it was loaded with fuel to the most distant location in South Dakota at which~~
 12 ~~the fuel is unloaded, excluding miles not traveled within this state.~~

13 Section 10. That § 10-45-76 be repealed.

14 ~~10-45-76. In lieu of the tax imposed by §§ 10-45-70 and 10-46-57 on the transportation of~~
 15 ~~fuel, a transportation company may elect to be taxed on the fuel terminal transportation services~~
 16 ~~under the provisions of §§ 10-45-75 to 10-45-78, inclusive.~~

17 Section 11. That § 10-45-77 be repealed.

18 ~~10-45-77. There is imposed a tax on the imputed gross receipts of any transportation~~
 19 ~~company engaged in fuel terminal transportation who elects to be taxed under this section. The~~
 20 ~~tax imposed by this section shall be on the imputed gross receipts as provided in this section. The~~
 21 ~~imputed gross receipts from fuel terminal transportation shall be calculated on the basis of the~~
 22 ~~number of cargo vessels and distance traveled on each trip as follows:~~

23	Length	Imputed Gross
24	of Trip	Number of Cargo Receipts from
25	Zone (in miles)	Vessels per Trip Transportation

1	A	50 or Less	1	\$ 64.00
2	A	50 or Less	2 or more	\$ 88.00
3	B	More than 50, but less than 100	1	\$120.00
4	B	More than 50, but less than 100	2 or more	\$165.00
5	C	100 or more, but less than 150	1	\$176.00
6	C	100 or more, but less than 150	2 or more	\$242.00
7	D	150 or more, but less than 200	1	\$224.00
8	D	150 or more, but less than 200	2 or more	\$308.00
9	E	200 or more	1	\$280.00
10	E	200 or more	2 or more	\$385.00

11 Section 12. That § 10-45-78 be repealed.

12 ~~10-45-78. For the fuel terminal transportation subject to tax under §§ 10-45-75 to 10-45-77,~~
13 ~~inclusive, all subsequent transportation of that fuel is exempt from the tax imposed under this~~
14 ~~chapter.~~

15 Section 13. That § 10-45-79 be repealed.

16 ~~10-45-79. The provisions of § 10-45-22 shall also apply to any taxes imposed by §§ 10-45-75~~
17 ~~to 10-45-77, inclusive, on transportation services regardless of any special reporting election the~~
18 ~~taxpayer may have made.~~

19 Section 14. That § 10-45-81 be repealed.

20 ~~10-45-81. There are exempted from the provisions of this chapter and the tax imposed by it,~~
21 ~~the gross receipts from transportation services associated with timber sale contracts entered into~~
22 ~~prior to July 1, 1996, provided such contract has a duration of one year or less.~~

23 Section 15. That § 10-46-57 be repealed.

24 ~~10-46-57. There is imposed a tax of four percent on the privilege of the use of any~~
25 ~~transportation of tangible personal property. The tax imposed by this section shall apply to any~~

1 ~~transportation of tangible personal property if both the origin and destination of the tangible~~
2 ~~personal property are within this state.~~

3 Section 16. That § 10-46-58 be repealed.

4 ~~— 10-46-58. There is imposed a tax of four percent on the privilege of the use of any~~
5 ~~transportation of passengers. The tax imposed by this section shall apply to any transportation~~
6 ~~of passengers if the passenger boards and exits the mode of transportation within this state.~~

7 Section 17. That § 10-46-59 be repealed.

8 ~~— 10-46-59. The tax imposed by §§ 10-46-57 to 10-46-61, inclusive, does not apply to any~~
9 ~~transportation service which the state is prohibited from taxing by federal law or the United~~
10 ~~States Constitution.~~

11 Section 18. That § 10-46-60 be repealed.

12 ~~— 10-46-60. The transportation of agricultural products by the agricultural producer thereof~~
13 ~~is exempt from the tax imposed by §§ 10-46-57 to 10-46-61, inclusive, if the producer transports~~
14 ~~such products in a mode of transportation which is owned, leased, or rented by the producer.~~
15 ~~However, if an agricultural producer transports another person's products for hire, such~~
16 ~~transportation is subject to the tax imposed by §§ 10-46-57 to 10-46-61, inclusive.~~

17 Section 19. That § 10-46-61 be repealed.

18 ~~— 10-46-61. There are exempted from the provisions of this chapter and the tax imposed by it,~~
19 ~~the use of transportation services associated with timber sale contracts entered into prior to~~
20 ~~July 1, 1996, provided such contract has a duration of one year or less.~~

1 **BILL HISTORY**

2 1/23/98 First read in Senate and referred to Taxation. S.J. 179

3 2/6/98 Scheduled for Committee hearing on this date.

4 2/6/98 Scheduled for Committee hearing on this date.

5 2/6/98 Taxation Do Pass, Passed, AYES 9, NAYS 0. S.J. 358

6 2/9/98 Senate Deferred to another day. S.J. 392

7 2/10/98 Senate Deferred to another day. S.J. 421

8 2/11/98 Senate Deferred to another day. S.J. 450

9 2/12/98 Motion to Amend, Passed. S.J. 481

10 2/12/98 Motion to Amend, Passed, AYES 18, NAYS 17. S.J. 482

11 2/12/98 Senate Do Pass Amended, Passed, AYES 27, NAYS 8. S.J. 482

12 2/12/98 Senate Title Amended Passed. S.J. 483

13 2/13/98 Senate Hog Housed.

14 2/13/98 First read in House and referred to Taxation. H.J. 683

15 2/17/98 Scheduled for Committee hearing on this date.

16 2/19/98 Scheduled for Committee hearing on this date.

17 2/19/98 Taxation Do Pass, Passed, AYES 12, NAYS 0. H.J. 771

18 2/19/98 Taxation Place on Consent Calendar.

19 2/20/98 Second reading of consent calendar items.

20 2/23/98 Motion to Amend, Passed, AYES 41, NAYS 26. H.J. 843

21 2/23/98 House of Representatives Do Pass Amended, Passed, AYES 49, NAYS 21. H.J. 848

22 2/23/98 House of Representatives Title Amended Passed. H.J. 848

23 2/23/98 Intent to reconsider. H.J. 848