

2023 South Dakota Legislature

House Bill 1137**AMENDMENT 1137E
FOR THE SENATE TAXATION ENGROSSED BILL**

1 **An Act to reduce certain gross receipts tax rates and a use tax rate, and to repeal a**
2 **conditional reduction of certain gross receipts tax rates.**

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

4 **Section 1. That § 10-45-2 be AMENDED:**

5 **10-45-2.** There is hereby imposed a tax upon the privilege of engaging in business
6 as a retailer, a tax of ~~four and one-half~~ and two-tenths percent upon the gross receipts of
7 all sales of tangible personal property consisting of goods, wares, or merchandise, except
8 as otherwise provided in this chapter, sold at retail in the ~~State of South Dakota~~ state to
9 consumers or users.

10 **Section 2. That § 10-45-5 be AMENDED:**

11 **10-45-5.** There is imposed a tax at the rate of ~~four and one-half~~ and two-tenths
12 percent upon the gross receipts of any person from engaging or continuing in any of the
13 following businesses or services in this state: abstracters; accountants; ancillary services;
14 architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing;
15 dry cleaning; dyeing; exterminators; garage and service stations; garment alteration;
16 cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen
17 and towel supply; membership or entrance fees for the use of a facility or for the right to
18 purchase tangible personal property, any product transferred electronically, or services;
19 photography; photo developing and enlarging; tire recapping; welding and all repair
20 services, except repair services for farm machinery, attachment units, and irrigation
21 equipment used exclusively for agricultural purposes; cable television; and rentals of
22 tangible personal property except leases of tangible personal property between one
23 telephone company and another telephone company, motor vehicles as defined pursuant
24 to § 32-5-1 leased under a single contract for more than twenty-eight days, and mobile

1 homes. However, the specific enumeration of businesses and professions made in this
2 section does not, in any way, limit the scope and effect of the provisions of § 10-45-4.

3 **Section 3. That § 10-45-5.3 be AMENDED:**

4 **10-45-5.3.** There is imposed, at the rate of four~~-and one-half~~ and two-tenths
5 percent, an excise tax on the gross receipts of any person engaging in oil and gas field
6 services (group no. 138) as enumerated in the Standard Industrial Classification Manual,
7 1987, as prepared by the Statistical Policy Division of the Office of Management and
8 Budget, Office of the President.

9 **Section 4. That § 10-45-6 be AMENDED:**

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

15 **Section 5. That § 10-45-6.1 be AMENDED:**

16 **10-45-6.1.** Except as provided in § 10-45-6.2, there is hereby imposed a tax of
17 four~~-and one-half~~ and two-tenths percent upon the gross receipts from providing any
18 intrastate, interstate, or international telecommunications service that originates or
19 terminates in this state and that is billed or charged to a service address in this state, or
20 that both originates and terminates in this state. However, the tax imposed by this section
21 does not apply to:

- 22 (1) Any eight hundred or eight hundred-type service, unless the service both originates
23 and terminates in this state;
- 24 (2) Any sale of a telecommunication service to a provider of telecommunication
25 services, including access service, for use in providing any telecommunication
26 service; or
- 27 (3) Any sale of interstate telecommunication service provided to a call center that has
28 been certified by the secretary of revenue to meet the criterion established in § 10-
29 45-6.3 and the call center has provided to the telecommunications service provider
30 an exemption certificate issued by the secretary indicating that it meets the
31 criterion.

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

4 **Section 6. That § 10-45-6.2 be AMENDED:**

5 **10-45-6.2.** There is hereby imposed a tax of four ~~and one-half~~ and two-tenths
6 percent upon the gross receipts of mobile telecommunications services, as defined in 4
7 U.S.C. § 124(7) as of January 1, 2002, that originate and terminate in the same state and
8 are billed to a customer with a place of primary use in this state or are deemed to have
9 originated or been received in this state and to be billed or charged to a service address
10 in this state if the customer's place of primary use is located in this state regardless of
11 where the service actually originates or terminates. Notwithstanding any other provision
12 of this chapter and for purposes of the tax imposed by this section, the tax imposed upon
13 mobile telecommunication services ~~shall~~ must be administered in accordance with 4 U.S.C.
14 §§ 116-126, as in effect on July 28, 2000.

15 **Section 7. That § 10-45-8 be AMENDED:**

16 **10-45-8.** There is imposed a tax of four ~~and one-half~~ and two-tenths percent upon
17 the gross receipts from all sales of tickets or admissions to places of amusement and
18 athletic contests or events, except as otherwise provided in this chapter.

19 **Section 8. That § 10-45-71 be AMENDED:**

20 **10-45-71.** There is imposed a tax of four ~~and one-half~~ and two-tenths percent on
21 the gross receipts from the transportation of passengers. The tax imposed by this section
22 ~~shall apply~~ applies to any transportation of passengers if the passenger boards and exits
23 the mode of transportation within this state.

24 **Section 9. That § 10-46-2.1 be AMENDED:**

25 **10-46-2.1.** For the privilege of using services in South Dakota, except those types
26 of services exempted by § 10-46-17.3, there is imposed on the person using the service
27 an excise tax equal to four ~~and one-half~~ and two-tenths percent of the value of the services
28 at the time they are rendered. However, this tax may not be imposed on any service
29 rendered by a related corporation, as defined in subdivision 10-43-1(11), for use by a
30 financial institution, as defined in subdivision 10-43-1(4), or on any service rendered by

1 a financial institution_z as defined in subdivision 10-43-1(4)_z for use by a related
2 corporation as defined in subdivision 10-43-1(11). For the purposes of this section, the
3 term_z related corporation_z includes a corporation_z which together with the financial
4 institution_z is part of a controlled group of corporations_z as defined in 26 U.S.C. § 1563 as
5 in effect on January 1, 1989, except that the eighty percent ownership requirements set
6 forth in 26 U.S.C. § 563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-
7 one percent. For the purpose of this chapter, services rendered by an employee for the
8 use of ~~his~~ the employer are not taxable.

9 **Section 10. That § 10-46-2.2 be AMENDED:**

10 **10-46-2.2.** An excise tax is imposed upon the privilege of the use of rented
11 tangible personal property and any product transferred electronically in this state at the
12 rate of four ~~and one-half~~ and two-tenths percent of the rental payments upon the property.

13 **Section 11. That § 10-46-58 be AMENDED:**

14 **10-46-58.** There is imposed a tax of four ~~and one-half~~ and two-tenths percent on
15 the privilege of the use of any transportation of passengers. The tax imposed by this
16 section ~~shall apply~~ applies to any transportation of passengers if the passenger boards
17 and exits the mode of transportation within this state.

18 **Section 12. That § 10-46-69 be AMENDED:**

19 **10-46-69.** There is hereby imposed a tax of four ~~and one-half~~ and two-tenths
20 percent upon the privilege of the use of mobile telecommunications services, as defined
21 in 4 U.S.C. § 124(7) as of January 1, 2002, that originate and terminate in the same state
22 and are billed to a customer with a place of primary use in this state. Notwithstanding any
23 other provision of this chapter and for purposes of the tax imposed by this section, the
24 tax imposed upon mobile telecommunication services ~~shall~~ must be administered in
25 accordance with 4 U.S.C. §§ 116-126_z as in effect on July 28, 2000.

26 **Section 13. That § 10-46-69.1 be AMENDED:**

27 **10-46-69.1.** Except as provided in § 10-46-69, there is hereby imposed a tax of
28 four ~~and one-half~~ and two-tenths percent upon the privilege of the use of any intrastate,
29 interstate, or international telecommunications service that originates or terminates in this

1 state and that is billed or charged to a service address in this state, or that both originates
2 and terminates in this state. However, the tax imposed by this section does not apply to:

- 3 (1) Any eight hundred or eight hundred type service unless the service both originates
4 and terminates in this state;
- 5 (2) Any sale of a telecommunication service to a provider of telecommunication
6 services, including access service, for use in providing any telecommunication
7 service; or
- 8 (3) Any sale of interstate telecommunication service provided to a call center that has
9 been certified by the secretary of revenue to meet the criterion established in § 10-
10 45-6.3 and the call center has provided to the telecommunications service provider
11 an exemption certificate issued by the secretary indicating that it meets the
12 criterion.

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

16 **Section 14. That § 10-46-69.2 be AMENDED:**

17 **10-46-69.2.** There is hereby imposed a tax of four ~~and one-half~~ and two-tenths
18 percent upon the privilege of the use of any ancillary services.

19 **Section 15. That § 10-46E-1 be AMENDED:**

20 **10-46E-1.** There is hereby imposed an excise tax of four ~~and one-half~~ and two-
21 tenths percent on the gross receipts from the sale, resale, or lease of farm machinery,
22 attachment units, and irrigation equipment used exclusively for agricultural purposes.
23 However, if any trade-in or exchange of used farm machinery, attachment units, and
24 irrigation equipment is involved in the transaction, the excise tax is only due and may only
25 be collected on the cash difference.

26 **Section 16. That § 10-58-1 be AMENDED:**

27 **10-58-1.** There is imposed upon owners and operators a special amusement
28 excise tax of four ~~and one-half~~ and two-tenths percent of the gross receipts from the
29 operation of any mechanical or electronic amusement device. The tax imposed by this
30 section is in lieu of the tax imposed pursuant to chapter 10-45.

31 **Section 17. That § 10-64-9 be REPEALED:**

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

13 **Section 18.** The provisions of this Act amendments to the Code sections in sections 1 to 16,
14 inclusive, of this Act are repealed on June 30, 2025, and the those Code sections amended
15 by this Act will revert in word and substance to that which existed immediately prior to the
16 effective date of this Act.