

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

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HOUSE BILL NO. 1049

Introduced by: The Committee on Taxation at the request of the Department of Revenue

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding references to the
2 Internal Revenue Code.

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

4 Section 1. That chapter 10-1 be amended by adding a NEW SECTION to read:

5 The term, United States Internal Revenue Code, or Internal Revenue Code, means the
6 United States Internal Revenue Code as amended and in effect on January 1, 2016. This section
7 applies to §§ 10-4-9.1, 10-4-9.2, 10-4-9.3, 10-4-9.4, 10-4-39, 10-43-10.1, and 35-4-11.9, and
8 subdivisions 10-6A-1(7), 10-6B-1(5), 10-18A-1(6), 10-43-10.3(7), and 10-45A-1(5).

9 Section 2. That § 10-4-9.1 be amended to read:

10 10-4-9.1. Property owned by a public charity and used for charitable purposes is exempt
11 from taxation. A public charity is any organization or society which devotes its resources to the
12 relief of the poor, distressed, or underprivileged. A public charity shall receive a majority of its
13 revenue from donations, public funds, membership fees, or program fees generated solely to
14 cover operating expenses; it shall lessen a governmental burden by providing its services to
15 people who would otherwise use governmental services; it shall offer its services to people



1 regardless of their ability to pay for such services; it shall be nonprofit and recognized as an
2 exempt organization under section 501(c)(3) of the United States Internal Revenue Code, as
3 ~~amended and in effect on January 1, 2015~~ defined by section 1 of this Act; and it may not have
4 any of its assets available to any private interest.

5 Section 3. That § 10-4-9.2 be amended to read:

6 10-4-9.2. Property owned by a benevolent organization and used exclusively for benevolent
7 purposes is exempt from taxation. A benevolent organization is any lodge, patriotic
8 organization, memorial association, educational association, cemetery association, or similar
9 association. A benevolent organization shall be nonprofit and recognized as an exempt
10 organization under section 501(c)(3), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the
11 United States Internal Revenue Code, as ~~amended and in effect on January 1, 2015~~ defined by
12 section 1 of this Act. However, if any such property consists of improved or unimproved
13 property located within a municipality not occupied or directly used in carrying out the primary
14 objective of the benevolent organization owning the same, such property shall be taxed the same
15 as other property of the same class is taxed. However, if any such property consists of
16 agricultural land, such property shall be taxed the same as other property of the same class is
17 taxed. For the purposes of this section, an educational association is a group of accredited
18 elementary, secondary, or postsecondary schools. For the purposes of this section, a benevolent
19 organization also includes a congressionally chartered veterans organization which is nonprofit
20 and recognized as an exempt organization under section 501(c)(4) of the United States Internal
21 Revenue Code, as ~~amended and in effect on January 1, 2015~~ defined by section 1 of this Act.

22 For purposes of this section, benevolent purpose means an activity that serves the poor,
23 distressed or underprivileged, promotes the physical or mental welfare of youths or
24 disadvantaged individuals, or relieves a government burden.

1 Section 4. That § 10-4-9.3 be amended to read:

2 10-4-9.3. Property owned by any corporation, organization, or society and used primarily
3 for human health care and health care related purposes is exempt from taxation. Such
4 corporation, organization, or society shall be nonprofit and recognized as an exempt
5 organization under section 501(c)(3) of the United States Internal Revenue Code, as ~~amended~~
6 ~~and in effect on January 1, 2015~~ defined by section 1 of this Act, and none of its assets may be
7 available to any private interest. The property shall be a health care facility licensed pursuant
8 to chapter 34-12, orphanage, mental health center or community support provider regulated
9 under chapter 27A-5, or camp. The facility shall admit all persons for treatment consistent with
10 the facility's ability to provide health care services required by the patient until the facility is
11 filled to its ordinary capacity and conform to all applicable regulations of and permit inspections
12 by the state as otherwise provided by law.

13 Section 5. That § 10-4-9.4 be amended to read:

14 10-4-9.4. Any congregate housing facility owned by a corporation, organization, or society
15 is exempt from certain property taxes, if the facility provides certain health care services and is
16 recognized as an exempt nonprofit corporation, organization, or society under section 501(c)(3)
17 of the United States Internal Revenue Code, as ~~amended and in effect on January 1, 2015~~
18 defined by section 1 of this Act, and if none of its assets are available to any private interest. A
19 congregate housing facility does provide health care services if the facility is an independent
20 group-living environment operated and owned by a health care facility licensed pursuant to
21 chapter 34-12 which offers a continuum of care, residential accommodations, and supporting
22 services primarily for persons at least sixty-two years of age or disabled as defined pursuant to
23 chapter 10-6A. Supporting services include the ability to provide health care and a food service
24 that satisfies a balanced nutrition program. As part of the statement required by § 10-4-19, the

1 owner of the congregate housing facility shall submit a statement to the county director of
2 equalization listing the health ~~cares~~ care services provided and method used to satisfy the
3 balanced nutrition program.

4 In addition, no owner may apply for a property tax exemption for a congregate housing
5 facility constructed after July 1, 2004, unless the congregate housing facility:

- 6 (1) Consists of two or more individual housing units located within one structure; and
- 7 (2) Not more than twenty-five percent of the individual housing units exceed fifteen
8 hundred square feet.

9 Section 6. That § 10-4-39 be amended to read:

10 10-4-39. Any facility operated as a multi-tenant business incubator and owned by an entity
11 recognized as an exempt nonprofit corporation pursuant to section 501(c)(3), 501(c)(4), or
12 501(c)(6) of the United States Internal Revenue Code ~~as amended and in effect on January 1,~~
13 ~~2015,~~ as defined by section 1 of this Act, is exempt from property taxation. A business incubator
14 is any facility that supports the development and operation of a number of small start-up
15 businesses. Tenants of the facility may share a number of support services and the tenants may
16 receive technical assistance, business planning, legal, financial, and marketing advice. If any
17 portion of the facility is occupied by an incubated business for more than five years, that portion
18 of the facility shall be taxed as other property of the same class is taxed.

19 Section 7. That subdivision (7) of § 10-6A-1 be amended to read:

20 (7) "Income," the sum of adjusted gross income as defined in the United States Internal
21 Revenue Code, as ~~amended and in effect on January 1, 2015~~ defined by section 1 of
22 this Act, and IRA disbursements, the amount of capital gains excluded from adjusted
23 gross income, alimony, support money, nontaxable strike benefits, cash public
24 assistance and relief, the gross amount of any pension or annuity, including Railroad

1 Retirement Act benefits and veterans disability pensions, all payments received under
2 the federal social security and state unemployment insurance laws, nontaxable
3 interest, life insurance proceeds that exceed twenty thousand dollars, any gift or
4 inheritance that exceeds five hundred dollars, proceeds from a court action, any sale
5 of a personal item that exceeds five hundred dollars, foster care income, and workers'
6 compensation;

7 Section 8. That subdivision (5) of § 10-6B-1 be amended to read:

8 (5) "Income," the sum of adjusted gross income as defined in the United States Internal
9 Revenue Code, as ~~amended and in effect on January 1, 2015~~ defined by section 1 of
10 this Act, and all nontaxable income, including the amount of capital gains excluded
11 from adjusted gross income, alimony, support money, nontaxable strike benefits,
12 cash, public assistance and relief, not including relief granted under this chapter, the
13 gross amount of any pension or annuity, including Railroad Retirement Act benefits
14 and veterans' disability pensions, all payments received under the federal social
15 security and state unemployment insurance laws, nontaxable interest received from
16 the federal government or any of its instrumentalities, workers' compensation, and
17 the gross amount of "loss of time" insurance, but not including gifts from
18 nongovernmental sources, food stamps, or surplus foods or other relief in kind
19 provided by a public agency less real estate taxes payable on the applicant's principal
20 residence for the year in which application is made;

21 Section 9. That subdivision (6) of § 10-18A-1 be amended to read:

22 (6) "Income," the sum of adjusted gross income as defined in the United States Internal
23 Revenue Code, as ~~amended and in effect on January 1, 2015~~ defined by section 1 of
24 this Act, and all nontaxable income, including the amount of capital gains excluded

1 from adjusted gross income, alimony, support money, nontaxable strike benefits,
2 cash public assistance and relief, not including relief granted under this chapter, the
3 gross amount of any pension or annuity, including Railroad Retirement Act benefits
4 and veterans' disability pensions, all payments received under the federal social
5 security and state unemployment insurance laws, nontaxable interest received from
6 the federal government or any of its instrumentalities, workers' compensation, and
7 the gross amount of loss of time insurance, but not including gifts from
8 nongovernmental sources, food stamps, or surplus foods, or other relief in kind
9 provided by a public agency less real estate taxes payable on the applicant's principal
10 residence for the year in which application is made. However, the reduction in the
11 applicant's income for real estate taxes payable may not exceed four hundred dollars;

12 Section 10. That § 10-43-10.1 be amended to read:

13 10-43-10.1. Net income, in the case of a financial institution, is taxable income as defined
14 in the United States Internal Revenue Code, as ~~amended and in effect on January 1, 2015~~
15 defined by section 1 of this Act, and reportable for federal income tax purposes for the taxable
16 year, but subject to the adjustments as provided in §§ 10-43-10.2 and 10-43-10.3. If a financial
17 institution has elected to file its federal tax return pursuant to 26 USC § 1362(a), ~~as amended,~~
18 ~~and in effect on January 1, 2015~~ of the United States Internal Revenue Code, as defined by
19 section 1 of this Act, net income shall be computed in the same manner and in the same amount
20 as if that institution had continued to file its federal tax return without making the election and
21 the financial institution shall continue to be treated as a separate corporation for the purposes
22 of this chapter. If a financial institution is organized as a limited liability company, the limited
23 liability company shall be treated as a separate corporation for the purpose of this chapter.

24 Section 11. That subdivision (7) of § 10-43-10.3 be amended to read:

1 (7) For those financial institutions making an election pursuant to 26 USC § 1362(a), as
2 ~~amended, and in effect on January 1, 2015~~ of the United States Internal Revenue
3 Code, as defined by section 1 of this Act, imputed federal income taxes in an amount
4 equal to the taxes that would have been paid on net income as defined in § 10-43-
5 10.1 had the financial institution continued to file its federal tax return without
6 making an election to file pursuant to 26 USC § 1362(a); and

7 Section 12. That subdivision (5) of § 10-45A-1 be amended to read:

8 (5) "Income," the sum of adjusted gross income as defined in the United States Internal
9 Revenue Code, as ~~amended and in effect on January 1, 2015~~ defined by section 1 of
10 this Act, and all nontaxable income, including the amount of capital gains excluded
11 from adjusted gross income, alimony, support money, nontaxable strike benefits,
12 cash public assistance and relief, not including relief granted under this chapter, the
13 gross amount of any pension or annuity, including Railroad Retirement Act benefits
14 and veterans' disability pensions, all payments received under the federal social
15 security and state unemployment insurance laws, nontaxable interest received from
16 the federal government or any of its instrumentalities, workers' compensation, and
17 the gross amount of loss of time insurance, but not including gifts from
18 nongovernmental sources, food stamps, or surplus foods, or other relief in kind
19 provided by a public agency, less real estate taxes payable or ten percent of rent paid
20 on the applicant's principal residence for the year in which application is made.
21 However, the reduction in the individual's income may not exceed four hundred
22 dollars;

23 Section 13. That § 35-4-11.9 be amended to read:

24 35-4-11.9. The renewal fee for any on-sale license issued outside a municipality to a

1 nonprofit organization, recognized as an exempt organization under section 501(c)(7) or
2 501(c)(19) of the United States Internal Revenue Code, as ~~amended and in effect on January 1,~~
3 ~~2015~~ defined by section 1 of this Act, which will be in operation less than one hundred fifty
4 days each year shall be established by the county commission at a rate not to exceed the rate in
5 the nearest municipality.