

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

400L0783

## HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1261** - 02/09/2005

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to provide for the refund of the sales and contractor's excise  
2 tax for significant capital investment and large job-creation projects.

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

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

5 10-45B-1. Terms used in this chapter mean:

6 (1) "Construction date," the first date earth is excavated for the purpose of constructing  
7 a project;

8 (2) "Department," the Department of Revenue and Regulation;

9 (3) "Nameplate capacity," the number of kilowatts a power unit can produce according  
10 to the nameplate assigned to the power unit generator by the manufacturer;

11 ~~(2)~~(4) "New agricultural processing facility," a new building or structure, the construction  
12 of which is subject to contractors' excise tax pursuant to chapter 10-46A or 10-46B.

13 A new agricultural processing facility is any new building or structure constructed  
14 for the initial or subsequent processing of any form of agricultural commodity,  
15 product, or by-product. A new agricultural processing facility does not include any



1 building or structure constructed for raising or feeding of livestock or the expansion  
2 of an existing agricultural processing facility;

3 ~~(3)~~(5) "Person," any individual, firm, copartnership, joint venture, association, limited  
4 liability company, limited liability partnership, corporation, estate, trust, business  
5 trust, receiver, unit of government, rural electric cooperative, consumers power  
6 district or any group or combination acting as a unit;

7 ~~(6)~~ "Power generation facility," a facility with one power unit that generates electricity  
8 with a nameplate capacity of no less than five hundred megawatts;

9 ~~(4)~~(7) "Project," the construction of a new agricultural processing facility or a new business  
10 facility at a single site;

11 ~~(5)~~(8) "Project cost," the amount paid in money, credits, property, or other money's worth  
12 for a project;

13 ~~(6)~~(9) "Secretary," the secretary of the Department of Revenue and Regulation.

14 Section 2. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 For the purposes of this Act, the term, new business facility, means a new building or  
17 structure, including a power generation facility, the construction of which is subject to the  
18 contractor's excise tax pursuant to chapter 10-46A or 10-46B. A new business facility does not  
19 include any building or structure:

20 (1) Used predominantly for the sale of products at retail, other than the sale of electricity  
21 at retail, to individual consumers;

22 (2) Used predominantly for residential housing or transient lodging;

23 (3) Used predominantly to provide health care services; or

24 (4) That is not subject to ad valorem real property taxation or equivalent taxes measured

1           by gross receipts.

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

4           As provided in this Act, any person holding a permit issued pursuant to § 10-45B-6 may  
5 apply for and obtain a refund or credit for sales or use tax imposed and paid by such person  
6 under the provisions of chapter 10-45 or 10-46 and contractors' excise taxes imposed and paid  
7 under the provisions of chapter 10-46A or 10-46B on the project costs for a new business  
8 facility.

9           Section 4. That § 10-45B-4 be amended to read as follows:

10          10-45B-4. The refund of taxes for a new agricultural processing facility pertains only to  
11 project costs incurred and paid after April 1, 1997, and within thirty-six months of the approval  
12 of the application required by § 10-45B-6. No refund may be made unless:

- 13          (1)    The project cost exceeds the sum of four million five hundred thousand dollars; and  
14          (2)    The person applying for the refund obtains a permit from the secretary as set forth in  
15               § 10-45B-6.

16          Section 5. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as  
17 follows:

18          The refund of taxes pursuant to section 3 of this Act pertains only to project costs incurred  
19 and paid after February 1, 2005, up to and including thirty-six months from the construction date  
20 if the project costs are sixty million dollars or less and after February 1, 2005, up to and  
21 including seventy-two months from the construction date if the project costs are more than sixty  
22 million dollars. There is no refund if the person applying for the refund does not obtain a permit  
23 from the secretary as set forth in § 10- 45B-6.

24          Upon a showing of good cause, the time limits prescribed by this section may be extended

1 by the secretary for a period not to exceed twenty-four months.

2 Section 6. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 The amount of the tax refund for a new business facility shall be a percentage of the taxes  
5 paid, as follows:

6 (1) For project costs of less than ten million dollars, there shall be no refund;

7 (2) For project costs of ten or more million dollars but less than twenty million dollars  
8 there shall be a refund of twenty-five percent of the taxes paid;

9 (3) For project costs of twenty or more million dollars but less than sixty million dollars  
10 there shall be a refund of fifty percent of the taxes paid;

11 (4) For project costs of sixty or more million dollars but less than six hundred million  
12 dollars there shall be a refund of seventy-five percent of the taxes paid; and

13 (5) For project costs of six hundred million dollars and greater there shall be a refund of  
14 ninety percent of the taxes paid.

15 Section 7. That § 10-45B-5 be amended to read as follows:

16 10-45B-5. If the project cost for a new agricultural processing facility exceeds four million  
17 five hundred thousand dollars, the refund shall be one hundred percent of the taxes attributed  
18 to the project cost.

19 Section 8. That § 10-45B-6 be amended to read as follows:

20 10-45B-6. Any person desiring to claim a refund pursuant to ~~§ 10-45B-2~~ this chapter shall  
21 apply for a permit from the secretary at least thirty days prior to ~~commencement of the project~~  
22 the construction date. The application for a permit shall be submitted on a form prescribed by  
23 the secretary. A separate application shall be made and submitted for each project. Upon  
24 approval of the application, the secretary shall issue a permit entitling the applicant to submit

1 refund claims as provided by §§ 10-45B-7 and 10-45B-8. Such permit or refund claims are not  
2 assignable or transferable except as collateral or security pursuant to chapter 57A-9.

3 Section 9. That § 10-45B-8 be amended to read as follows:

4 10-45B-8. Any person issued a permit pursuant to this chapter shall submit a return to the  
5 department no more frequently than on or before the last day of ~~the~~ each month and no less  
6 frequently than on or before the last day of each month following each ~~quarterly period~~ calendar  
7 quarter. The secretary shall determine and pay the amount of the tax refund within thirty days  
8 of receipt of the return. ~~Ninety~~ Ninety-five percent of the amount of refund shall be paid to the  
9 claimant in accordance with §§ 10-59-22 and 10-59-23, and ~~ten~~ five percent shall be withheld  
10 by the department. No interest shall be paid on the refund amount. If electronic funds transfer  
11 is available to the secretary, the secretary shall pay the refund by electronic funds transfer if  
12 requested by the claimant.

13 Section 10. That § 10-45B-9 be amended to read as follows:

14 10-45B-9. The amounts withheld by the department in accordance with § 10-45B-8 shall be  
15 retained until the project has been completed and the claimant has met all the conditions of § 10-  
16 45B-4 or section 5 of this Act, at which time all sums retained shall be paid to claimant.

17 Section 11. That § 10-45B-10 be amended to read as follows:

18 10-45B-10. If any claim has been fraudulently presented or supported as to any item in the  
19 claim, or if the claimant fails to meet all the conditions of ~~§ 10-45B-4~~ this chapter, then ~~such~~  
20 the claim may be rejected in its entirety and all sums previously refunded to the claimant shall  
21 constitute a debt to the state and a lien in favor of the state upon all property and rights to  
22 property whether real or personal belonging to the claimant and may be recovered in an action  
23 of debt.

24 Section 12. That chapter 10-45B be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Any amount refunded pursuant to this Act for a project that is not completed within the time  
3 frames prescribed by section 5 of this Act, including any extensions granted by the secretary,  
4 shall be returned to the state without interest. Any refunded amounts not returned pursuant to  
5 this section and all sums previously refunded to the claimant constitute a debt to the state and  
6 a lien in favor of the state upon all property and rights to property whether real or personal  
7 belonging to the claimant and may be recovered in an action of debt.

8 Section 13. That chapter 10-45B be amended by adding thereto a NEW SECTION to read  
9 as follows:

10 Any person aggrieved by a decision of the secretary under this Act may, within thirty days  
11 of receipt of written notice of the secretary's decision, make written application to the secretary  
12 for a hearing to be conducted pursuant to chapter 1-26. Hearings are to be conducted and  
13 appeals taken pursuant to the provisions of chapters 1-26 and 1-26D. A copy of the hearing  
14 examiner's proposed decision, findings of fact, and conclusions of law shall be served on all  
15 parties when furnished to the secretary. If the secretary, pursuant to chapter 1-26D, accepts the  
16 final decision of the hearing examiner, no appeal from a final decision of the secretary upon any  
17 additional tax to be paid may be taken unless any amount ordered paid by the secretary is paid  
18 or a bond filed to insure payment of the amount. However, if the final decision of the secretary,  
19 pursuant to chapter 1-26D, rejects or modifies the decision of the hearing examiner regarding  
20 the amount due, an appeal may be taken without payment of the amount ordered to be paid and  
21 without filing of a bond. If the secretary's decision is affirmed by the circuit court, no appeal  
22 may be taken unless any amount ordered to be paid by the secretary is paid or a bond is filed to  
23 insure payment of such amount.

24 Section 14. That § 10-46B-1 be amended to read as follows:

1        10-46B-1. There is imposed an excise tax upon the gross receipts of all prime contractors  
2        and subcontractors engaged in realty improvement contracts for those persons subject to tax  
3        under chapter 10-28, 10-33, 10-34, 10-35, 10-36, or 10-36A or any municipal utility or  
4        telephone company subject to chapter 9-39, 9-41, 9-47, or 9-48 or any rural water system, at the  
5        rate of two percent. Notwithstanding the provisions of this section, the tax imposed by this  
6        chapter does not apply to the construction of a power generation facility as defined by section  
7        1 of this Act.

8        Section 15. That § 10-46A-1.2 be amended to read as follows:

9        10-46A-1.2. The tax imposed upon contractors performing realty improvement contracts for  
10       those persons subject to tax under chapter 10-28, 10-33, 10-34, 10-35, 10-36 or 10-36A or any  
11       municipal utility or telephone company subject to chapter 9-39 or 9-41 or any rural water system  
12       ~~shall~~ is not ~~be~~ subject to this chapter and ~~said~~ the contracts ~~shall be~~ are subject to the contractors'  
13       excise tax imposed by chapter 10-46B. Notwithstanding the provisions of this section, the tax  
14       imposed by this chapter applies to the construction of a power generation facility as defined by  
15       section 1 of this Act.