

## 2023 South Dakota Legislature

**Senate Bill 112****AMENDMENT 112A  
FOR THE INTRODUCED BILL**

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

1 **An Act to ~~establish and modify provisions related to taxation~~reduce certain gross**  
2 **receipts tax rates and a use tax rate, and to repeal a conditional reduction of**  
3 **certain gross receipts tax rates.**

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

5 **Section 1. That § 10-45-2 be AMENDED:**

6 **10-45-2.** There is hereby imposed a tax upon the privilege of engaging in business  
7 as a retailer, a tax of four and ~~one-half percent~~ two-tenths upon the gross receipts of all  
8 sales of tangible personal property consisting of goods, wares, or merchandise, except as  
9 otherwise provided in this chapter, sold at retail in the ~~State of South Dakota~~ state to  
10 consumers or users.

11 **Section 2. That § 10-45-5 be AMENDED:**

12 **10-45-5.** There is imposed a tax at the rate of four and ~~one-half~~ two-tenths  
13 percent upon the gross receipts of any person from engaging or continuing in any of the  
14 following businesses or services in this state: abstracters; accountants; ancillary services;  
15 architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing;  
16 dry cleaning; dyeing; exterminators; garage and service stations; garment alteration;  
17 cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen  
18 and towel supply; membership or entrance fees for the use of a facility or for the right to  
19 purchase tangible personal property, any product transferred electronically, or services;  
20 photography; photo developing and enlarging; tire recapping; welding and all repair  
21 services, except repair services for farm machinery, attachment units, and irrigation  
22 equipment used exclusively for agricultural purposes; cable television; and rentals of  
23 tangible personal property except leases of tangible personal property between one

1 telephone company and another telephone company, motor vehicles as defined pursuant  
2 to § 32-5-1 leased under a single contract for more than twenty-eight days and mobile  
3 homes. However, the specific enumeration of businesses and professions made in this  
4 section does not, in any way, limit the scope and effect of the provisions of § 10-45-4.

5 **Section 3. That § 10-45-5.3 be AMENDED:**

6 **10-45-5.3.** There is imposed, at the rate of four and ~~one-half~~ two-tenths percent,  
7 an excise tax on the gross receipts of any person engaging in oil and gas field services  
8 (group no. 138) as enumerated in the Standard Industrial Classification Manual, 1987, as  
9 prepared by the Statistical Policy Division of the Office of Management and Budget, Office  
10 of the President.

11 **Section 4. That § 10-45-6 be AMENDED:**

12 **10-45-6.** There is hereby imposed a tax of four and ~~one-half~~ two-tenths percent  
13 upon the gross receipts from sales, furnishing, or service of gas, electricity, and water,  
14 including the gross receipts from such sales by any municipal corporation furnishing gas,  
15 and electricity, to the public in its proprietary capacity, except as otherwise provided in  
16 this chapter, when sold at retail in the State of South Dakota to consumers or users.

17 **Section 5. That § 10-45-6.1 be AMENDED:**

18 **10-45-6.1.** Except as provided in § 10-45-6.2, there is hereby imposed a tax of  
19 four and ~~one-half~~ two-tenths percent upon the gross receipts from providing any  
20 intrastate, interstate, or international telecommunications service that originates or  
21 terminates in this state and that is billed or charged to a service address in this state, or  
22 that both originates and terminates in this state. However, the tax imposed by this section  
23 does not apply to:

- 24 (1) Any eight hundred or eight hundred type service unless the service both originates  
25 and terminates in this state;
- 26 (2) Any sale of a telecommunication service to a provider of telecommunication  
27 services, including access service, for use in providing any telecommunication  
28 service; or
- 29 (3) Any sale of interstate telecommunication service provided to a call center that has  
30 been certified by the secretary of revenue to meet the criterion established in § 10-  
31 45-6.3 and the call center has provided to the telecommunications service provider

1 an exemption certificate issued by the secretary indicating that it meets the  
2 criterion.

3 If a call center uses an exemption certificate to purchase services not meeting the  
4 criterion established in § 10-45-6.3, the call center is liable for the applicable tax, penalty,  
5 and interest.

6 **Section 6. That § 10-45-6.2 be AMENDED:**

7 **10-45-6.2.** There is hereby imposed a tax of four and ~~one-half~~ two-tenths percent  
8 upon the gross receipts of mobile telecommunications services, as defined in 4 U.S.C.  
9 § 124(7) as of January 1, 2002, that originate and terminate in the same state and are  
10 billed to a customer with a place of primary use in this state or are deemed to have  
11 originated or been received in this state and to be billed or charged to a service address  
12 in this state if the customer's place of primary use is located in this state regardless of  
13 where the service actually originates or terminates. Notwithstanding any other provision  
14 of this chapter and for purposes of the tax imposed by this section, the tax imposed upon  
15 mobile telecommunication services ~~shall~~ must be administered in accordance with 4 U.S.C.  
16 §§ 116-126 as in effect on July 28, 2000.

17 **Section 7. That § 10-45-8 be AMENDED:**

18 **10-45-8.** There is imposed a tax of four and ~~one-half~~ two-tenths percent upon the  
19 gross receipts from all sales of tickets or admissions to places of amusement and athletic  
20 contests or events, except as otherwise provided in this chapter.

21 **Section 8. That § 10-45-71 be AMENDED:**

22 **10-45-71.** There is imposed a tax of four and ~~one-half~~ two-tenths percent on the  
23 gross receipts from the transportation of passengers. The tax imposed by this section shall  
24 apply to any transportation of passengers if the passenger boards and exits the mode of  
25 transportation within this state.

26 **Section 9. That § 10-46-2.1 be AMENDED:**

27 **10-46-2.1.** For the privilege of using services in South Dakota, except those types  
28 of services exempted by § 10-46-17.3, there is imposed on the person using the service  
29 an excise tax equal to four and ~~one-half~~ two-tenths percent of the value of the services at  
30 the time they are rendered. However, this tax may not be imposed on any service

1 rendered by a related corporation as defined in subdivision 10-43-1(11) for use by a  
2 financial institution as defined in subdivision 10-43-1(4) or on any service rendered by a  
3 financial institution as defined in subdivision 10-43-1(4) for use by a related corporation  
4 as defined in subdivision 10-43-1(11). For the purposes of this section, the term related  
5 corporation includes a corporation which together with the financial institution is part of a  
6 controlled group of corporations as defined in 26 U.S.C. § 1563 as in effect on January 1,  
7 1989, except that the eighty percent ownership requirements set forth in 26 U.S.C.  
8 § 563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent. For  
9 the purpose of this chapter, services rendered by an employee for the use of ~~his~~ the  
10 employer are not taxable.

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

12 **10-46-2.2.** An excise tax is imposed upon the privilege of the use of rented  
13 tangible personal property and any product transferred electronically in this state at the  
14 rate of four and ~~one-half~~ two-tenths percent of the rental payments upon the property.

15 **Section 11. That § 10-46-58 be AMENDED:**

16 **10-46-58.** There is imposed a tax of four and ~~one-half~~ two-tenths percent on the  
17 privilege of the use of any transportation of passengers. The tax imposed by this section  
18 ~~shall apply~~ applies to any transportation of passengers if the passenger boards and exits  
19 the mode of transportation within this state.

20 **Section 12. That § 10-46-69 be AMENDED:**

21 **10-46-69.** There is hereby imposed a tax of four and ~~one-half~~ two-tenths percent  
22 upon the privilege of the use of mobile telecommunications services, as defined in 4 U.S.C.  
23 § 124(7) as of January 1, 2002, that originate and terminate in the same state and are  
24 billed to a customer with a place of primary use in this state. Notwithstanding any other  
25 provision of this chapter and for purposes of the tax imposed by this section, the tax  
26 imposed upon mobile telecommunication services ~~shall~~ must be administered in  
27 accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

28 **Section 13. That § 10-46-69.1 be AMENDED:**

29 **10-46-69.1.** Except as provided in § 10-46-69, there is hereby imposed a tax of  
30 four and ~~one-half~~ two-tenths percent upon the privilege of the use of any intrastate,

1 interstate, or international telecommunications service that originates or terminates in this  
2 state and that is billed or charged to a service address in this state, or that both originates  
3 and terminates in this state. However, the tax imposed by this section does not apply to:

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

14 If a call center uses an exemption certificate to purchase services not meeting the  
15 criterion established in § 10-45-6.3, the call center is liable for the applicable tax, penalty,  
16 and interest.

17 **Section 14. That § 10-46-69.2 be AMENDED:**

18 **10-46-69.2.** There is hereby imposed a tax of four and ~~one-half~~ two-tenths  
19 percent upon the privilege of the use of any ancillary services.

20 **Section 15. That § 10-46E-1 be AMENDED:**

21 **10-46E-1.** There is hereby imposed an excise tax of four and ~~one-half~~ two-tenths  
22 percent on the gross receipts from the sale, resale, or lease of farm machinery, attachment  
23 units, and irrigation equipment used exclusively for agricultural purposes. However, if any  
24 trade-in or exchange of used farm machinery, attachment units, and irrigation equipment  
25 is involved in the transaction, the excise tax is only due and may only be collected on the  
26 cash difference.

27 **Section 16. That § 10-58-1 be AMENDED:**

28 **10-58-1.** There is imposed upon owners and operators a special amusement  
29 excise tax of four and ~~one-half~~ two-tenths percent of the gross receipts from the operation  
30 of any mechanical or electronic amusement device. The tax imposed by this section is in  
31 lieu of the tax imposed pursuant to chapter 10-45.

1 **Section 17. That § 10-64-9 be REPEALED:**

2 ~~If the state is able to enforce the obligation to collect and remit sales tax on remote~~  
3 ~~sellers who deliver tangible personal property, products transferred electronically, or~~  
4 ~~services directly to the citizens of South Dakota, the additional net revenue from such~~  
5 ~~obligation shall be used to reduce the rate of certain taxes. The rate of tax imposed by~~  
6 ~~§§ 10-45-2, 10-45-5, 10-45-5.3, 10-45-6, 10-45-6.1, 10-45-6.2, 10-45-8, 10-45-71, 10-~~  
7 ~~46-2.1, 10-46-2.2, 10-46-58, 10-46-69, 10-46-69.1, 10-46-69.2, 10-46E-1, and 10-58-~~  
8 ~~1 shall be reduced by one-tenth percent on July first following the calendar year for which~~  
9 ~~each additional twenty million dollar increment of net revenue is collected and remitted~~  
10 ~~by such remote sellers. However, the rate of tax imposed by §§ 10-45-2, 10-45-5, 10-~~  
11 ~~45-5.3, 10-45-6, 10-45-6.1, 10-45-6.2, 10-45-8, 10-45-71, 10-46-2.1, 10-46-2.2, 10-~~  
12 ~~46-58, 10-46-69, 10-46-69.1, 10-46-69.2, 10-46E-1, and 10-58-1 may not be reduced~~  
13 ~~below four percent pursuant to the provisions of this section.~~