

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

400X0179

SENATE TAXATION ENGROSSED NO. **SB 53** - 01/20/2016

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 concerning the bank franchise
2 tax.

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

4 Section 1. That subdivision (4) of § 10-43-1 be amended to read:

5 (4) "Financial institution," any banking institution, production credit association, or
6 savings and loan association organized under the laws of the United States and
7 located or doing business in this state; any bank, savings and loan association, mutual
8 saving bank, or trust company, organized under the laws of this state or of any other
9 state, district, territory, or country, doing business within this state; any person
10 licensed in this state pursuant to chapter 54-4, the installment repayment small loan
11 and consumer finance law; and any person in the business of buying loans, notes, or
12 other evidences of debt except those persons registered as broker-dealers pursuant to
13 chapter 47-31B; and persons in the business of making installment repayment and
14 open-end loans which may be unsecured or secured by real or personal property,
15 which loans are in an aggregate amount exceeding five hundred dollars, which are



1 repaid in two or more installment payments or one lump sum payment extending over
2 a time exceeding thirty days from the day the loan was made except where the loan
3 is made by the person selling the property, incidental to the sale of the property and
4 where the seller is primarily in the business of selling such real or personal property
5 or except where the loan is made to a related corporation and the primary business
6 of these related corporations is the production and sale of tangible personal property
7 or where the loan is made in the form of an advance to secure the production of
8 equipment to be obtained by the lender or to finance a joint venture between the
9 lender and others which has been formed to produce and sell tangible personal
10 property;

11 Section 2. That § 10-43-2 be amended to read:

12 10-43-2. An annual tax is hereby imposed on every each financial institution, ~~except those~~
13 ~~institutions organized under the laws of the United States, doing business in this state for the~~
14 ~~grant to it of the privilege of transacting or for the actual transaction by it, of or licensed to do~~
15 business in this state during any part of its tax year.

16 Section 3. That § 10-43-2.1 be repealed.

17 ~~—10-43-2.1. An annual tax is hereby imposed upon every national banking corporation or~~
18 ~~production credit association or savings and loan association doing business within this state,~~
19 ~~according to or measured by its net income, to be computed in the manner provided in this~~
20 ~~chapter, on the basis of its net income during any part of its tax year.~~

21 Section 4. That § 10-43-4 be amended to read:

22 10-43-4. The liability for the tax imposed by §§ ~~10-43-2 and 10-43-2.1~~ this chapter shall
23 arise upon the first day of each tax year and shall be based upon the net income assignable to
24 this state at the rate of six percent on net income of four hundred million dollars or less; at the

1 rate of five percent on net income exceeding four hundred million dollars but equal to or less
2 than four hundred twenty-five million dollars; at the rate of four percent on the net income
3 exceeding four hundred twenty-five million dollars but equal to or less than four hundred fifty
4 million dollars; at the rate of three percent on the net income exceeding four hundred fifty
5 million dollars but equal to or less than four hundred seventy-five million dollars; at the rate of
6 two percent on the net income exceeding four hundred seventy-five million dollars but equal
7 to or less than five hundred million dollars; at the rate of one percent on the net income
8 exceeding five hundred million dollars but equal to or less than six hundred million dollars; at
9 the rate of one-half of one percent on the net income exceeding six hundred million dollars but
10 equal to or less than one billion two hundred million dollars; and at the rate of one-quarter of
11 one percent on the net income exceeding one billion two hundred million dollars. The tax
12 payable under this section may be no less than two hundred dollars for each authorized location
13 at which the financial institution subject to taxation under ~~§ 10-43-2~~ regularly conducts
14 business.

15 Section 5. That § 10-43-5 be amended to read:

16 10-43-5. The tax referred to in ~~§§ 10-43-2 and 10-43-2.1~~ this chapter is in lieu of all other
17 taxes and licenses, state, county, and local, except taxes upon the institutions' real property,
18 taxes upon the institutions' leased sites, taxes upon tangible personal property and products
19 transferred electronically not normally used in extension of credit or acceptance of deposits and
20 the retail sales tax or the use tax on tangible personal property and any product transferred
21 electronically. However, tangible personal property and any product transferred electronically
22 acquired by the financial institution through a foreclosure proceeding are exempt from such
23 other taxes. ~~The institutions taxed by §§ 10-43-2 and 10-43-2.1 are exempt from other net~~
24 ~~income taxation by this state.~~

1 Section 6. That § 10-43-10.3 be amended to read:

2 10-43-10.3. Subtracted from taxable income are:

3 (1) ~~Interest and dividends from obligations of the United States government and its~~
4 ~~agencies which this state is prohibited by federal law or treaty from taxing by an~~
5 ~~income tax, a franchise tax, or a privilege tax;~~

6 ~~(2)~~ Dividends received from financial institutions subject to taxation under this chapter
7 to the extent such dividends were included in taxable income as determined under the
8 Internal Revenue Code;

9 ~~(3)~~(2) Taxes imposed upon the financial institution within the tax year, under the Internal
10 Revenue Code excluding any taxes imposed under 26 USC § 1374 and 26 USC
11 § 1375;

12 ~~(4)~~(3) Any interest expense described in §§ 291(e)(1)(B) and 265(b) of the Internal Revenue
13 Code, which interest expense shall be deductible;

14 ~~(5)~~(4) Any capital gain from liquidating sales within the twelve-month period beginning on
15 the date on which a financial institution adopts a plan of complete liquidation if all
16 of the assets of the financial institution are distributed in complete liquidation less
17 assets retained to meet claims within the twelve-month period, or from the
18 distribution of property in complete liquidation of the financial institution which is
19 subject to federal corporate income taxes pursuant to § 336 of the Internal Revenue
20 Code;

21 ~~(6)~~(5) Any adjustment to taxable income due to a change in the method used to compute the
22 federal bad debt deduction where the adjustment has already been included in taxable
23 income for purposes of the tax imposed by this chapter;

24 ~~(7)~~(6) For those financial institutions making an election pursuant to 26 USC § 1362(a), as

1 amended, and in effect on January 1, 2015, imputed federal income taxes in an
2 amount equal to the taxes that would have been paid on net income as defined in
3 § 10-43-10.1 had the financial institution continued to file its federal tax return
4 without making an election to file pursuant to 26 USC § 1362(a); and

5 ~~(8)~~(7) For those financial institutions organized as limited liability companies, imputed
6 federal income taxes in an amount equal to the taxes that would have been paid on
7 net income as defined in § 10-43-10.1 had the financial institution elected to file as
8 a subchapter C corporation under the Internal Revenue Code.

9 Section 7. That § 10-43-10.4 be amended to read:

10 10-43-10.4. No carryback of net operating losses ~~or capital losses~~ may be deducted from net
11 income for state tax purposes.

12 Section 8. That § 10-43-10.5 be amended to read:

13 10-43-10.5. A deduction may be made for a carryforward of a net operating loss ~~or capital~~
14 ~~loss~~. The deduction is limited to the seven tax years immediately following the tax year of the
15 loss. Net income may not be less than zero prior to making the adjustments provided for in
16 §§ 10-43-10.2 and 10-43-10.3 because of a deduction taken for losses not incurred during the
17 tax year for which the return is being filed.

18 The provisions of this section only apply to net operating losses ~~or capital losses~~ incurred
19 on or after January 1, 2015.

20 Section 9. That § 10-43-24.1 be amended to read:

21 10-43-24.1. The payroll factor used in § 10-43-22.1 is a fraction, the numerator of which is
22 the total amount paid in this state during the tax period by the financial institution for
23 compensation, and the denominator of which is the total compensation paid everywhere during
24 the tax period. Compensation does not include any payment to any independent contractor or

1 any other person not classified as an employee.

2 Section 10. That § 10-43-30 be amended to read:

3 10-43-30. ~~Any person required to file and pay tax pursuant to this chapter and whose tax~~
4 ~~liability in the previous year exceeded ten thousand dollars shall file with the Department of~~
5 ~~Revenue a quarterly estimate of the amount of tax due for the current year and make payment~~
6 ~~of the estimated amount. If the tax year of the person ends on December thirty-first, the~~
7 ~~estimated amount shall be paid on or before the fifteenth day of January, April, July, and~~
8 ~~October of each year. If the tax year of the person ends on a date other than December thirty-~~
9 ~~first, the estimated amount shall be made on or before the fifteenth day of the month following~~
10 ~~the end of the quarter for which the estimate is due. In determining the amount of each quarterly~~
11 ~~payment, the taxpayer shall estimate the taxpayer's total tax liability for the entire tax year and~~
12 ~~make payment of one-fourth of the estimate.~~

13 Each taxpayer shall file ~~the final~~ a return for the tax year, and pay any tax imposed by this
14 chapter, within fifteen days after the taxpayer's federal income tax return is due. ~~For taxpayers~~
15 ~~required to make quarterly estimated payments, if the total quarterly estimated payments do not~~
16 ~~equal ninety percent of the total tax due, then interest, but not penalty, accrues at the rate~~
17 ~~provided in § 10-59-6 and is applied to the amount by which one-fourth of ninety percent of the~~
18 ~~total tax due exceeds the amount of any quarterly estimate filed or required to be filed from the~~
19 ~~time the estimate was due until finally paid. Neither interest nor penalty may be imposed on~~
20 ~~quarterly estimates if each estimate equaled an amount which would have been required on that~~
21 ~~date had the estimated tax been based upon the tax shown on the previous year's return.~~

22 Any return not filed by the due date or tax due but not paid on by the due date is delinquent
23 and bears penalty and interest as provided in § 10-59-6.

24 Section 11. That § 10-43-30.1 be amended to read:

1 10-43-30.1. Any taxpayer shall receive an extension of time to file the return required by this
2 chapter to a day not later than six months from the day the return was originally due, if the
3 taxpayer:

- 4 (1) Files for an extension of time to file the taxpayer's federal income tax return;
- 5 (2) Files a copy of the federal income tax return extension request with the Department
6 of Revenue on or before the day the return was originally due; and
- 7 (3) Makes a reasonable estimate of the amount of tax due and pays that amount with or
8 prior to the request for extension of time to file.

9 If the time for filing the return is extended at the request of the taxpayer, and the amount of
10 tax due exceeds the reasonable estimate paid pursuant to subdivision (3), interest, but not
11 penalty, shall be added to the difference at the same rate as provided for in § 10-59-6 from the
12 time the ~~payments were~~ return was originally due until the additional taxes due are paid.

13 Section 12. That § 10-43-31 be repealed.

14 ~~10-43-31. The secretary of revenue shall cause to be prepared blank forms for said returns~~
15 ~~and shall cause them to be distributed throughout the state and to be furnished upon application,~~
16 ~~but failure to receive or secure the form shall not relieve the taxpayer from the obligations of~~
17 ~~making any return herein required.~~

18 Section 13. That § 10-43-32 be repealed.

19 ~~10-43-32. If the secretary of revenue believes that the assessment or collection of taxes will~~
20 ~~be jeopardized by delay, the secretary of revenue may immediately make an assessment of the~~
21 ~~estimated amount of tax due, together with all interest, additional amounts or penalties, as~~
22 ~~provided by law, and demand payment thereof from the taxpayer. If such payment is not made,~~
23 ~~a distress warrant may be issued or a lien filed against such taxpayer immediately.~~

24 Section 14. That § 10-43-34 be amended to read:

1 10-43-34. ~~Every corporation taxable under this chapter shall make a return and the return~~
 2 ~~shall be sworn to by the president, vice-president, or other principal officer, and by the treasurer~~
 3 ~~or assistant treasurer.~~ Before a corporation may be dissolved and its assets distributed, the
 4 corporation shall make a return for any settlement of the tax for any income earned in the
 5 income year up to its final date of dissolution.

6 Section 15. That § 10-43-42.1 be amended to read:

7 10-43-42.1. The provisions of this chapter shall be administered by the secretary of revenue
 8 and the secretary may promulgate rules, pursuant to chapter 1-26, concerning:

- 9 (1) The procedure for filing tax returns and payment of the tax;
- 10 (2) The type of accounting to be used;
- 11 (3) The definition and deductibility of net federal income taxes; ~~and~~
- 12 (4) ~~Determining the~~ The application of the tax and exemptions; and
- 13 (5) The records to be retained by the taxpayer.

14 Section 16. That § 10-43-43.1 be amended to read:

15 10-43-43.1. ~~Every~~ Each person subject to tax under this chapter shall make and keep for a
 16 period of six years ~~such~~ after federal taxable income has been finally determined by the United
 17 States any records as required by the secretary of revenue or otherwise necessary for the
 18 administration of this chapter. ~~Such books and documents~~ The records shall, at all times during
 19 business hours of the day, be subject to inspection by the secretary ~~of revenue or his duly~~
 20 ~~authorized agents and employees~~ to determine the amount of tax due.

21 If in the normal conduct of the business, the required records are maintained and kept at an
 22 office outside the State of South Dakota, it shall be a sufficient compliance with this section if
 23 the records are made available for audit and examination by the Department of Revenue at the
 24 office outside of South Dakota.

1 Section 17. That § 10-43-62 be repealed.

2 ~~—10-43-62. If the time for filing the return is extended at the request of the taxpayer, interest~~
3 ~~shall be added at the same rate as provided in § 10-59-6, from the time when the return was~~
4 ~~originally required to be filed to the time of payment.~~

5 Section 18. That § 10-43-63 be repealed.

6 ~~—10-43-63. Any delinquent tax constitutes a debt due to the State of South Dakota and may~~
7 ~~be collected by action brought by the secretary of revenue in a court of competent jurisdiction.~~
8 ~~No exemptions from execution of a judgment so obtained are permitted except those made~~
9 ~~absolute by the exemption statutes of this state.~~

10 Section 19. That § 10-43-64 be repealed.

11 ~~—10-43-64. If any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay~~
12 ~~the tax or penalty, the amount, including any interest, penalty, or addition to the tax, together~~
13 ~~with the costs that may accrue in addition to the tax, penalty, and interest, constitute a lien in~~
14 ~~favor of the State of South Dakota upon all property and rights to property, whether real or~~
15 ~~personal, belonging to the taxpayer.~~

16 ~~—The lien attaches at the time the tax becomes due and payable and continues until the~~
17 ~~liability for the amount is satisfied.~~

18 Section 20. That § 10-43-65 be repealed.

19 ~~—10-43-65. The register of deeds of each county shall prepare and keep in the office of the~~
20 ~~register of deeds a book to be known as "index of income tax liens," so ruled as to show in~~
21 ~~appropriate columns the following data, under the names of taxpayers, arranged alphabetically:~~

22 ~~—(1)—The name of the taxpayer;~~

23 ~~—(2)—The name "State of South Dakota" as claimant;~~

24 ~~—(3)—Time notice of lien was received;~~

1 ~~—(4)—~~ Date of notice;

2 ~~—(5)—~~ Amount of lien then due;

3 ~~—(6)—~~ When satisfied.

4 Section 21. That § 10-43-66 be repealed.

5 ~~—10-43-66. In order to preserve the lien provided by § 10-43-64 against subsequent~~
6 ~~mortgagees, purchasers, or judgment creditors for value and without notice of the lien, on any~~
7 ~~property situated in a county, the secretary of revenue shall file with the register of deeds of the~~
8 ~~county in which the property is located a notice of the lien. The notice of lien shall be signed~~
9 ~~by the secretary, shall be in a form determined by the secretary, and shall contain the~~
10 ~~information prescribed in § 10-43-65 for the register of deeds' index.~~

11 Section 22. That § 10-43-67 be repealed.

12 ~~—10-43-67. The register of deeds shall endorse on each notice of lien the day, hour, and~~
13 ~~minute when received and preserve the notice. The register of deeds shall, without delay, index~~
14 ~~the notice in the index book and shall immediately record the lien in the manner provided for~~
15 ~~recording real estate mortgages. The lien is effective from the time the lien is indexed.~~

16 Section 23. That § 10-43-69 be repealed.

17 ~~—10-43-69. Upon the payment of a tax as to which the secretary of revenue has filed notice~~
18 ~~with a register of deeds, the secretary of revenue shall immediately file with the register of deeds~~
19 ~~a satisfaction of the tax. The register of deeds shall enter the satisfaction on the notice on file~~
20 ~~in the office of the register of deeds and indicate that fact on the index.~~

21 Section 24. That § 10-43-70 be repealed.

22 ~~—10-43-70. After a notice of lien has been filed as provided in § 10-43-66, the secretary of~~
23 ~~revenue may at any time require the county treasurer to issue a distress warrant in the same form~~
24 ~~as provided by statutes relating to distress warrant for mobile home taxes pursuant to chapter~~

1 ~~10-22 and to deliver the warrant to the sheriff of the county. Upon receipt of the warrant, the~~
2 ~~sheriff shall, without delay, proceed to collect the tax by seizure and sale of personal property~~
3 ~~in the manner provided in the statutes relating to collection by distress warrant and shall remit~~
4 ~~the tax so collected to the county treasurer. For such services, the sheriff may collect from the~~
5 ~~taxpayer and retain the compensation provided in statute prescribing compensation of sheriff~~
6 ~~for distress warrant procedure.~~

7 Section 25. That § 10-43-71 be repealed.

8 ~~— 10-43-71. If the sheriff is unable to find property of the taxpayer that may be seized and sold,~~
9 ~~the sheriff shall, within thirty days after receipt of the warrant, endorse upon the face of the~~
10 ~~warrant the word, uncollectible, and return the warrant to the county treasurer.~~

11 Section 26. That § 10-43-72 be repealed.

12 ~~— 10-43-72. Failure or refusal of the county treasurer to issue a distress warrant if requested~~
13 ~~to do so, or of the sheriff to attempt to execute the warrant, makes the officer failing to perform~~
14 ~~the officer's duty personally liable for the delinquent tax. The tax may be recovered in an action~~
15 ~~brought against the officer and the officer's sureties by the secretary of revenue.~~

16 Section 27. That § 10-43-75.1 be repealed.

17 ~~— 10-43-75.1. A financial institution may deposit with the secretary of revenue an amount~~
18 ~~determined by the financial institution to be applied toward the future tax liability of the~~
19 ~~financial institution under this chapter to the extent of the share of the tax the state would be~~
20 ~~required to remit to the county. The secretary of revenue shall remit, as provided in § 10-43-76,~~
21 ~~the amount of the deposit to the county or counties where the financial institution does business.~~
22 ~~The secretary of revenue shall record any deposit received pursuant to this section as a credit~~
23 ~~toward the future tax liability of the financial institution. No interest may accrue on any deposit~~
24 ~~received pursuant to this section.~~

1 — If any amount deposited pursuant to this section is not applied to the financial institution's
2 tax liability under this chapter within ten years of the date of deposit, the secretary of revenue
3 shall refund the amount of any remaining deposit to the financial institution.

4 Section 28. That § 10-43-77 be amended to read:

5 10-43-77. The county treasurer upon receipt of the funds, remitted to the county pursuant
6 to §§ ~~10-43-75.1~~ and § 10-43-76, shall apportion and distribute the funds between the taxing
7 subdivisions, ~~including the county~~, in the same proportion as the average of personal real
8 property taxes assessed levied in each taxing subdivision, ~~including the county~~, for calendar
9 years ~~1972, 1973, 1974, 1975, and 1976~~ were distributed in the previous year as determined and
10 certified by the secretary of revenue.

11 — ~~For any school district affected by a consolidation on or after July 1, 2003, as defined in~~
12 ~~§ 13-6-1, the successor school district shall receive the funds allocated to each of the former~~
13 ~~school districts. For any school district eliminated or subdivided by a reorganization on or after~~
14 ~~July 1, 2003, as defined in § 13-6-1, each successor school district shall receive a portion of the~~
15 ~~funds allocated to the former school district. Each successor school district's portion of the funds~~
16 ~~shall be based upon the percentage of the total taxable valuation of the former school district~~
17 ~~transferred to the successor school district, at the time of the reorganization. Any amount~~
18 ~~received by the county and taxing subdivisions pursuant to this section may upon receipt be used~~
19 ~~to support the functions of such taxing subdivision.~~

20 Section 29. That § 10-43-78 be repealed.

21 — ~~10-43-78. Any QUEST entity certified pursuant to §§ 10-43-82 is subject to the tax provided~~
22 ~~by this chapter. For the purposes of collecting the tax pursuant to this chapter, a QUEST entity~~
23 ~~shall be considered a financial institution as defined by § 10-43-1.~~

24 Section 30. That § 10-43-82 be repealed.

1 ~~10-43-82. Any for-profit corporation which seeks to be designated as a QUEST entity shall~~
2 ~~supply the secretary of state with the necessary information to prove it meets the definition of~~
3 ~~a QUEST entity as provided by § 10-43-81. Upon receipt of such information, the secretary shall~~
4 ~~certify the corporation as a QUEST entity. The secretary may not certify any corporation as a~~
5 ~~QUEST entity after July 1, 1997.~~

6 Section 31. That § 10-43-92 be amended to read:

7 10-43-92. As used in § 10-43-91, the term, extended term trust, means any trust which has
8 no limitation on duration which would require the trust to cease and terminate on a date not later
9 than twenty-one years beyond any life in being. Extended term trusts may not include any trust
10 subject to the Employee Retirement Income Security Act of 1974, as amended ~~as of~~ and in effect
11 on January 1, ~~1997~~ 2016.

12 Section 32. The provisions of this Act only apply to returns that are related to tax years
13 ending in 2015 or thereafter and filed after December 31, 2015.