

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

177E0007

SENATE ENGROSSED NO. **SB 214** - 02/13/2001

Introduced by: Senators Apa, Drake, Koskan, Sutton (Dan), Symens, and Volesky and
Representatives Napoli, Broderick, Burg, Duenwald, Hennies (Thomas),
Lange, Madsen, Sutton (Duane), and Teupel

1 FOR AN ACT ENTITLED, An Act to establish a telecommunications gross receipts tax, to
2 provide for its distribution, and to repeal certain property taxes and certain gross receipts
3 taxes paid by certain telecommunications companies.

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

5 Section 1. Terms used in this Act mean:

- 6 (1) "Department," the South Dakota Department of Revenue;
- 7 (2) "Engaging in business," carrying on or causing to be carried on any activity with the
8 purpose of direct or indirect benefit;
- 9 (3) "Secretary," the secretary of the Department of Revenue;
- 10 (4) "Station," a subscriber service address located in this state with a distinct call number
11 designation or distinct extension number designation. If this is not a defined location,
12 the term, station, means the location of the primary user of telecommunications
13 equipment as determined by the telephone number, authorization code, or billing
14 address;

1 (5) "Telecommunications company," any person as defined by § 2-14-2, trustee, lessee,
2 receiver, or municipality providing any telecommunications service;

3 (6) "Telecommunications gross receipts tax," the gross receipts tax imposed by this Act.

4 Section 2. The term, telecommunications service, as used in this Act, means the transmission
5 of signs, signals, writings, images, sounds, messages, data, or other information of any nature
6 for two-way communication by wire, radio, light waves, electromagnetic means, or other similar
7 means. The term, telecommunications service, does not include the provision of terminal
8 equipment used to originate or terminate such service. The term, telecommunications service,
9 does not include specialized mobile radio service, private mobile radio service, one-way cable
10 television service, or pay per view cable television service.

11 Section 3. The term, gross receipts, as used in this Act, only includes revenue of a
12 telecommunications company from the sale at retail of intrastate and interstate
13 telecommunications services. Sale at retail does not include the sale of any telecommunications
14 service by a telecommunications company to another telecommunications company if the service
15 is resold or becomes a component part of the sale by the second telecommunications company.
16 Any hospital, hotel, motel, or place that provides temporary accommodations selling
17 telecommunications services to its patients or guests is not a telecommunications company under
18 this Act.

19 Section 4. The term, interstate telecommunication service, as used in this Act, means any
20 telecommunications service that originates or terminates in this state and is billed to a station in
21 this state.

22 Section 5. There is hereby imposed a tax of three and one-half percent on the gross receipts
23 of any telecommunications company from the sale at retail of any telecommunications service.

24 Section 6. There is created in the state treasury the telecommunications gross receipts tax

1 fund. The secretary shall deposit any revenue collected from the tax imposed by section 5 of this
2 Act into this fund.

3 Section 7. The secretary shall make distributions from the telecommunications gross receipts
4 tax fund each March, June, September, and December to replace the distributions made to each
5 school district pursuant to chapter 10-33 prior to the repeal of that chapter by this Act. The
6 amount of the distribution to each school district pursuant to this section shall ensure that each
7 school district receives each calendar year as much as the school district received pursuant to
8 chapter 10-33 in calendar year 1999. The secretary shall approve vouchers and the state auditor
9 shall draw warrants to pay each school district its share of the distribution.

10 Section 8. Any municipally owned and operated telecommunications company may annually
11 receive a tax credit for funds transferred from such telecommunications company to a school
12 district. The tax credit reduces any gross receipts tax due pursuant to this Act, and the tax credit
13 may not exceed five hundred thousand dollars in one year.

14 Section 9. The secretary shall make distributions from the telecommunications gross receipts
15 tax fund each March, June, September, and December to each county to replace any revenue
16 from property taxes levied pursuant to subdivision 10-33-17(2) prior to the repeal of that
17 subdivision by this Act. The amount of the distribution to each county pursuant to this section
18 shall ensure that each county receives each calendar year as much as the county received
19 pursuant to subdivision 10-33-17(2) in calendar year 1999. The secretary shall approve vouchers
20 and the state auditor shall draw warrants to pay each county its share of the distribution.

21 Section 10. There shall be deposited in the property tax reduction fund an amount of three
22 million dollars from the gross receipts tax imposed by this Act for the purpose of replacing the
23 property taxes paid by centrally assessed telecommunications company which has been
24 considered local effort and the state shall adjust the relative proportion of local need paid by local

1 effort and state aid pursuant to this amount.

2 Section 11. The secretary shall transfer any revenues remaining in the telecommunications
3 gross receipts tax fund, after the distributions required by this Act, in the following manner:

4 (1) Sixty percent shall be deposited in the property tax reduction fund. Any revenue
5 deposited in the property tax reduction fund pursuant to this section shall be dedicated
6 to increasing the funds to each school district based on its share of the statewide
7 average daily membership as defined in subdivision 13-13-10.1(1); and

8 (2) Forty percent shall be deposited in the county telecommunications gross receipts fund
9 which is hereby created pursuant to this section.

10 Section 12. The secretary shall distribute to each county an amount equal to one-half of the
11 money deposited in county telecommunications gross receipts fund times the ratio of the
12 assessed valuation of the county to the total assessed valuation of all counties plus one-half of
13 the money deposited in county telecommunications gross receipts fund times the ratio of
14 population of the county to the total population of all counties. The secretary shall base the
15 allocation of money on the most recent assessed valuations as published by the Department of
16 Revenue and the most recent decennial census of the United States Department of Commerce,
17 Bureau of the Census. The secretary shall make distributions from the county
18 telecommunications gross receipts fund each March, June, September, and December. The
19 secretary shall approve vouchers and the state auditor shall draw warrants to pay each county
20 its share of the distribution.

21 Section 13. Any property taxes levied pursuant to chapter 10-33 and payable for calendar
22 year 2001 are due January 31, 2002. Any taxes imposed pursuant to chapter 10-33 and payable
23 on gross receipts for calendar year 2001 are due January 31, 2002.

24 Section 14. Any telecommunications company engaging in a business in this state whose

1 gross receipts from telecommunications services are subject to the telecommunications gross
2 receipts tax shall file with the department, an application for a telecommunications gross receipts
3 tax license. An application for a license shall be made upon a form prescribed by the secretary
4 and shall set forth the name under which the applicant transacts or intends to transact business,
5 the location of the place of business, and such other information as the secretary may require.
6 The application shall be signed by the owner, if a natural person; in the case of an association or
7 partnership, by a member or partner thereof; or in the case of a corporation or a municipality,
8 by an executive officer thereof or some person specifically authorized by the corporation or the
9 municipality to sign the application, to which shall be attached the written evidence of the
10 person's authority.

11 Section 15. The secretary shall grant and issue to each applicant a telecommunications gross
12 receipts tax license. A license is not assignable and is valid only for the telecommunications
13 company to which it was issued. Any license issued is valid and effective without further payment
14 of fees until canceled or revoked.

15 Section 16. The secretary may refuse to issue a telecommunications gross receipts tax license
16 to any person who is delinquent in payment of other taxes levied by the State of South Dakota.
17 The secretary may also require an applicant to furnish to the state a bond, or other adequate
18 security, as security for payment of any gross receipts tax that may become due, or require a
19 bond or security as a condition precedent to remaining in business as a telecommunications
20 company.

21 Section 17. Any person who is the holder of a telecommunications gross receipts tax license
22 or is a telecommunications company whose receipts are subject to telecommunications gross
23 receipts tax in this state shall file a return and remit the tax on or before the twentieth day of the
24 month following each monthly period. If the telecommunications company files the return and

1 remits the tax by electronic transfer to the state, the telecommunications company shall file the
2 return and remit the tax on or before the last day of the month following each monthly period.

3 The secretary may grant an extension of not more than five days for filing a return and
4 remittance. Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if
5 a return or remittance is not made on time.

6 Section 18. Any telecommunications company that is the holder of a telecommunications
7 gross receipts tax license and that has failed to file a return, or that has filed a return and has
8 failed to pay the tax due the state under this law on or before the fifteenth of the second month
9 following the reporting period authorized, may no longer continue as a telecommunications
10 company and its telecommunications gross receipts tax license shall be revoked and canceled.

11 Section 19. Any appeal from a decision of the secretary in a contested case shall be taken in
12 accordance with chapter 1-26.

13 Section 20. The secretary may not reinstate the license of a telecommunications company,
14 which has been canceled or revoked as provided in this Act, until all the telecommunications
15 gross receipts tax due the state and a ten dollar reinstatement fee has been paid. The secretary
16 may also require the telecommunications company to file a bond as security for any future
17 liability.

18 Section 21. Any refund or allowance made by any telecommunication service or any amount
19 written off the books of a telecommunications company reporting financial information on an
20 accrual basis may be reported as an uncollectible debt and deducted from the gross receipts of
21 any telecommunications service. If any uncollectible debt is subsequently collected, the amount
22 is subject to the telecommunications gross receipts tax and shall be reported to the department
23 in the month of collection.

24 Section 22. Any telecommunications company subject to the telecommunications gross

1 receipts tax shall keep records of all receipts and telecommunications service sales. The records
2 are, at all times during business hours of the day, subject to inspection by the department to
3 determine the amount of tax due. The records shall be preserved for a period of three years
4 unless the secretary, in writing, authorized their destruction or disposal at an earlier date.

5 Section 23. The secretary may promulgate rules pursuant to chapter 1-26 concerning:

- 6 (1) Telecommunications tax licensing, including bonding and filing license applications;
- 7 (2) The filing of returns and payment of the tax;
- 8 (3) Determining the application of the telecommunications tax and exemptions;
- 9 (4) Taxpayer record-keeping requirements; and
- 10 (5) Determining auditing methods.

11 Section 24. Any person who:

- 12 (1) Makes any false or fraudulent return in attempting to defeat or evade the
13 telecommunications gross receipts tax is guilty of a Class 6 felony;
- 14 (2) Fails to pay the telecommunications gross receipts tax due under this Act within thirty
15 days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- 16 (3) Fails to keep the records required by this Act or refuses to exhibit these records to the
17 department for the purpose of examination is guilty of a Class 1 misdemeanor;
- 18 (4) Fails to file a return required by this Act within thirty days from the date the return is
19 due is guilty of a Class 1 misdemeanor;
- 20 (5) Engages in business as a telecommunications company under this Act without
21 obtaining a telecommunications gross receipts tax license is guilty of a Class 1
22 misdemeanor;
- 23 (6) Engages in business as a telecommunications company under this Act after the
24 company's telecommunications gross receipts tax license has been revoked or

1 canceled by the secretary is guilty of a Class 6 felony;

2 (7) Willfully violates any rule of the secretary for the administration and enforcement of
3 the provisions of this Act is guilty of a Class 1 misdemeanor;

4 (8) Violates either subdivision (2) or subdivision (4) of this section two or more times in
5 any twelve-month period is guilty of a Class 6 felony; or

6 (9) Engages in business as a telecommunications company under this Act without
7 obtaining a telecommunications gross receipts tax license after having been notified
8 in writing by the secretary that the telecommunications company is subject to the
9 provisions of this Act is guilty of a Class 6 felony. However, it is not a violation of
10 this subdivision if the telecommunications company providing any telecommunications
11 service files an application for a telecommunications gross receipts tax license and
12 meets all lawful prerequisites for obtaining such license within three days from receipt
13 of written notice from the secretary.

14 For purposes of this section, the term, telecommunications company, includes corporate
15 officers having control, supervision of or charged with the responsibility for making tax returns
16 or payments pursuant to this Act.

17 Section 25. If a corporation subject to the gross receipts tax under this Act fails for any
18 reason to file the required returns or to pay the tax due, any of its officers having control, or
19 supervision of, or charged with the responsibility for making such returns and payments are
20 personally liable for such failure. The dissolution of a corporation does not discharge an officer's
21 liability for a prior failure of the corporation to make a return or remit the tax due. The sum due
22 for such a liability may be assessed and collected as provided by law.

23 If the corporate officers elect not to be personally liable for the failure to file the required
24 returns or to pay the tax due, the corporation shall provide the department with a surety bond

1 or certificate of deposit as security for payment of any tax that may become due. The bond or
2 certificate of deposit provided for in this section shall be in an amount equal to the estimated
3 annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section
4 does not apply to elected or appointed officials of a municipality if they are bonded pursuant to
5 §§ 9-14-6 and 9-14-6.1.

6 Section 26. Any real and personal property owned by a telecommunications company that
7 is used or intended for use in furnishing and providing telecommunication services is exempt
8 from real and personal property taxes levied by the state, counties, municipalities, townships, or
9 other political subdivisions of the state.

10 Section 27. That § 10-59-1 be amended to read as follows:

11 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
12 or fees imposed by this Act, chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A,
13 10-46B, 10-47B, 10-52, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and
14 §§ 22-25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

15 Section 28. That §§ 10-33-1 to 10-33-30, inclusive, be repealed.

16 Section 29. This Act is effective on January 1, 2002.