

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0323

HOUSE BILL NO. 1072

Introduced by: The Committee on Taxation at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to repeal certain exemptions from the sales tax and the use
2 tax and to repeal certain provisions concerning the delayed remittance of sales and use taxes
3 for certain businesses.

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

5 Section 1. That § 10-45-9.1 be repealed.

6 ~~—10-45-9.1. Gross receipts from the sale of tangible personal property and any product~~
7 ~~transferred electronically to a person who intends to lease the property to persons in this state~~
8 ~~and actually does so are exempted from the provisions of this chapter and the tax composed by~~
9 ~~it.~~

10 Section 2. That § 10-45-12.2 be repealed.

11 ~~—10-45-12.2. There are specifically exempted from the provisions of this chapter and from~~
12 ~~the computation of the amount of tax imposed by §§ 10-45-4 and 10-45-5, the gross receipts~~
13 ~~from engineering, architectural, and surveying services (group no. 871, Standard Industrial~~
14 ~~Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of~~
15 ~~Management and Budget, Office of the President) rendered for a project entirely outside this~~



1 state:

2 Section 3. That § 10-45-14.2 be repealed.

3 ~~—10-45-14.2. Ink and newsprint when used in the production of shoppers' guides are hereby~~
4 ~~exempt from the tax imposed under this chapter.~~

5 ~~—For the purposes of this section the term, shoppers' guide, includes for numerous advertisers~~
6 ~~advertising publications whose advertisements are solicited from the general public and whose~~
7 ~~publications are for free distribution to the general public and are published regularly at least~~
8 ~~once a month, consisting of printed sheets containing advertising, bearing a date of issue, and~~
9 ~~devoted to advertising of general interest.~~

10 Section 4. That § 10-45-93 be repealed.

11 ~~—10-45-93. There are hereby exempted from the provisions of this chapter and the~~
12 ~~computation of the tax imposed by it, gross receipts resulting from the sale of agricultural and~~
13 ~~industrial production equipment in international commerce if, under the terms of the sales~~
14 ~~agreement, physical delivery of the goods takes place in South Dakota. However, the exemption~~
15 ~~only applies if written evidence of the contract of sale is retained, and such contract indicates~~
16 ~~that the goods are to be shipped in international commerce to a point outside the United States~~
17 ~~not to be returned to a point within the United States.~~

18 Section 5. That § 10-45-99 be repealed.

19 ~~—10-45-99. Terms used in §§ 10-45-99 to 10-45-107, inclusive, mean:~~

20 ~~—(1)—"Department," the Department of Revenue and Regulation;~~

21 ~~—(2)—"Business," a business that has purchased and is installing tangible personal property~~
22 ~~in the form of equipment or machinery for direct use in a manufacturing, fabricating,~~
23 ~~or processing business, which is subject to sales or use tax pursuant to chapter 10-45~~
24 ~~or 10-46;~~

1 ~~—(3)—"Project," the purchase and installation of equipment or machinery;~~

2 ~~—(4)—"Project cost," the amount paid in money for a project;~~

3 ~~—(5)—"Secretary," the secretary of the Department of Revenue and Regulation.~~

4 Section 6. That § 10-45-100 be repealed.

5 ~~—10-45-100. Any manufacturing, fabricating, or processing business may apply for and obtain~~
6 ~~an extension for remitting the sales and use tax imposed and due under the provisions of chapter~~
7 ~~10-45 or 10-46 for equipment or machinery that will be for direct use in a manufacturing,~~
8 ~~fabricating, or processing business. The extension shall end after six months.~~

9 Section 7. That § 10-45-101 be repealed.

10 ~~—10-45-101. The extension pertains only to equipment and machinery purchased and installed~~
11 ~~after July 1, 2001. No extension may be made unless:~~

12 ~~—(1)—The project cost exceeds twenty thousand dollars; and~~

13 ~~—(2)—The business applying for the extension obtains a permit from the secretary as set~~
14 ~~forth in § 10-45-103.~~

15 Section 8. That § 10-45-102 be repealed.

16 ~~—10-45-102. The amount of the tax extension shall apply to one hundred percent of the~~
17 ~~equipment and machinery costs and installation fees.~~

18 Section 9. That § 10-45-103 be repealed.

19 ~~—10-45-103. Any business desiring an extension pursuant to §§ 10-45-99 to 10-45-107,~~
20 ~~inclusive, shall apply for a permit from the secretary at least thirty days prior to commencement~~
21 ~~of the project. The application for a permit shall be submitted on a form prescribed by the~~
22 ~~secretary. A separate application shall be made and submitted for each project. Upon approval~~
23 ~~of the application, the secretary shall issue a permit entitling the applicant to an extension as~~
24 ~~provided by §§ 10-45-99 to 10-45-107, inclusive. The permit or extension is not assignable or~~

1 transferable.

2 Section 10. That § 10-45-104 be repealed.

3 ~~10-45-104. Any extension shall be submitted on forms prescribed by the secretary and shall~~
4 ~~be supported by such documentation as the secretary may require. The secretary may deny any~~
5 ~~extension where the business has failed to provide information or documentation requested or~~
6 ~~considered necessary by the secretary to determine the validity of the extension.~~

7 Section 11. That § 10-45-105 be repealed.

8 ~~10-45-105. If any extension has been fraudulently presented or supported as to any item in~~
9 ~~the claim, or if the business fails to meet all the conditions §§ 10-45-99 to 10-45-107, inclusive,~~
10 ~~then the business may be rejected in its entirety and any tax due from the business shall~~
11 ~~constitute a debt to the state and a lien in favor of the state upon all property and rights to~~
12 ~~property whether real or personal belonging to the business and may be recovered in an action~~
13 ~~of debt.~~

14 Section 12. That § 10-45-106 be repealed.

15 ~~10-45-106. Any business aggrieved by the denial in whole or in part of a extension requested~~
16 ~~under §§ 10-45-99 to 10-45-107, inclusive, may within thirty days after service of the notice of~~
17 ~~a denial by the secretary, demand and is entitled to a hearing, upon notice, before the secretary.~~
18 ~~The hearing shall be conducted pursuant to chapter 1-26.~~

19 Section 13. That § 10-45-107 be repealed.

20 ~~10-45-107. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the~~
21 ~~procedures for filing extensions and the requirements necessary to qualify for an extension.~~

22 Section 14. That § 10-46-3 be amended to read as follows:

23 10-46-3. An excise tax is imposed on the privilege of the use, storage or consumption in this
24 state of tangible personal property or any product transferred electronically not originally

1 purchased for use in this state, but thereafter used, stored or consumed in this state, at the same
2 rate of percent of the fair market value of the property at the time it is brought into this state as
3 is imposed by § 10-45-2. ~~The use, storage, or consumption of tangible personal property or any~~
4 ~~product transferred electronically more than seven years old at the time it is brought into the~~
5 ~~state by the person who purchased such property for use in another state is exempt from the tax~~
6 ~~imposed herein.~~ The secretary may promulgate rules pursuant to chapter 1-26 relating to the
7 determination of the ~~age and~~ value of the tangible personal property or the product transferred
8 electronically brought into this state.

9 Section 15. That § 10-46-9.1 be repealed.

10 ~~—10-46-9.1. Ink and newsprint when used in the production of shoppers' guides are hereby~~
11 ~~exempt from the tax imposed under this chapter.~~

12 ~~—For the purposes of this section the term, shoppers' guide, includes advertising publications~~
13 ~~whose advertisements are solicited from the general public and whose publications are for free~~
14 ~~distribution to the general public and are published regularly at least once a month, consisting~~
15 ~~of printed sheets containing advertising, bearing a date of issue, and devoted to advertising of~~
16 ~~general interest.~~