

2023 South Dakota Legislature

Senate Bill 104**AMENDMENT 104A
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 ~~make an appropriation to enhance the economic viability and sustainability~~**
 2 **~~of South Dakota and to declare an emergency~~reduce certain gross receipts**
 3 **tax rates and a use tax rate, and to repeal a conditional reduction of certain**
 4 **gross receipts tax rates.**

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

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

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

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

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

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

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

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

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

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

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

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

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

1 45-6.3 and the call center has provided to the telecommunications service provider
2 an exemption certificate issued by the secretary indicating that it meets the
3 criterion.

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

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

8 **10-45-6.2.** There is hereby imposed a tax of four and ~~one-half~~ two-tenths percent
9 upon the gross receipts of mobile telecommunications services, as defined in 4 U.S.C.
10 § 124(7) as of January 1, 2002, that originate and terminate in the same state and are
11 billed to a customer with a place of primary use in this state or are deemed to have
12 originated or been received in this state and to be billed or charged to a service address
13 in this state if the customer's place of primary use is located in this state regardless of
14 where the service actually originates or terminates. Notwithstanding any other provision
15 of this chapter and for purposes of the tax imposed by this section, the tax imposed upon
16 mobile telecommunication services ~~shall~~ must be administered in accordance with 4 U.S.C.
17 §§ 116-126 as in effect on July 28, 2000.

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

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

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

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

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

28 **10-46-2.1.** For the privilege of using services in South Dakota, except those types
29 of services exempted by § 10-46-17.3, there is imposed on the person using the service
30 an excise tax equal to four and ~~one-half~~ two-tenths percent of the value of the services at

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

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

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

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

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

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

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

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

1 **10-46-69.1.** Except as provided in § 10-46-69, there is hereby imposed a tax of
2 four and ~~one-half~~ two-tenths percent upon the privilege of the use of any intrastate,
3 interstate, or international telecommunications service that originates or terminates in this
4 state and that is billed or charged to a service address in this state, or that both originates
5 and terminates in this state. However, the tax imposed by this section does not apply to:
6 (1) Any eight hundred or eight hundred type service unless the service both originates
7 and terminates in this state;
8 (2) Any sale of a telecommunication service to a provider of telecommunication
9 services, including access service, for use in providing any telecommunication
10 service; or
11 (3) Any sale of interstate telecommunication service provided to a call center that has
12 been certified by the secretary of revenue to meet the criterion established in § 10-
13 45-6.3 and the call center has provided to the telecommunications service provider
14 an exemption certificate issued by the secretary indicating that it meets the
15 criterion.

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

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

20 **10-46-69.2.** There is hereby imposed a tax of four and ~~one-half~~ two-tenths
21 percent upon the privilege of the use of any ancillary services.

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

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

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

30 **10-58-1.** There is imposed upon owners and operators a special amusement
31 excise tax of four and ~~one-half~~ two-tenths percent of the gross receipts from the operation

1 of any mechanical or electronic amusement device. The tax imposed by this section is in
2 lieu of the tax imposed pursuant to chapter 10-45.

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

4 If the state is able to enforce the obligation to collect and remit sales tax on remote
5 sellers who deliver tangible personal property, products transferred electronically, or
6 services directly to the citizens of South Dakota, the additional net revenue from such
7 obligation shall be used to reduce the rate of certain taxes. The rate of tax imposed by
8 ~~§§ 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-~~
9 ~~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-~~
10 ~~1~~ shall be reduced by one-tenth percent on July first following the calendar year for which
11 each additional twenty million dollar increment of net revenue is collected and remitted
12 by such remote sellers. However, the rate of tax imposed by ~~§§ 10-45-2, 10-45-5, 10-~~
13 ~~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-~~
14 ~~46-58, 10-46-69, 10-46-69.1, 10-46-69.2, 10-46E-1, and 10-58-1~~ may not be reduced
15 below four percent pursuant to the provisions of this section.