

2023 South Dakota Legislature

House Bill 1137**AMENDMENT 1137P
FOR THE SENATE 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 three-tenths and two-tenths~~ percent upon the
7 gross receipts of all sales of tangible personal property consisting of goods, wares, or
8 merchandise, except as otherwise provided in this chapter, sold at retail in the ~~State of~~
9 ~~South Dakota~~ state to 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 three-tenths~~
12 ~~and two-tenths~~ percent upon the gross receipts of any person from engaging or continuing
13 in any of the following businesses or services in this state: abstracters; accountants;
14 ancillary services; architects; barbers; beauty shops; bill collection services; blacksmith
15 shops; car washing; dry cleaning; dyeing; exterminators; garage and service stations;
16 garment alteration; cleaning and pressing; janitorial services and supplies; specialty
17 cleaners; laundry; linen and towel supply; membership or entrance fees for the use of a
18 facility or for the right to purchase tangible personal property, any product transferred
19 electronically, or services; photography; photo developing and enlarging; tire recapping;
20 welding and all repair services, except repair services for farm machinery, attachment
21 units, and irrigation equipment used exclusively for agricultural purposes; cable television;
22 and rentals of tangible personal property except leases of tangible personal property
23 between one telephone company and another telephone company, motor vehicles as
24 defined pursuant to § 32-5-1 leased under a single contract for more than twenty-eight
25 days, and mobile homes. However, the specific enumeration of businesses and professions

1 made in this section does not, in any way, limit the scope and effect of the provisions of
2 § 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 three tenths
5 and two-tenths percent, an excise tax on the gross receipts of any person engaging in oil
6 and gas field services (group no. 138) as enumerated in the Standard Industrial
7 Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of
8 Management and 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 three tenths and
11 two-tenths percent upon the gross receipts from sales, furnishing, or service of gas,
12 electricity, and water, including the gross receipts from such sales by any municipal
13 corporation furnishing gas, and electricity, to the public in its proprietary capacity, except
14 as otherwise provided in this chapter, when sold at retail in the State of South Dakota to
15 consumers or users.

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

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

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

1 an exemption certificate issued by the secretary indicating that it meets the
2 criterion.

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

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

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

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

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

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

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

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

27 **10-46-2.1.** For the privilege of using services in South Dakota, except those types
28 of services exempted by § 10-46-17.3, there is imposed on the person using the service
29 an excise tax equal to four and one-half ~~and three-tenths and two-tenths~~ percent of the
30 value of the services at the time they are rendered. However, this tax may not be imposed

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

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

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

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

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

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

22 **10-46-69.** There is hereby imposed a tax of four ~~and one-half~~ and three-tenths
23 and two-tenths percent upon the privilege of the use of mobile telecommunications
24 services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that originate and
25 terminate in the same state and are billed to a customer with a place of primary use in
26 this state. Notwithstanding any other provision of this chapter and for purposes of the tax
27 imposed by this section, the tax imposed upon mobile telecommunication services ~~shall~~
28 must be administered in accordance with 4 U.S.C. §§ 116-126, as in effect on July 28,
29 2000.

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

1 **10-46-69.1.** Except as provided in § 10-46-69, there is hereby imposed a tax of
2 four ~~and one-half~~ and three-tenths and two-tenths percent upon the privilege of the use
3 of any intrastate, interstate, or international telecommunications service that originates
4 or terminates in this state and that is billed or charged to a service address in this state,
5 or that both originates and terminates in this state. However, the tax imposed by this
6 section does not apply to:

- 7 (1) Any eight hundred or eight hundred type service unless the service both originates
8 and terminates in this state;
- 9 (2) Any sale of a telecommunication service to a provider of telecommunication
10 services, including access service, for use in providing any telecommunication
11 service; or
- 12 (3) Any sale of interstate telecommunication service provided to a call center that has
13 been certified by the secretary of revenue to meet the criterion established in § 10-
14 45-6.3 and the call center has provided to the telecommunications service provider
15 an exemption certificate issued by the secretary indicating that it meets the
16 criterion.

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

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

21 **10-46-69.2.** There is hereby imposed a tax of four ~~and one-half~~ and three-tenths
22 and two-tenths percent upon the privilege of the use of any ancillary services.

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

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

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

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

5 **Section 17. That § 32-5B-20 be AMENDED:**

6 **32-5B-20.** There is hereby imposed a tax of four and ~~one-half~~two-tenths percent
7 upon the gross receipts of any person renting a rental vehicle as defined in § 32-5B-19.
8 This tax applies to all vehicles registered in accordance with § 32-5-6, 32-5-8.1, or 32-5-
9 9. Any rental vehicle not licensed in accordance with § 32-5-6, 32-5-8.1, or 32-5-9 is
10 subject to the motor vehicle excise tax in § 32-5B-1.

11 The tax imposed by this section is in addition to any tax levied pursuant to chapter
12 10-45 or 10-46 upon the rental of a rental vehicle. The provisions of chapter 10-45 apply
13 to the administration and enforcement of the tax imposed by this section. The tax imposed
14 by this section is in lieu of the tax levied by § 32-5B-1 on the sales of such motor vehicles.
15 A violation of this section is a Class 1 misdemeanor.

16 **Section 18. That § 10-64-9 be REPEALED:**

17 If the state is able to enforce the obligation to collect and remit sales tax on remote
18 sellers who deliver tangible personal property, products transferred electronically, or
19 services directly to the citizens of South Dakota, the additional net revenue from such
20 obligation shall be used to reduce the rate of certain taxes. The rate of tax imposed by
21 ~~§§ 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-~~
22 ~~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-~~
23 ~~1 shall be reduced by one-tenth percent on July first following the calendar year for which~~
24 ~~each additional twenty million dollar increment of net revenue is collected and remitted~~
25 ~~by such remote sellers. However, the rate of tax imposed by §§ 10-45-2, 10-45-5, 10-~~
26 ~~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-~~
27 ~~46-58, 10-46-69, 10-46-69.1, 10-46-69.2, 10-46E-1, and 10-58-1 may not be reduced~~
28 ~~below four percent pursuant to the provisions of this section.~~

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

1 **Section 19.** Beginning July 30, 2025 and by each July thirtieth thereafter, the commissioner
2 of the Bureau of Finance and Management shall report to the special committee, created
3 pursuant to § 4-8A-2, the annual growth coefficient.

4 For purposes of this section, the term, gross receipts and use tax revenue, means the amount
5 of gross receipts and use taxes collected and reported as prescribed in chapters 10-45 and
6 10-46 and §§ 10-46E-1, 10-58-1, 32-5-16.1, 32-5B-1, and 32-5B-20.

7 The term, annual growth coefficient, is calculated as follows:

- 8 (1) The difference between the gross receipts and use tax revenue for the prior fiscal
9 year and the gross receipts and use tax revenue for the fiscal year immediately
10 preceding the prior fiscal year; and
11 (2) The amount calculated in subdivision (1) divided by the gross receipts and use tax
12 revenue for the fiscal year immediately preceding the prior fiscal year.

13 **Section 20.** Upon certification of the special committee of an annual growth coefficient equal
14 to negative one percent or less, as reported pursuant to section 19 of this Act, the
15 amendments to the Code sections in sections 1 to 17, inclusive, and section 19 of this Act,
16 are repealed effective July first of the next year and sections 1 to 17, inclusive will revert in
17 word and substance to that which existed immediately prior to the effective date of this Act.

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