

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

744T0285

## SENATE BILL NO. 123

Introduced by: Senators Rhoden, Begalka, Frerichs, Fryslie, Hansen (Tom), Haverly, Juhnke, Maher, Nelson (Tom), Nygaard, Peters, Putnam, Rampelberg, Schlekeway, Sutton, Tidemann, and Tieszen and Representatives Solum, Bolin, Boomgarden, Brunner, Cronin, Dennert, Gibson, Greenfield, Hawley, Hoffman, Jensen, Kloucek, Kopp, Olson (Betty), Rausch, Romkema, Russell, Schaefer, Schrempp, Street, Turbiville, Vanneman, Verchio, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise how the taxes are applied to rural electric  
2 companies.

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

4 Section 1. That § 10-36-6 be amended to read as follows:

5 10-36-6. There is levied on each company subject to §§ 10-36-1 and 10-36-2, as of May first  
6 of each year, a tax of ~~two percent upon the gross receipts derived by it from the furnishing of~~  
7 ~~electric energy~~ \$0.0016 per kilowatt hour of retail electric energy and a tax of \$0.0008 per  
8 kilowatt hour of wholesale electric energy delivered to its customer within the state of South  
9 Dakota during the preceding calendar year. ~~Gross receipts for taxation purposes may not include~~  
10 ~~dividends or distributions to patrons whether paid or credited.~~

11 Each company taxed pursuant to ~~§ 10-36-6~~ this section shall receive a credit against the  
12 ~~gross receipts tax~~ taxes due and payable under this section if it has contracted jointly or severally  
13 for the use of property in this state owned, held under lease, or otherwise by a light or power



1 company defined in § 10-35-2, a consumer power district organized pursuant to chapter 49-35,  
 2 or a municipal power agency organized pursuant to chapter 9-41A if the property is assessed for  
 3 taxation pursuant to chapter 10-35, subject to an excise tax as provided in § 49-37-13, or taxed  
 4 as provided in § 9-41A-36. A company taxed pursuant to § ~~10-36-6~~ this section may deduct as  
 5 a credit from the ~~gross receipts tax~~ taxes to be paid under this section, that portion of the taxes  
 6 included in the payments by the company to such organizations for the use of the property  
 7 described in the contract.

8 Section 2. That § 10-36-3 be amended to read as follows:

9 10-36-3. ~~The term, rural areas, as used in this chapter means either any area not included~~  
 10 ~~within the boundaries of any municipality having a population in excess of fifteen hundred~~  
 11 ~~inhabitants or the assigned service area or areas of a rural electric cooperative determined~~  
 12 ~~pursuant to chapter 49-34A. The term, line, does not necessarily mean a single circuit but is a~~  
 13 ~~succession of poles connected by wires regardless of the number of circuits on a particular pole~~  
 14 ~~or poles. Those persons, corporations, cooperatives, and associations are herein referred to as~~  
 15 ~~"companies."~~ Terms used in this chapter mean:

16 (1) "Company," any person, corporation, cooperative, or association engaged in the  
 17 distribution or transmission of electric energy solely within the United States for  
 18 consumption principally in rural areas;

19 (2) "Line," a succession of poles connected by wires regardless of the number of circuits  
 20 on a particular pole or poles;

21 (3) "Personal property," any property used or intended for use by a company in  
 22 connection with the distribution or transmission of electric energy including all poles,  
 23 wires, lines, transformers, meters, machinery, fixtures, and all attachments and  
 24 appurtenances thereto;

1       (4)   "Retail company," any company engaged in the distribution of retail electric energy  
2       for end user consumption principally in rural areas in South Dakota;

3       (5)   "Rural area," any area not included within the boundaries of any municipality having  
4       a population in excess of fifteen hundred inhabitants or the assigned service area or  
5       areas of a rural electric cooperative determined pursuant to chapter 49-34A;

6       (6)   "Wholesale power supplier," any company engaged in the delivery of wholesale  
7       electric energy to another company for resale in South Dakota.

8       Section 3. That § 10-36-4 be amended to read as follows:

9       10-36-4. Each company as defined in § 10-36-1, shall keep on file with the county auditor  
10      of each county through or into which its line or lines run, a map or blueprints showing correctly  
11      the location of its line or lines in ~~such~~ the county and in each governmental subdivision thereof.

12      Section 4. That § 10-36-5 be amended to read as follows:

13      10-36-5. On April fifteenth of each year, each retail company on behalf of itself and its  
14      wholesale power supplier shall file with the secretary of revenue on forms prescribed by ~~him~~  
15      the secretary a report of ~~its gross receipts derived from furnishing electric energy during the~~  
16      ~~preceding calendar year. The report shall set forth the total gross receipts and the amount of~~  
17      ~~dividends and patron's credits of the company in the state, together with the total gross receipts~~  
18      ~~and the amount of dividends and patron's credits from each county in which the company~~  
19      ~~operates and shall further contain the total gross receipts and the amount of dividends and~~  
20      ~~patron's credits received by the company within each school district in each county in which the~~  
21      ~~company operates~~ the number of kilowatt hours of retail and wholesale electric energy subject  
22      to taxation pursuant to this chapter apportioned to each county and school district in proportion  
23      to electric energy delivered at retail. The report shall be sworn to and verified by an officer of  
24      the retail company.

1 Section 5. That § 10-36-7 be amended to read as follows:

2 10-36-7. The secretary of revenue shall compute and determine the amount of tax to be paid  
3 by ~~such~~ each company as provided in § 10-36-6 ~~and, which shall be remitted by the retail~~  
4 company. The secretary shall on or before July first following certify to the county auditor of  
5 each county in the state in which ~~such~~ the company operates the amount of the tax to be paid  
6 in ~~such~~ the county ~~on the basis of the gross receipts received by such company from its~~  
7 ~~operations in such county and~~ based on the kilowatt hours delivered. The secretary shall further  
8 certify to the county auditor the amount to which each school district shall be entitled in each  
9 ~~such county on the basis of the gross receipts received by such company in each school district~~  
10 based on the kilowatt hours delivered. The county auditor shall extend such tax on ~~his~~ the books  
11 and certify the same to the county treasurer.

12 Section 6. That § 10-36-8 be amended to read as follows:

13 10-36-8. The tax levied by § 10-36-6 shall become due and be payable to the county  
14 treasurer of each county in which ~~such~~ the retail company operates and as certified by the  
15 secretary of revenue on September first of each year following the filing of the report of ~~such~~  
16 ~~gross receipts~~ kilowatt hours delivered.

17 Section 7. That § 10-36-9 be amended to read as follows:

18 10-36-9. If the tax levied under this chapter is not paid on the due date a penalty of five  
19 percent of the amount of the tax shall be imposed for each month of such delinquency. Provided  
20 further that ~~such~~ the tax may be enforced and collected by distress and sale of the personal  
21 property of ~~such~~ the company ~~in the same manner as is provided for the collection of personal~~  
22 ~~property taxes.~~

23 Section 8. That § 10-36-10 be amended to read as follows:

24 10-36-10. The county treasurer shall allocate and transmit the taxes collected from each ~~such~~

1 company to the school ~~treasurers~~ treasurer of each school district in which ~~such~~ the company  
2 operates on the basis of the ~~gross receipts received by such~~ number of kilowatt hours delivered  
3 by the company from its operations within each ~~such~~ school district within the county.