

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

780A0594

HOUSE ENGROSSED NO. **HB1243** - 2/25/97

Introduced by: Representatives Gabriel, Cutler, Haley, and Lucas and Senators Benson, Dunn (Jim), Everist, Halverson, Hunhoff, and Rounds

1 FOR AN ACT ENTITLED, An Act to establish a telecommunications gross receipts tax,
2 provide certain credits, revise certain tax rates on gross receipts, and revise certain
3 exemptions to taxes levied on property.

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

5 Section 1. Terms used in this Act mean:

- 6 (1) "Department," the South Dakota Department of Revenue;
- 7 (2) "Engaging in business," carrying on or causing to be carried on any activity with the
8 purpose of direct or indirect benefit;
- 9 (3) "Mobile service," as defined pursuant to 47 USC § 153;
- 10 (4) "Private communications service," any service provided to a customer pursuant to a
11 contractual arrangement where the customer pays a charge on a per minute basis for
12 dedicated telecommunications services through transmission devices which permit
13 such services to originate or terminate in this state;
- 14 (5) "Secretary," the secretary of the Department of Revenue;
- 15 (6) "Telecommunications company," any person, municipal corporation, trustee, lessee,

1 or receiver owning, operating, managing, or controlling in whole or in part, any
2 telecommunications line, system, or exchange in this state, directly or indirectly, for
3 public use;

4 (7) "Telecommunications service," the transmission of signs, signals, writings, images,
5 sounds, messages, data, or other information of any nature by wire, radio, light waves,
6 electromagnetic means, or other similar means. The term does not include the
7 provision of terminal equipment used to originate or terminate such service or
8 broadcast transmission by radio, television, and satellite stations regulated by the
9 Federal Communications Commission and one-way cable television services. The term
10 includes radio common carrier services, mobile services, and radio paging;

11 (8) "Telecommunications gross receipts tax," the gross receipts tax imposed by this Act;

12 (9) "Wide-area telephone service," a fixed rate service allowing customers to make or
13 receive long-distance calls without being charged for each call.

14 Section 2. The term, gross receipts, as used in this Act is defined in § 10-33-2.

15 Section 3. There is hereby imposed a tax of four percent on the gross receipts of any
16 telecommunications company providing telecommunications service.

17 Section 4. Telecommunications companies subject to the tax imposed on gross receipts
18 pursuant to § 10-33-21 are exempt from the tax imposed by section 3 of this Act.

19 Section 5. For the purposes of this Act, to prevent evasion of the gross receipts tax and to
20 aid in its administration, all gross receipts of any telecommunications company engaged in the
21 business of providing telecommunications service are deemed subject to the telecommunications
22 gross receipts tax.

23 Section 6. The telecommunications gross receipts tax does not apply to the gross receipts
24 from any wide area telephone service or private communications service originating or
25 terminating in this state.

1 Section 7. No telecommunications company may list the tax imposed by section 3 of this Act
2 or § 10-33-21 as a separate line item on any contract or bill.

3 Section 8. That chapter 10-33 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Any property of a company providing radio common carrier services, mobile services, and
6 radio paging services shall be assessed and taxed in the same manner as telephone company
7 property is assessed and taxed pursuant to chapter 10-33.

8 Section 9. Any refund or allowance made by any telecommunication service or any amount
9 written off the books of a telecommunications company reporting financial information on an
10 accrual basis may be reported as an uncollectible debt and deducted from the gross receipts of
11 any telecommunications service. If any uncollectible debt is subsequently collected, the amount
12 is subject to the telecommunications gross receipts tax and shall be reported to the Department
13 of Revenue in the month of collection.

14 Section 10. The telecommunications gross receipts tax shall be in addition to all other taxes
15 imposed by the State of South Dakota, or by any municipal corporation or political subdivision
16 thereof, unless otherwise specifically exempted by this Act.

17 Section 11. The secretary of revenue shall establish, by rules promulgated pursuant to
18 chapter 1-26, schedules for the collection of the telecommunications gross receipts tax. The
19 schedules established shall spread the tax proportionately on fractions of dollars.

20 Section 12. Any telecommunications company engaging in a business in this state whose
21 gross receipts are subject to the telecommunications gross receipts tax shall file with the
22 Department of Revenue, an application for a telecommunications gross receipts tax license. An
23 application for a license shall be made upon a form prescribed by the secretary of revenue and
24 shall set forth the name under which the applicant transacts or intends to transact business, the
25 location of the place of business, and such other information as the secretary of revenue may

1 require. The application shall be signed by the owner, if a natural person; in the case of an
2 association or partnership, by a member or partner thereof; or in the case of a corporation, by
3 an executive officer thereof or some person specifically authorized by the corporation to sign the
4 application, to which shall be attached the written evidence of the person's authority.

5 Section 13. The secretary of revenue shall grant and issue to each applicant a
6 telecommunications gross receipts tax license. A license is not assignable and is valid only for
7 the telecommunications company to which it was issued. Any license issued is valid and effective
8 without further payment of fees until canceled or revoked.

9 Section 14. The secretary of revenue may refuse to issue a telecommunications gross receipts
10 tax license to any person who is delinquent in payment of other taxes levied by the State of South
11 Dakota. The secretary may also require an applicant to furnish a bond to the state, or other
12 adequate security, as security for payment of any gross receipts tax that may become due, or
13 require a bond or security as a condition precedent to remaining in business as a
14 telecommunications company.

15 Section 15. Any person who is the holder of a telecommunications gross receipts tax license
16 or is a telecommunications company whose receipts are subject to telecommunications gross
17 receipts tax in this state shall file a return and remit the tax on or before the twentieth day of the
18 month following each monthly period. If the telecommunications company files the return and
19 remits the tax by electronic transfer to the state, the telecommunications company shall file the
20 return and remit the tax on or before the last day of the month following each monthly period.

21 The secretary of revenue may grant an extension of not more than five days for filing a return
22 and remittance. Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid
23 if a return or remittance is not made on time.

24 Section 16. Any telecommunications company that is the holder of a telecommunications
25 gross receipts tax license and that has failed to file a return, or that has filed a return and has

1 failed to pay the tax due the state under this law on or before the fifteenth of the second month
2 following the reporting period authorized, may no longer continue as a telecommunications
3 company and its telecommunications gross receipts tax license is hereby revoked and canceled.

4 Section 17. Appeals from decisions of the secretary of revenue in contested cases may be
5 taken in accordance with chapter 1-26.

6 Section 18. The secretary of revenue may not reinstate the license of a telecommunications
7 company, which has been canceled or revoked as provided in section 16 of this Act, until all the
8 telecommunications gross receipts tax due the state and a ten dollar reinstatement fee has been
9 paid. The secretary may also require the telecommunications company to file a bond as security
10 for any future liability.

11 Section 19. Any telecommunications company subject to the telecommunications gross
12 receipts tax shall keep records of all receipts and telecommunications service sales. The records
13 shall, at all times during business hours of the day, be subject to inspection by the Department
14 of Revenue to determine the amount of tax due. The records shall be preserved for a period of
15 three years unless the secretary of revenue, in writing, authorized their destruction or disposal
16 at an earlier date.

17 Section 20. The secretary of revenue may promulgate rules pursuant to chapter 1-26
18 concerning:

- 19 (1) Telecommunications tax licensing, including bonding and filing license applications;
- 20 (2) The filing of returns and payment of the tax;
- 21 (3) Determining the application of the telecommunications tax and exemptions;
- 22 (4) Taxpayer record-keeping requirements;
- 23 (5) Determining auditing methods;
- 24 (6) Requirements necessary to qualify for tax credits;
- 25 (7) Procedures for filing for tax credits.

1 Section 21. Any person who:

2 (1) Makes any false or fraudulent return in attempting to defeat or evade the
3 telecommunications gross receipts tax is guilty of a Class 6 felony;

4 (2) Fails to pay the telecommunications gross receipts tax due under this Act within thirty
5 days from the date the tax becomes due is guilty of a Class 1 misdemeanor;

6 (3) Fails to keep the records required by section 19 of this Act or refuses to exhibit these
7 records to the Department of Revenue for the purpose of examination is guilty of a
8 Class 1 misdemeanor;

9 (4) Fails to file a return required by this chapter within thirty days from the date the return
10 is due is guilty of a Class 1 misdemeanor;

11 (5) Engages in business as a telecommunications company under this Act without
12 obtaining a telecommunications gross receipts tax license is guilty of a Class 1
13 misdemeanor;

14 (6) Engages in business as a telecommunications company under this Act after the
15 company's telecommunications gross receipts tax license has been revoked or
16 canceled by the secretary of revenue is guilty of a Class 6 felony;

17 (7) Willfully violates any rule of the secretary of revenue for the administration and
18 enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor;

19 (8) Violates either subdivision (2) or subdivision (4) two or more times in any
20 twelve-month period is guilty of a Class 6 felony;

21 (9) Engages in business as a telecommunications company under this Act without
22 obtaining a telecommunications gross receipts tax license after having been notified
23 in writing by the secretary of revenue that the telecommunications company is subject
24 to the provisions of this Act is guilty of a Class 6 felony. It is not a violation of this
25 subdivision if the telecommunications company providing any telecommunications

1 service files an application for a telecommunications gross receipts tax license and
2 meets all lawful prerequisites for obtaining such license within three days from receipt
3 of written notice from the secretary.

4 For purposes of this section, the term, telecommunications company, includes corporate
5 officers having control, supervision of or charged with the responsibility for making tax returns
6 or payments pursuant to section 22 of this Act.

7 Section 22. If a corporation subject to the gross receipts tax under this Act fails for any
8 reason to file the required returns or to pay the tax due, any of its officers having control, or
9 supervision of, or charged with the responsibility for making such returns and payments are
10 personally liable for such failure. The dissolution of a corporation does not discharge an officer's
11 liability for a prior failure of the corporation to make a return or remit the tax due. The sum due
12 for such a liability may be assessed and collected as provided by law.

13 If the corporate officers elect not to be personally liable for the failure to file the required
14 returns or to pay the tax due, the corporation shall provide the Department of Revenue with a
15 surety bond or certificate of deposit as security for payment of any tax that may become due. The
16 bond or certificate of deposit provided for in this section shall be in an amount equal to the
17 estimated annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This
18 section does not apply to elected or appointed officials of a municipality if they are bonded
19 pursuant to §§ 9-14-6 and 9-14-6.1.

20 Section 23. That § 10-59-1 be amended to read as follows:

21 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
22 or fees imposed by this Act, chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A,
23 10-46B, 10-47B, 10-52, 10-60, 32-3, 32-5, 32-5B, 32-9, 32-10, and 34A-13 and §§ 22-25-48,
24 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

25 Section 24. Any telecommunications company subject to the tax imposed pursuant to § 10-

1 33-16 may claim a credit against the tax levied by section 3 of this Act. The tax credit shall be
 2 applied to the tax liability the year the taxes are imposed by § 10-33-16 are paid. No carryover
 3 may be accumulated as a tax credit from one year to the next year. The amount of tax imposed
 4 pursuant to § 10-33-16 shall be certified on forms provided by the Department of Revenue.

5 Section 25. That § 10-33-21 be amended to read as follows:

6 10-33-21. All persons, corporations, cooperatives, and associations engaged in furnishing
 7 and providing telephone and exchange service comprising rental and toll service by means of
 8 wired circuits and otherwise and whose annual gross receipts are less than twenty-five million
 9 dollars shall be taxed on the basis of gross receipts, according to one of the two following
 10 schedules. Whichever schedule provides the lesser percentage of tax shall be applied by the
 11 Department of Revenue:

12 SCHEDULE A

13	14 Average Number of Customers	Percentage of
15	15 Per Mile of Line (Density)	Tax on
16	16 Not more than 1	Gross Revenue
17	17 More than 1, but not more than 2	2
18	18 More than 2, but not more than 3	3
19	19 More than 3	4
		5

21 SCHEDULE B

22	24 Gross Annual Revenue	Percentage of
25	25 Not more than \$ 15,000	Tax on
26	26 More than \$15,000 but not more than 20,000	Gross Revenue
		2
		3

1	More than \$20,000 but not more than 50,000 <u>\$25,000,000</u>	4
2	More than \$50,000 but not more than \$ 25,000,000	5

3

4 ~~However, no telephone company operating in this state shall be taxed less than an amount~~
5 ~~equal to fifty cents per year per telephone serviced.~~ Companies that provide mobile service shall
6 be taxed under schedule B.

7 Section 26. That § 10-33-30 be repealed.

8 ~~10-33-30. This chapter shall have no application to a telephone utility owned and operated~~
9 ~~by a municipality.~~

10 Section 27. The money received by the secretary of revenue from the tax imposed by section
11 3 of this Act shall be credited by the secretary to the property tax reduction fund.

12 Section 28. That chapter 10-33 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 For the purposes of this chapter only, the term, telephone company, means any company
15 selling telecommunication services including satellite and one-way cable television services, radio
16 common carrier services, mobile services, and radio paging.

17 Section 29. That § 10-33-10 be amended to read as follows:

18 10-33-10. All property, real and personal, which is actually and necessarily used in the
19 operation and maintenance of telephone lines in this state, and which belongs to any telephone
20 company in this state ~~which is not subject to the provisions of §§ 10-33-21 and 10-33-22~~ with
21 annual gross receipts in excess of twenty-five million dollars shall be assessed for the purpose
22 of taxation by the Department of Revenue, and not otherwise.

23 Section 30. That § 10-33-16 be amended to read as follows:

24 10-33-16. After such date of hearing, and on or before the fourth Monday of August, the

1 Department of Revenue shall finally equalize the assessments and notify each company thereof
 2 by mail. The Department of Revenue shall certify the value finally determined to the county
 3 auditor of each county in which the company assessed owns property. The value shall be entered
 4 on the tax lists of the county and levies shall be extended on the property in the same manner as
 5 other property is taxed.

6 Section 31. That § 10-33-17 be repealed.

7 ~~10-33-17. All telephone property so assessed by the department of revenue shall be taxed in~~
 8 ~~the following manner:~~

9 ~~(1) Property within corporate limits shall be subject to all taxes that other property within~~
 10 ~~the same corporate limits is subject to for the current year;~~

11 ~~(2) Property without corporate limits shall be subject to a rate of taxation which shall be~~
 12 ~~equal to the average rate of taxation borne by other property outside the corporate~~
 13 ~~limits for the current year, which rate shall be the average rate of all state, county,~~
 14 ~~school, municipal, road, bridge, and other local taxes on other property, which tax so~~
 15 ~~levied and extended shall be in lieu of all other taxes.~~

16 Section 32. That § 10-33-20 be repealed.

17 ~~10-33-20. When taxes on telephone property located within a municipality are collected, the~~
 18 ~~amount due each municipality, or school district shall be paid over by the county treasurer to the~~
 19 ~~treasurer of such municipality, or school district and the treasurer shall credit the remainder to~~
 20 ~~the several state and county funds. When collecting taxes on property located without the~~
 21 ~~corporate limits of any municipality, the treasurer shall use a tax receipt to be called the~~
 22 ~~"telephone tax receipt," and shall credit the proper amount to the state funds and the balance to~~
 23 ~~the county general fund.~~

24 Section 33. The county may increase the revenue payable from taxes on real property above
 25 limitations provided in § 10-13-35 by the amount of revenue that is lost by the county as a result

1 of this Act for taxes payable in calendar year 1998.

1 **BILL HISTORY**

2 2/3/97 First read in House and referred to State Affairs. H.J. 263

3 2/10/97 Scheduled for Committee hearing on this date.

4 2/14/97 Deferred to another day. H.J. 482

5 2/19/97 Scheduled for Committee hearing on this date.

6 2/19/97 State Affairs Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 562

7 2/24/97 Motion to Amend,. H.J. 649

8 2/24/97 House of Representatives Placed on Calendar. H.J. 652

9 2/24/97 Motion to Amend, Passed. H.J. 653

10 2/24/97 Motion to Amend, Passed. H.J. 654

11 2/24/97 House of Representatives Do Pass Amended, Passed, AYES 55, NAYS 14. H.J. 654