

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

708E0621

HOUSE TAXATION COMMITTEE ENGROSSED NO. **SB 209** - 02/20/2001

Introduced by: Senators Olson (Ed), Diedrich (Elmer), and Sutton (Dan) and
Representatives Brown (Richard), Derby, Flowers, Jaspers, and Sebert

1 FOR AN ACT ENTITLED, An Act to permit certain businesses to remit sales and use tax after
2 the machinery is under production.

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

4 Section 1. That § 10-45-27 be amended to read as follows:

5 10-45-27. Any person who is the holder of a sales tax permit or is a retailer whose receipts
6 are subject to sales tax in this state during the periods specified by this section shall make a return
7 and remittance to the Department of Revenue on forms prescribed and furnished by the
8 department in the following manner:

9 (1) Any person whose tax liability is one thousand dollars or more annually, shall file the
10 return and remit the tax on or before the twentieth day of the month following each
11 monthly period;

12 (2) Any person whose tax liability is less than one thousand dollars annually, shall file the
13 return and remit the tax on or before the last day of the month following each
14 two-month period;

1 (3) Any person whose tax liability is one thousand dollars or more annually and who
2 remits the tax by electronic transfer to the state, shall file the return by electronic
3 means on or before the twenty-third day of the month following each monthly period
4 and remit the tax on or before the second to the last day of the month following each
5 monthly period.

6 The secretary of revenue may grant an extension of not more than five days for filing a return
7 and remittance. However, the secretary of revenue may grant an extension for remitting the tax
8 to a qualified business as provided in sections 2 to 10, inclusive, of this Act for six months.

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

11 Section 2. Terms used in this Act mean:

- 12 (1) "Department," the Department of Revenue;
- 13 (2) "Business," a business that has purchased and is installing tangible personal property
14 in the form of equipment or machinery for direct use in an electrical generation,
15 electrical transmission, manufacturing, fabricating, or processing business, which is
16 subject to sales or use tax pursuant to chapter 10-45 or 10-46;
- 17 (3) "Project," the purchase and installation of equipment or machinery;
- 18 (4) "Project cost," the amount paid in money for a project;
- 19 (5) "Secretary," the secretary of the Department of Revenue.

20 Section 3. Any electrical generation, electrical transmission, manufacturing, fabricating, or
21 processing business may apply for and obtain an extension for remitting the sales and use tax
22 imposed and due under the provisions of chapter 10-45 or 10-46 for equipment or machinery
23 that will be for direct use in an electrical generation, electrical transmission, manufacturing,
24 fabricating, or processing business. The extension shall end after six months.

1 Section 4. The extension pertains only to equipment and machinery purchased and installed
2 after July 1, 2001. No extension may be made unless:

- 3 (1) The project cost exceeds twenty thousand dollars; and
- 4 (2) The business applying for the extension obtains a permit from the secretary as set
5 forth in section 6 of this Act.

6 Section 5. The amount of the tax extension shall apply to one hundred percent of the
7 equipment and machinery costs and installation fees.

8 Section 6. Any business desiring an extension pursuant to this Act shall apply for a permit
9 from the secretary at least thirty days prior to commencement of the project. The application for
10 a permit shall be submitted on a form prescribed by the secretary. A separate application shall
11 be made and submitted for each project. Upon approval of the application, the secretary shall
12 issue a permit entitling the applicant to an extension as provided by this Act. The permit or
13 extension is not assignable or transferable.

14 Section 7. Any extension shall be submitted on forms prescribed by the secretary and shall
15 be supported by such documentation as the secretary may require. The secretary may deny any
16 extension where the business has failed to provide information or documentation requested or
17 considered necessary by the secretary to determine the validity of the extension.

18 Section 8. If any extension has been fraudulently presented or supported as to any item in the
19 claim, or if the business fails to meet all the conditions of this Act, then the business may be
20 rejected in its entirety and any tax due from the business shall constitute a debt to the state and
21 a lien in favor of the state upon all property and rights to property whether real or personal
22 belonging to the business and may be recovered in an action of debt.

23 Section 9. Any business aggrieved by the denial in whole or in part of a extension requested
24 under this Act, may within thirty days after service of the notice of a denial by the secretary,

1 demand and is entitled to a hearing, upon notice, before the secretary. The hearing shall be
2 conducted pursuant to chapter 1-26.

3 Section 10. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the
4 procedures for filing extensions and the requirements necessary to qualify for an extension.