

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

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HOUSE ENGROSSED NO. **HB 1182** - 02/22/2016

Introduced by: The Committee on Appropriations at the request of the Office of the Governor

1 FOR AN ACT ENTITLED, An Act to increase the state sales tax, the state use tax, the excise
2 tax on farm machinery, and amusement device tax for the purpose of increasing education
3 funding and reducing property taxes, to provide for certain school district reporting and
4 penalties, and to declare an emergency.

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

6 Section 1. That § 10-45-2 be amended to read:

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

11 Section 2. That § 10-45-5 be amended to read:

12 10-45-5. There is imposed a tax at the rate of four and one-half percent upon the gross
13 receipts of any person from engaging or continuing in any of the following businesses or
14 services in this state: abstracters; accountants; ancillary services; architects; barbers; beauty
15 shops; bill collection services; blacksmith shops; car washing; dry cleaning; dyeing;



1 exterminators; garage and service stations; garment alteration; cleaning and pressing; janitorial
2 services and supplies; specialty cleaners; laundry; linen and towel supply; membership or
3 entrance fees for the use of a facility or for the right to purchase tangible personal property, any
4 product transferred electronically, or services; photography; photo developing and enlarging;
5 tire recapping; welding and all repair services, except repair services for farm machinery,
6 attachment units, and irrigation equipment used exclusively for agricultural purposes; cable
7 television; and rentals of tangible personal property except leases of tangible personal property
8 between one telephone company and another telephone company, motor vehicles as defined
9 pursuant to § 32-5-1 leased under a single contract for more than twenty-eight days and mobile
10 homes. However, the specific enumeration of businesses and professions made in this section
11 does not, in any way, limit the scope and effect of the provisions of § 10-45-4.

12 Section 3. That § 10-45-5.3 be amended to read:

13 10-45-5.3. There is imposed, at the rate of four and one-half percent, an excise tax on the
14 gross receipts of any person engaging in oil and gas field services (group no. 138) as enumerated
15 in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy
16 Division of the Office of Management and Budget, Office of the President.

17 Section 4. That § 10-45-6 be amended to read:

18 10-45-6. There is hereby imposed a tax of four and one-half percent upon the gross receipts
19 from sales, furnishing, or service of gas, electricity, and water, including the gross receipts from
20 such sales by any municipal corporation furnishing gas, and electricity, to the public in its
21 proprietary capacity, except as otherwise provided in this chapter, when sold at retail in the State
22 of South Dakota to consumers or users.

23 Section 5. That § 10-45-6.1 be amended to read:

24 10-45-6.1. Except as provided in § 10-45-6.2, there is hereby imposed a tax of four and one-

1 half percent upon the gross receipts from providing any intrastate, interstate, or international
2 telecommunications service that originates or terminates in this state and that is billed or
3 charged to a service address in this state, or that both originates and terminates in this state.

4 However, the tax imposed by this section does not apply to:

5 (1) Any eight hundred or eight hundred type service unless the service both originates
6 and terminates in this state;

7 (2) Any sale of a telecommunication service to a provider of telecommunication
8 services, including access service, for use in providing any telecommunication
9 service; or

10 (3) Any sale of interstate telecommunication service provided to a call center that has
11 been certified by the secretary of revenue to meet the criterion established in § 10-45-
12 6.3 and the call center has provided to the telecommunications service provider an
13 exemption certificate issued by the secretary indicating that it meets the criterion.

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

16 Section 6. That § 10-45-6.2 be amended to read:

17 10-45-6.2. There is hereby imposed a tax of four and one-half percent upon the gross
18 receipts of mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of January
19 1, 2002, that originate and terminate in the same state and are billed to a customer with a place
20 of primary use in this state or are deemed to have originated or been received in this state and
21 to be billed or charged to a service address in this state if the customer's place of primary use
22 is located in this state regardless of where the service actually originates or terminates.

23 Notwithstanding any other provision of this chapter and for purposes of the tax imposed by this
24 section, the tax imposed upon mobile telecommunication services shall be administered in

1 accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

2 Section 7. That § 10-45-8 be amended to read:

3 10-45-8. There is imposed a tax of four and one-half percent upon the gross receipts from
4 all sales of tickets or admissions to places of amusement and athletic contests or events, except
5 as otherwise provided in this chapter.

6 Section 8. That § 10-45-71 be amended to read:

7 10-45-71. There is imposed a tax of four and one-half percent on the gross receipts from the
8 transportation of passengers. The tax imposed by this section shall apply to any transportation
9 of passengers if the passenger boards and exits the mode of transportation within this state.

10 Section 9. That § 10-46-2.1 be amended to read:

11 10-46-2.1. For the privilege of using services in South Dakota, except those types of services
12 exempted by § 10-46-17.3, there is imposed on the person using the service an excise tax equal
13 to four and one-half percent of the value of the services at the time they are rendered. However,
14 this tax may not be imposed on any service rendered by a related corporation as defined in
15 subdivision 10-43-1(11) for use by a financial institution as defined in subdivision 10-43-1(4)
16 or on any service rendered by a financial institution as defined in subdivision 10-43-1(4) for use
17 by a related corporation as defined in subdivision 10-43-1(11). For the purposes of this section,
18 the term related corporation includes a corporation which together with the financial institution
19 is part of a controlled group of corporations as defined in 26 U.S.C. § 1563 as in effect on
20 January 1, 1989, except that the eighty percent ownership requirements set forth in 26 U.S.C.
21 § 563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent. For the
22 purpose of this chapter, services rendered by an employee for the use of his employer are not
23 taxable.

24 Section 10. That § 10-46-2.2 be amended to read:

1 10-46-2.2. An excise tax is imposed upon the privilege of the use of rented tangible personal
2 property and any product transferred electronically in this state at the rate of four and one-half
3 percent of the rental payments upon the property.

4 Section 11. That § 10-46-58 be amended to read:

5 10-46-58. There is imposed a tax of four and one-half percent on the privilege of the use of
6 any transportation of passengers. The tax imposed by this section shall apply to any
7 transportation of passengers if the passenger boards and exits the mode of transportation within
8 this state.

9 Section 12. That § 10-46-69 be amended to read:

10 10-46-69. There is hereby imposed a tax of four and one-half percent upon the privilege of
11 the use of mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of January
12 1, 2002, that originate and terminate in the same state and are billed to a customer with a place
13 of primary use in this state. Notwithstanding any other provision of this chapter and for purposes
14 of the tax imposed by this section, the tax imposed upon mobile telecommunication services
15 shall be administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

16 Section 13. That § 10-46-69.1 be amended to read:

17 10-46-69.1. Except as provided in § 10-46-69, there is hereby imposed a tax of four and one-
18 half percent upon the privilege of the use of any intrastate, interstate, or international
19 telecommunications service that originates or terminates in this state and that is billed or
20 charged to a service address in this state, or that both originates and terminates in this state.

21 However, the tax imposed by this section 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

1 services, including access service, for use in providing any telecommunication
2 service; or

3 (3) Any sale of interstate telecommunication service provided to a call center that has
4 been certified by the secretary of revenue to meet the criterion established in § 10-45-
5 6.3 and the call center has provided to the telecommunications service provider an
6 exemption certificate issued by the secretary indicating that it meets the criterion.

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

9 Section 14. That § 10-46-69.2 be amended to read:

10 10-46-69.2. There is hereby imposed a tax of four and one-half percent upon the privilege
11 of the use of any ancillary services.

12 Section 15. That § 10-46E-1 be amended to read:

13 10-46E-1. There is hereby imposed an excise tax of four and one-half percent on the gross
14 receipts from the sale, resale, or lease of farm machinery, attachment units, and irrigation
15 equipment used exclusively for agricultural purposes. However, if any trade-in or exchange of
16 used farm machinery, attachment units, and irrigation equipment is involved in the transaction,
17 the excise tax is only due and may only be collected on the cash difference.

18 Section 16. That § 10-58-1 be amended to read:

19 10-58-1. There is imposed upon owners and operators a special amusement excise tax of
20 four and one-half percent of the gross receipts from the operation of any mechanical or
21 electronic amusement device.

22 Section 17. That the code be amended by adding a NEW SECTION to read:

23 From the proceeds of this Act, each year sixty-three percent shall be dedicated to increasing
24 teacher salaries by school districts, thirty-four percent shall be dedicated to reducing the property

1 tax levies for general education for all classes of property, and three percent shall be dedicated
2 to increasing instructor salaries to competitive levels at postsecondary technical institutes.

3 Section 18. That the code be amended by adding a NEW SECTION to read:

4 The presidents of the postsecondary technical institutes, acting pursuant to rules established
5 by the State Board of Education, shall use the money provided pursuant to this Act to increase
6 instructor salaries at each postsecondary technical institute.

7 Section 19. That the code be amended by adding a NEW SECTION to read:

8 If the state is able to enforce the obligation to collect and remit sales tax on remote sellers
9 who deliver tangible personal property, products transferred electronically, or services directly
10 to the citizens of South Dakota, the additional net revenue from such obligation shall be used
11 to reduce the rate of certain taxes. The rate of tax imposed by §§ 10-45-2, 10-45-5, 10-45-5.3,
12 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, 10-46-58, 10-46-69,
13 10-46-69.1, 10-46-69.2, 10-46E-1, and 10-58-1 shall be reduced by one-tenth percent on July
14 first following the calendar year for which each additional twenty million dollar increment of
15 net revenue is collected and remitted by such remote sellers. However, the rate of tax imposed
16 by §§ 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, 10-46-
17 2.1, 10-46-2.2, 10-46-58, 10-46-69, 10-46-69.1, 10-46-69.2, 10-46E-1, and 10-58-1 may not
18 be reduced below four percent pursuant to the provisions of this section.

19 Section 20. That § 13-8-47 be amended to read:

20 13-8-47. Before the first day of August every school board shall file an annual report with
21 the Department of Education. The report shall contain all the educational and financial
22 information and statistics of the school district as requested in a format established by the
23 Department of Education. The report shall also contain, for each month of the fiscal year, the
24 month-end cash balances of the school district's general fund, capital outlay fund, pension fund,

1 and special education fund. The report shall also contain the following information for the
2 district from the preceding fiscal year:

- 3 (1) Total teacher compensation, which is the total amount spent on instructional salaries
4 and benefits for certified instructional staff;
- 5 (2) The total amount spent on instructional salaries for certified instructional staff;
- 6 (3) The total amount spent on benefits for certified instructional staff;
- 7 (4) The total number of certified instructional staff employed by the school district; and
- 8 (5) Any other information necessary to comply with the provisions of this Act.

9 The business manager with assistance of the secretary of the Department of Education shall
10 make the annual report, and it shall be approved by the school board. The business manager
11 shall sign the annual report and file a copy with the Department of Education as provided in
12 § 13-13-37. The division shall audit the report and return one copy to the school district.

13 Reports not filed prior to August thirtieth are considered past due and are subject to the past-
14 due provisions of § 13-13-38.

15 Section 21. That the code be amended by adding a NEW SECTION to read:

16 The Department of Education shall calculate the following for each school district:

- 17 (1) The average teacher salary, based on data collected pursuant to §§ 13-8-47 and
18 13-3-51;
- 19 (2) The increase in state aid to general education funding, excluding any effect due to
20 change in the school district's fall enrollment and less the amount of revenue
21 generated in school fiscal year 2016 pursuant to § 13-10-6 as a percentage increase,
22 from fiscal year 2016 to fiscal year 2017; and
- 23 (3) The increase in average teacher compensation as a percentage increase, as defined in
24 § 13-8-47, from fiscal year 2016 to fiscal year 2017.

1 For each school district, the district's increase in average teacher compensation from fiscal
2 year 2016 to 2017 shall be equal to at least eighty-five percent of the district's increase in state
3 aid to general education funding, as defined in subdivision (2), from fiscal year 2016 to fiscal
4 year 2017.

5 If a school district fails to comply with the requirements of this section, state aid to general
6 education funding to the district in fiscal year 2018 shall be decreased by an amount equal to
7 fifty percent of the amount calculated in subdivision (2). For fiscal years 2019, 2020, and 2021,
8 if a district's average teacher compensation is less than the district's average teacher
9 compensation in fiscal year 2017, state aid to general education funding to the district in the
10 following fiscal year shall be reduced by an amount equal to five hundred dollars for each
11 teacher employed in the school district.

12 A school district may request a waiver from any penalty imposed under this section from
13 the School Finance Accountability Board created in section 22 of this Act.

14 Section 22. That the code be amended by adding a NEW SECTION to read:

15 There is hereby created the School Finance Accountability Board within the Department of
16 Education. The board shall consist of five members appointed by the Governor. The members
17 shall serve a term of four years. The board may recommend that a penalty against a school
18 district imposed under section 21 of this Act be waived, in whole or in part, if the district can
19 demonstrate that its failure to comply with section 21 of this Act is due to special circumstances.

20 The School Finance Accountability Board shall promulgate rules, pursuant to chapter 1-26,
21 to establish the appeals process provided for in section 21 of this Act, and to establish the
22 factors that may be taken into account when considering a waiver requested by a school district,
23 which shall include the impact of retirements.

24 Any waiver recommended by the School Finance Accountability Board must be approved

1 by the Joint Committee on Appropriations or the Interim Committee on Appropriations. The
2 Department of Education shall annually report to the Governor and the Legislature the
3 information collected pursuant to § 13-8-47 and section 21 of this Act.

4 Section 23. Whereas, this Act is necessary for the support of the state government and its
5 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
6 full force and effect on June 1, 2016.