

AN ACT

ENTITLED, An Act to revise the refunds for new or expanded agricultural facilities and new or expanded business facilities and to sunset the refunds for new or expanded agricultural facilities and new or expanded business facilities.

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

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

10-45B-2. As provided in this chapter, any person holding a permit issued pursuant to § 10-45B-6 may apply for and obtain a refund or credit for contractors' excise taxes imposed and paid under the provisions of chapter 10-46A for the construction of a new agricultural processing facility and for sales or use taxes imposed and paid by such person under the provisions of chapters 10-45 and 10-46 for the purchase or use of agricultural processing equipment.

Section 2. That § 10-45B-4 be repealed.

Section 3. That § 10-45B-4.1 be repealed.

Section 4. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

The refund of taxes pursuant to §§ 10-45B-2 and 10-45B-2.1 pertains only to project costs incurred and paid after January 1, 2008, up to and including thirty-six months from the construction date. No refund may be paid unless the person applying for the refund obtains a permit from the secretary as set forth in § 10-45B-6.

Section 5. That § 10-45B-5 be repealed.

Section 6. That § 10-45B-5.1 be repealed.

Section 7. That § 10-45B-6.1 be repealed.

Section 8. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding any provision of chapter 10-45B or this Act, this section controls the amount of refunds payable under chapter 10-45B for any new agricultural processing facility or new business facility that has a construction date on or after January 1, 2010. For project cost incurred and paid from July 1, 2010, to December 31, 2012, inclusive, the amount of the refund shall be determined by applying the provisions of chapter 10-45B in effect on July 1, 2010. The amount of the tax refund for a new agricultural processing facility or new business facility shall be a percentage of the taxes paid, as follows:

- (1) For project costs of less than ten million dollars, there shall be no refund;
- (2) For project costs of ten or more million dollars but less than forty million dollars, there shall be a refund of forty-five percent of the taxes paid;
- (3) For project costs of forty or more million dollars but less than five hundred million dollars, there shall be a refund of fifty-five percent of the taxes paid; and
- (4) For projects costs of five hundred million or more dollars, there shall be no refund.

No tax refund may be given for any project cost incurred and paid on or after January 1, 2013, except for performance retainage amounts, not to exceed ten percent, related to the project.

Section 9. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

The provisions of chapter 10-45B in effect prior to January 1, 2010, apply to any project where the construction date was before January 1, 2010.

Section 10. That § 10-45B-8 be amended to read as follows:

10-45B-8. Any person issued a permit pursuant to this chapter shall submit a claim for refund to the department no more frequently than on or before the last day of each month and no less frequently than on or before the last day of each month following each calendar quarter. The secretary shall determine and pay the amount of the tax refund within ninety days of receipt of the

claim for refund. Ninety-five percent of the amount of refund shall be paid to the claimant in accordance with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the department. No interest may be paid on the refund amount. The secretary shall pay the refund by electronic funds transfer.

Section 11. That § 10-45B-8.1 be repealed.

Section 12. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

No claim for refund pursuant to this chapter may be considered by the department if the claim for refund is received twelve months after the thirty-six month time period of section 4 of this Act. Moreover, any such claim is barred from any future refund eligibility.

Section 13. That § 10-45B-8.2 be repealed.

Section 14. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

No document or record in support of any claim for refund may be considered by the department if the document or record in support of any claim for refund is received twelve months after the thirty-six month time period of section 4 of this Act. Moreover, any such document or record is barred from any future consideration.

However, if the department requests any additional document or record from the project owner after a review of the claim for refund, and the request is made after the applicable time period provided by this section has expired, the project owner has sixty days to provide the requested document or record. No document or record received after this sixty-day period may be considered by the department. Moreover, any such document or record is barred from any future consideration.

Section 15. That § 10-45B-8.3 be repealed.

Section 16. That § 10-45B-9 be amended to read as follows:

10-45B-9. The amounts withheld by the department in accordance with § 10-45B-8 shall be retained until the project has been completed and the claimant has met all the conditions of section 4 of this Act, at which time all sums retained shall be paid to claimant.

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I certify that the attached Act
originated in the
SENATE as Bill No. 195

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 195
File No. _____
Chapter No. _____

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Received at this Executive Office
this ____ day of _____ ,
20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State