

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

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HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1002 - 01/17/2002

Introduced by: Representatives Brown (Richard), Glenski, Peterson (Jim), and Smidt and
Senators McCracken, Dennert, and Reedy at the request of the Interim
Streamlined Sales Tax Project Task Force

1 FOR AN ACT ENTITLED, An Act to impose a gross receipts tax on certain visitor-related
2 businesses.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Lodging establishment," any building, structure, property, or premise kept, used,
6 maintained, advertised, or held out to the public to be a place where sleeping
7 accommodations are furnished to transient guests. The following constitute lodging
8 establishments: bed and breakfast inns, boarding houses, bungalows cabins,
9 condominiums, cottages, dude ranches, guest houses, guest ranches, hostels, hotels,
10 inns, lodges, motels, resorts, tourist homes, timeshare rentals, vacation home rentals,
11 and villas;

12 (2) "Campground," any property or premise kept, used, maintained, advertised, or held
13 out to the public to be a place where sites are available for placing of tents, campers,
14 trailers, mobile homes, or other mobile accommodations to transient guests.



1 Campgrounds include city, county, and state-owned campgrounds, as well as
2 concessionaires or contractors who manage or operate publicly owned campgrounds.

3 The following constitute campgrounds: campgrounds, camping cabins, camping
4 resorts, commercial picnic grounds, organizational camps, park units, recreational
5 vehicle parks, trailer parks, and youth camps;

6 (3) "Visitor attraction," any business establishment that offers recreation, entertainment,
7 or interpretation of natural or cultural history. The following constitute visitor
8 attractions: aerial tramways, amusement parks, animal exhibits, animal shows, antique
9 car exhibits, antique exhibits, arboreta, aquariums, batting cages, botanical gardens,
10 bumper boats, bumper cars, bungee jumps, carnival rides, chuck wagon suppers,
11 commercial playgrounds, go-cart raceways, gold mines, golf driving ranges, historic
12 sites, human mazes, hunting preserves, miniature golf courses, museums, music
13 shows, observation towers, outdoor dramas, pitch 'n putt golf courses, playhouses,
14 racetracks, recreational gold mining, reptile exhibits, restorations, scenic railroads,
15 shooting preserves, show caves, ski areas, spectator events, water slides, wave pools,
16 wax figure exhibits, and zoological gardens. A visitor attraction includes any business
17 which is being conducted on the site of another visitor attraction;

18 (4) "Recreational service," any business establishment that provides leisure or recreational
19 experiences. The following constitute recreational services: aerial sightseeing tours,
20 amusement rides, bath houses, carriage rides, climbing guides, day camps, fishing
21 guides, fishing ponds, golf driving ranges, hunting guides, outfitters, pack trains,
22 private beaches, river rafting, saddle horse rides, sightseeing guides, sightseeing tours,
23 shooting galleries, shooting ranges, skeet ranges, ski instruction, ski lift tickets, ski
24 trails, spas, trail rides, trap ranges, tour bus excursions, and youth camps;

- 1 (5) "Recreational equipment rental," include all items rented for twenty-eight days or less
2 whose primary purpose is recreational use. Rental, under such circumstances, of the
3 following constitute recreational equipment rentals: all-terrain vehicles, beach chairs,
4 bicycles, bumper boats, bumper cars, campers, camping trailers, firearms, fishing
5 equipment, flotation devices, go carts, golf clubs, hunting dogs, hunting equipment,
6 mopeds, motor coaches, motorcycles, pack animals, recreational courts and
7 equipment, recreational gold mining equipment, recreational vehicles, recreational
8 water equipment, rock climbing gear, roller blades, saddle horses, skis, snowboards,
9 snowmobiles, snowmobile trailers, snowshoes, watercraft, and watercraft trailers;
- 10 (6) "Spectator event," any organized activity meant for entertainment or education and
11 open to the public. The following constitute spectator events: air shows, auto races,
12 auto shows, balloon shows, boat races, car rallies, carnivals, circuses, concerts, dance
13 festivals, draft horse contests, ethnic festivals, exhibitions, expositions, fairs,
14 greyhound races, horse races, horse shows, monster truck shows, motorcycle
15 expositions, motorcycle races, music festivals, rodeos, sporting events, stage
16 performances, threshing bees, tractor pull contests, and water-skiing shows. A
17 spectator event includes any business which is conducted on the site of another
18 spectator event;
- 19 (7) "Visitor intensive business," any antique shop, book store, candy store, flea market,
20 gift shop, indigenous arts and crafts shop, jewelry, lapidary shop, leather goods shop,
21 marina, novelty shop, pottery shop, rock shop, souvenir shop, and tee shirt shop if
22 fifty percent or more of annual total receipts are derived from the sale of tangible
23 personal property, during the months of June, July, August, and September. No
24 postsecondary, college, and university book store is, however, included.

1 Section 2. There is hereby imposed a tax of one percent on the gross receipts from any
2 lodging establishment, campground, motor vehicle rental, visitor attraction, recreational
3 equipment rental, recreational service, spectator event, and visitor-intensive business. The tax
4 imposed by this section on the gross receipts of any visitor-intensive business shall apply to the
5 gross receipts received by such business during the months of June, July, August, and September.
6 The tax imposed by this section is in addition to any other tax imposed by chapters 10-45 and
7 10-46. Tangible personal property, services, and admissions are subject to the tax imposed by
8 this section only if subject to tax by chapters 10-45 and 10-46.

9 Section 3. The revenue from the tax imposed by section 2 of this Act shall be deposited in
10 the tourism promotion fund created in § 1-42-31.

11 Section 4. The tax imposed by section 2 of this Act on any lodging establishment applies only
12 to the gross receipts from the rental of rooms by a lodging establishment.

13 Section 5. The tax imposed by section 2 of this Act on any campground applies to the gross
14 receipts from the rental of campground space.

15 Section 6. The tax imposed by section 2 of this Act applies to the gross receipts from
16 admission to a visitor attraction and from the sale of tangible personal property, services,
17 parking, or transportation at a visitor attraction.

18 Section 7. The tax imposed by section 2 of this Act applies to the gross receipts from
19 admission to a spectator event and from the sale of tangible personal property, services, parking,
20 or transportation at a spectator event.

21 Section 8. Gross receipts from the rental of rooms or sites at a lodging establishment or
22 campground owned by nonprofit religious, educational, or youth organization are exempt from
23 the tax imposed by section 2 of this Act if rented to a member of such organization.

24 Section 9. The tax imposed by section 2 of this Act shall be collected and administered by

1 the Department of Revenue.

2 Section 10. Any person who is subject to the tax imposed by this Act shall make a return and
3 remittance to the Department of Revenue on forms prescribed and furnished by the department
4 in the following manner:

5 (1) Any person, whose tax liability is one thousand dollars or more annually, shall file the
6 return and remit the tax on or before the twentieth day of the month following each
7 monthly period;

8 (2) Any person, whose tax liability is less than one thousand dollars annually, shall file the
9 return and remit the tax on or before the last day of the month following each two-
10 month period; and

11 (3) Any person, whose tax liability is one thousand dollars or more annually and who
12 remits the tax by electronic transfer to the state, shall file the return by electronic
13 means on or before the twenty-third day of the month following each monthly period
14 and remit the tax on or before the second to the last day of the month following each
15 monthly period.

16 The secretary of revenue may grant an extension of not more than five days for filing a return
17 and remittance. Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid
18 if a return or remittance is not made on time.

19 Section 11. The secretary of revenue may require or allow some returns and remittances to
20 be filed on a monthly, bimonthly, semiannual, or annual basis and the return and remittance is due
21 the last day of the month following the reporting period. For persons issued a temporary or
22 seasonal sales tax permit pursuant to chapter 10-45, the returns and remittances may be required
23 at a time determined by the secretary. Section 10-59-6 applies to returns and payments under this
24 section.

1 Section 12. The definitions, administrative, collection, and enforcement provisions of
2 chapters 10-45 and 10-46 apply to the tax imposed by this Act, where applicable.

3 Section 13. The secretary of revenue may promulgate rules pursuant to chapter 1-26
4 concerning:

- 5 (1) Licensing, including bonding and filing license applications;
- 6 (2) The filing of returns and payment of the tax;
- 7 (3) Determining the application of the tax and exemptions;
- 8 (4) Taxpayer record-keeping requirements; and
- 9 (5) Determining auditing methods.

10 Section 14. Any person who:

- 11 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
12 by this Act is guilty of a Class 6 felony;
- 13 (2) Fails to pay tax due under this Act within thirty days from the date the tax becomes
14 due is guilty of a Class 1 misdemeanor;
- 15 (3) Fails to keep the records and books required by section 13 of this Act or refuses to
16 exhibit these records to the secretary of revenue or the secretary's agents for the
17 purpose of examination is guilty of a Class 1 misdemeanor;
- 18 (4) Fails to file a return required by this Act within thirty days from the date the return is
19 due is guilty of a Class 1 misdemeanor;
- 20 (5) Willfully violates any rule of the secretary of revenue for the administration and
21 enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor; or
- 22 (6) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-
23 month period is guilty of a Class 6 felony.

24 Section 15. That § 10-59-1 be amended to read as follows:

1 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
2 or fees imposed by chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A, 10-46B,
3 10-47B, 10-52, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48,
4 49-31-51, 50-4-13 to 50-4-17, inclusive, this Act, and the provisions of chapter 10-45B.

5 Section 16. That § 10-45-69.1 be repealed.

6 ~~10-45-69.1. There is hereby imposed a tax of one percent on the gross receipts from hotels
7 and lodging places; campgrounds; motor vehicle rentals; visitor attractions; recreational
8 equipment rentals; recreational services; spectator events; and visitor-intensive businesses. The
9 tax imposed by this section to the gross receipts of visitor-intensive businesses shall apply to the
10 gross receipts received by such businesses during the months of June, July, August, and
11 September. The tax imposed by this section is in addition to any other tax imposed by chapters
12 10-45 and 10-46. Tangible personal property, services, and admissions are subject to the tax
13 imposed by this section only if subject to tax by chapters 10-45 and 10-46.~~

14 Section 17. That § 10-45-69.2 be repealed.

15 ~~10-45-69.2. The revenue from the tax imposed by § 10-45-69.1 shall be deposited in the
16 tourism promotion fund created in § 1-42-31.~~

17 Section 18. That § 10-45-69.3 be repealed.

18 ~~10-45-69.3. The tax imposed by § 10-45-69.1 on hotels and lodging establishments shall only
19 apply to the gross receipts from the rental of rooms by hotels and lodging establishments. A
20 lodging establishment is any building, structure, property, or premise kept, used, maintained,
21 advertised, or held out to the public to be a place where sleeping accommodations are furnished
22 in two or more rental units to transient guest. The following constitute hotels and lodging
23 establishments: bed and breakfast inns, boarding houses, bungalows cabins, condominiums,
24 cottages, dude ranches, guest houses, guest ranches, hostels, hotels, inns, lodges, motels, resorts,~~

1 ~~tourist homes, timeshare rentals, vacation home rentals, and villas.~~

2 Section 19. That § 10-45-69.4 be repealed.

3 ~~—10-45-69.4. The tax imposed by § 10-45-69.1 on campgrounds shall apply to the gross~~
4 ~~receipts from the rental of campground space. A campground is any property or premise kept,~~
5 ~~used, maintained, advertised, or held out to the public to be a place where sites are available for~~
6 ~~placing of tents, campers, trailers, mobile homes, or other mobile accommodations in two or~~
7 ~~more rental units to transient guests. Campgrounds include city, county, and state-owned~~
8 ~~campgrounds, as well as concessionaires or contractors who manage or operate publicly-owned~~
9 ~~campgrounds. The following constitute campgrounds: campgrounds, camping cabins, camping~~
10 ~~resorts, commercial picnic grounds, organizational camps, park units, recreational vehicle parks,~~
11 ~~trailer parks, and youth camps.~~

12 Section 20. That § 10-45-69.5 be repealed.

13 ~~—10-45-69.5. For the purposes of § 10-45-69.1, a visitor attraction is any business~~
14 ~~establishment that offers recreation, entertainment, or interpretation of natural or cultural history.~~
15 ~~The following constitute visitor attractions: aerial tramways, amusement parks, animal exhibits,~~
16 ~~animal shows, antique car exhibits, antique exhibits, arboreta, aquariums, batting cages, botanical~~
17 ~~gardens, bumper boats, bumper cars, bungee jumps, carnival rides, chuck wagon suppers,~~
18 ~~commercial playgrounds, go-cart raceways, gold mines, golf driving ranges, historic sites, human~~
19 ~~mazes, hunting preserves, miniature golf courses, museums, music shows, observation towers,~~
20 ~~outdoor dramas, pitch 'n putt golf courses, playhouses, racetracks, recreational gold mining,~~
21 ~~reptile exhibits, restorations, scenic railroads, shooting preserves, show caves, ski areas,~~
22 ~~spectator events, water slides, wave pools, wax figure exhibits, and zoological gardens.~~

23 ~~—The tax imposed by § 10-45-69.1 applies to the gross receipts from admission to a visitor~~
24 ~~attraction and from the sale of tangible personal property, services, parking, or transportation.~~

1 ~~A visitor attraction includes any business which is being conducted on the site of another visitor~~
2 ~~attraction.~~

3 Section 21. That § 10-45-69.6 be repealed.

4 ~~— 10-45-69.6. For the purposes of § 10-45-69.1, a recreational service is any business~~
5 ~~establishment that provides leisure or recreational experiences. The following constitute~~
6 ~~recreational services: aerial sightseeing tours, amusement rides, bath houses, carriage rides,~~
7 ~~climbing guides, day camps, fishing guides, fishing ponds, golf driving ranges, hunting guides,~~
8 ~~outfitters, pack trains, private beaches, river rafting, saddle horse rides, sightseeing guides,~~
9 ~~sightseeing tours, shooting galleries, shooting ranges, skeet ranges, ski instruction, ski lift tickets,~~
10 ~~ski trails, spas, trail rides, trap ranges, tour bus excursions, and youth camps.~~

11 Section 22. That § 10-45-69.7 be repealed.

12 ~~— 10-45-69.7. For the purposes of § 10-45-69.1, recreational equipment rentals include all~~
13 ~~items rented for twenty-eight days or less whose primary purpose is recreational use. Rental,~~
14 ~~under such circumstances, of the following constitute recreational equipment rentals: all-terrain~~
15 ~~vehicles, beach chairs, bicycles, bumper boats, bumper cars, campers, camping trailers, firearms,~~
16 ~~fishing equipment, flotation devices, go carts, golf clubs, hunting dogs, hunting equipment,~~
17 ~~mopeds, motor coaches, motorcycles, pack animals, recreational courts and equipment,~~
18 ~~recreational gold mining equipment, recreational vehicles, recreational water equipment, rock~~
19 ~~climbing gear, roller blades, saddle horses, skis, snowboards, snowmobiles, snowmobile trailers,~~
20 ~~snowshoes, watercraft, and watercraft trailers.~~

21 Section 23. That § 10-45-69.8 be repealed.

22 ~~— 10-45-69.8. For the purposes of § 10-45-69.1, a spectator event is any organized activity~~
23 ~~meant for entertainment or education and open to the public. The following constitute spectator~~
24 ~~events: air shows, auto races, auto shows, balloon shows, boat races, car rallies, carnivals,~~

1 ~~circuses, concerts, dance festivals, draft horse contests, ethnic festivals, exhibitions, expositions,~~
2 ~~fairs, greyhound races, horse races, horse shows, monster truck shows, motorcycle expositions,~~
3 ~~motorcycle races, music festivals, rodeos, sporting events, stage performances, threshing bees,~~
4 ~~tractor pull contests, and water-skiing shows.~~

5 ~~— The tax imposed by § 10-45-69.1 applies to the gross receipts from admission to a spectator~~
6 ~~event and from the sale of tangible personal property, services, parking, or transportation at a~~
7 ~~spectator event. A spectator event includes any business which is conducted on the site of~~
8 ~~another spectator event.~~

9 Section 24. That § 10-45-69.9 be repealed.

10 ~~— 10-45-69.9. For the purposes of § 10-45-69.1, a visitor-intensive business is any: antique~~
11 ~~shop, book store, candy store, flea market, gift shop, indigenous arts and craft shop, jewelry,~~
12 ~~lapidary shop, leather goods shop, marina, novelty shop, pottery shop, rock shop, souvenir shop,~~
13 ~~and tee shirt shop if fifty percent or more of annual total receipts are derived from the sale of~~
14 ~~tangible personal property, during the months of June, July, August, and September. No~~
15 ~~postsecondary, college, and university book store is, however, included.~~

16 Section 25. That § 10-45-69.10 be repealed.

17 ~~— 10-45-69.10. There is exempted from the tax imposed by § 10-45-69.1, gross receipts from~~
18 ~~the rental of rooms or sites at a lodging establishment or campground owned by nonprofit~~
19 ~~religious, educational, or youth organization if rented to members of such organizations.~~

20 Section 26. That § 10-45-91 be amended to read as follows:

21 10-45-91. Notwithstanding the provisions of § 10-45-13, admissions to rodeos and rodeo
22 related activities and events are subject to the tax imposed by §§ 10-45-8 and ~~10-45-69.1~~ section
23 2 of this Act.