

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

742B0138

HOUSE STATE AFFAIRS

ENGROSSED NO. **HB 1265** - 2/22/2019

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

Introduced by: Representatives Karr, Bartels, Gosch, Howard, Koth, Pischke, and Post

1 FOR AN ACT ENTITLED, An Act to revise provisions regarding certain tax rates.

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

3 Section 1. That the code be amended by adding a NEW SECTION to read:

4 The rate of tax imposed under §§ 10-45-2, 10-45-5, 10-45-5.3, 10-45-6, 10-45-6.1,

5 10-45-6.2, 10-45-8, 10-45-71, 10-46-2.1, 10-46-2.2, 10-46-58, 10-46-69, 10-46-69.1,

6 10-46-69.2, 10-46E-1, and 10-58-1 is four and one-half percent. For each fiscal year in which

7 growth in gross sales tax revenue in the state general fund as compared with its immediately

8 preceding fiscal year, exceeds the adjusted cost of living plus twenty million dollars, the rate of

9 tax imposed by this section is reduced by one-tenth percent, effective on the next fiscal year.

10 The rate of tax under this section is not reduced below four percent.

11 For purposes of this section, adjusted cost of living, means a calendar year's annual average

12 consumer price index consisting of all items in the United States city average of all urban

13 consumers which is seasonally adjusted as compiled by the bureau of labor statistics, United

14 States Department of Labor for the state of South Dakota.



1 Section 2. That § 10-45-2 be amended to read:

2 10-45-2. There is hereby imposed a tax upon the privilege of engaging in business as a  
3 retailer, ~~a tax of four and one-half percent~~ upon the gross receipts of all sales of tangible  
4 personal property consisting of goods, wares, or merchandise, except as otherwise provided in  
5 this chapter, sold at retail in ~~the State of South Dakota~~ this state to consumers or users. The rate  
6 of tax under this section is the same as provided under section 1 of this Act.

7 Section 3. That § 10-45-5 be amended to read:

8 10-45-5. There is imposed a tax ~~at the rate of four and one-half percent~~ upon the gross  
9 receipts of any person from engaging or continuing in any of the following businesses or  
10 services in this state: abstracters; accountants; ancillary services; architects; barbers; beauty  
11 shops; bill collection services; blacksmith shops; car washing; dry cleaning; dyeing;  
12 exterminators; garage and service stations; garment alteration; cleaning and pressing; janitorial  
13 services and supplies; specialty cleaners; laundry; linen and towel supply; membership or  
14 entrance fees for the use of a facility or for the right to purchase tangible personal property, any  
15 product transferred electronically, or services; photography; photo developing and enlarging;  
16 tire recapping; welding and all repair services, except repair services for farm machinery,  
17 attachment units, and irrigation equipment used exclusively for agricultural purposes; cable  
18 television; and rentals of tangible personal property except leases of tangible personal property  
19 between one telephone company and another telephone company, motor vehicles as defined  
20 pursuant to § 32-5-1 leased under a single contract for more than twenty-eight days and mobile  
21 homes. ~~However, the specific~~ Specific enumeration of ~~businesses and professions made in any~~  
22 business or profession under this section does not, in any way, limit the scope and effect of the  
23 provisions of § 10-45-4. The rate of tax under this section is the same as provided under section  
24 1 of this Act.

1 Section 4. That § 10-45-5.3 be amended to read:

2 10-45-5.3. There is imposed, ~~at the rate of four and one-half percent~~, an excise tax on the  
3 gross receipts of any person engaging in oil and gas field services (group no. 138) as enumerated  
4 in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy  
5 Division of the Office of Management and Budget, Office of the President. The rate of tax under  
6 this section is the same as provided under section 1 of this Act.

7 Section 5. That § 10-45-6 be amended to read:

8 10-45-6. There is ~~hereby~~ imposed a tax of ~~four and one-half percent~~ upon the gross receipts  
9 from sales, furnishing, or service of gas, electricity, and water, including the gross receipts from  
10 such sales by any municipal corporation furnishing gas, and electricity, to the public in its  
11 proprietary capacity, except as otherwise provided in this chapter, when sold at retail in ~~the State~~  
12 ~~of South Dakota~~ this state to consumers or users. The rate of tax under this section is the same  
13 as provided under section 1 of this Act.

14 Section 6. That § 10-45-6.1 be amended to read:

15 10-45-6.1. Except as provided in § 10-45-6.2, there is ~~hereby~~ imposed a tax of ~~four and one-~~  
16 ~~half percent~~ upon the gross receipts from providing any intrastate, interstate, or international  
17 telecommunications service that originates or terminates in this state and that is billed or  
18 charged to a service address in this state, or that both originates and terminates in this state.

19 ~~However, the~~ The tax imposed by this section does not apply to:

- 20 (1) Any eight hundred or eight hundred type service unless the service both originates  
21 and terminates in this state;
- 22 (2) Any sale of a telecommunication service to a provider of telecommunication  
23 services, including access service, for use in providing any telecommunication  
24 service; or

1 (3) Any sale of interstate telecommunication service provided to a call center that has  
2 been certified by the secretary of revenue to meet the criterion established in § 10-45-  
3 6.3 and the call center has provided to the telecommunications service provider an  
4 exemption certificate issued by the secretary indicating that it meets the criterion.

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

7 The rate of tax under this section is the same as provided under section 1 of this Act.

8 Section 7. That § 10-45-6.2 be amended to read:

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

19 Section 8. That § 10-45-8 be amended to read:

20 10-45-8. There is imposed a tax of ~~four and one-half percent~~ upon the gross receipts from  
21 all sales of tickets or admissions to places of amusement and athletic contests or events, except  
22 as otherwise provided in this chapter. The rate of tax under this section is the same as provided  
23 under section 1 of this Act.

24 Section 9. That § 10-45-71 be amended to read:

1        10-45-71. There is imposed a tax of ~~four and one-half percent on~~ upon the gross receipts  
2 from the transportation of passengers. The tax imposed by this section shall apply to any  
3 transportation of passengers if the passenger boards and exits the mode of transportation within  
4 this state. The rate of tax under this section is the same as provided under section 1 of this Act.

5        Section 10. That § 10-46-2.1 be amended to read:

6        10-46-2.1. For the privilege of using services in ~~South Dakota~~ this state, except ~~those types~~  
7 ~~of any~~ services exempted by § 10-46-17.3, there is imposed on the person using the service an  
8 excise tax ~~equal to four and one-half percent of~~ on the value of the services at the time they are  
9 rendered. ~~However, this~~ The tax under this section may not be imposed on any service rendered  
10 by a related corporation as defined in subdivision 10-43-1(11) for use by a financial institution  
11 as defined in subdivision 10-43-1(4) or on any service rendered by a financial institution as  
12 defined in subdivision 10-43-1(4) for use by a related corporation as defined in subdivision 10-  
13 43-1(11). For the purposes of this section, the term related corporation includes a corporation  
14 which together with the financial institution is part of a controlled group of corporations as  
15 defined in 26 U.S.C. § 1563 as in effect on January 1, 1989, except that the eighty percent  
16 ownership requirements set forth in 26 U.S.C. § 563(a)(2)(A) for a brother-sister controlled  
17 group are reduced to fifty-one percent. For the purpose of this chapter, services rendered by an  
18 employee for the use of his employer are not taxable. The rate of tax under this section is the  
19 same as provided under section 1 of this Act.

20        Section 11. That § 10-46-2.2 be amended to read:

21        10-46-2.2. An excise tax is imposed upon the privilege of the use of rented tangible personal  
22 property and any product transferred electronically in this state ~~at the rate of four and one-half~~  
23 ~~percent of.~~ The rate of tax under this section is the same as provided under section 1 of this Act  
24 as applied to the rental payments upon the property.

1 Section 12. That § 10-46-58 be amended to read:

2 10-46-58. There is imposed a tax ~~of four and one-half percent~~ on the privilege of the use of  
3 any transportation of passengers. The tax imposed by this section shall apply to any  
4 transportation of passengers if the passenger boards and exits the mode of transportation within  
5 this state. The rate of tax under this section is the same as provided under section 1 of this Act.

6 Section 13. That § 10-46-69 be amended to read:

7 10-46-69. There is ~~hereby~~ imposed a tax ~~of four and one-half percent~~ upon the privilege of  
8 the use of mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of January  
9 1, 2002, that originate and terminate in the same state and are billed to a customer with a place  
10 of primary use in this state. Notwithstanding any other provision of this chapter and for purposes  
11 of the tax imposed by this section, the tax imposed upon mobile telecommunication services  
12 shall be administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000. The  
13 rate of tax under this section is the same as provided under section 1 of this Act.

14 Section 14. That § 10-46-69.1 be amended to read:

15 10-46-69.1. Except as provided in § 10-46-69, there is ~~hereby~~ imposed a tax ~~of four and one-~~  
16 ~~half percent~~ upon the privilege of the use of any intrastate, interstate, or international  
17 telecommunications service that originates or terminates in this state and that is billed or  
18 charged to a service address in this state, or that both originates and terminates in this state.

19 However, the tax imposed by this section does not apply to:

- 20 (1) Any eight hundred or eight hundred type service unless the service both originates  
21 and terminates in this state;
- 22 (2) Any sale of a telecommunication service to a provider of telecommunication  
23 services, including access service, for use in providing any telecommunication  
24 service; or

1 (3) Any sale of interstate telecommunication service provided to a call center that has  
2 been certified by the secretary of revenue to meet the criterion established in § 10-45-  
3 6.3 and the call center has provided to the telecommunications service provider an  
4 exemption certificate issued by the secretary indicating that it meets the criterion.

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

7 The rate of tax under this section is the same as provided under section 1 of this Act.

8 Section 15. That § 10-46-69.2 be amended to read:

9 10-46-69.2. There is hereby imposed a tax of four and one-half percent upon the privilege  
10 of the use of any ancillary services. The rate of tax under this section is the same as provided  
11 under section 1 of this Act.

12 Section 16. That § 10-46E-1 be amended to read:

13 10-46E-1. There is hereby imposed an excise tax of four and one-half percent on the gross  
14 receipts from the sale, resale, or lease of farm machinery, attachment units, and irrigation  
15 equipment used exclusively for agricultural purposes. ~~However, if~~ If any trade-in or exchange  
16 of used farm machinery, attachment units, and irrigation equipment is involved in the  
17 transaction, the excise tax is only due and may only be collected on the cash difference. The rate  
18 of tax under this section is the same as provided under section 1 of this Act.

19 Section 17. That § 10-58-1 be amended to read:

20 10-58-1. There is imposed upon owners and operators a special amusement excise tax of  
21 ~~four and one-half percent of~~ on the gross receipts from the operation of any mechanical or  
22 electronic amusement device. The rate of tax under this section is the same as provided under  
23 section 1 of this Act.

24 Section 18. That § 10-64-9 be repealed.

1 ~~10-64-9. If the state is able to enforce the obligation to collect and remit sales tax on remote~~  
2 ~~sellers who deliver tangible personal property, products transferred electronically, or services~~  
3 ~~directly to the citizens of South Dakota, the additional net revenue from such obligation shall~~  
4 ~~be used to reduce the rate of certain taxes. The rate of tax imposed by §§ 10-45-2, 10-45-5, 10-~~  
5 ~~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, 10-46-58, 10-~~  
6 ~~46-69, 10-46-69.1, 10-46-69.2, 10-46E-1, and 10-58-1 shall be reduced by one-tenth percent on~~  
7 ~~July first following the calendar year for which each additional twenty million dollar increment~~  
8 ~~of net revenue is collected and remitted by such remote sellers. However, the rate of tax~~  
9 ~~imposed by §§ 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 ~~10-46-2.1, 10-46-2.2, 10-46-58, 10-46-69, 10-46-69.1, 10-46-69.2, 10-46E-1, and 10-58-1 may~~  
11 ~~not be reduced below four percent pursuant to the provisions of this section.~~