

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

780A0594

HOUSE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1243** - 2/19/97

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) "Secretary," the secretary of the Department of Revenue;
- 11 (5) "Selling public telecommunications services," the provision of telecommunications  
12 services by a telecommunications company to a purchaser within the state for  
13 consideration;
- 14 (6) "Telecommunications company," any person, municipal corporation, trustee, lessee,  
15 or receiver owning, operating, managing, or controlling in whole or in part, any

1 telecommunications line, system, or exchange in this state, directly or indirectly, for  
2 public use;

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

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

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

13 Section 2. For the purposes of this Act, the term, sales price, means the total amount of  
14 money or the value of other consideration charged by a telecommunications company for the sale  
15 of telecommunications services in the state, including amounts charged for interstate  
16 telecommunications services. The term does not include:

- 17 (1) Cash discounts allowed and taken;
- 18 (2) Any tax collected pursuant to Chapter 10-45;
- 19 (3) Any tax collected pursuant to Chapter 10-52;
- 20 (4) Any gross receipts or sales tax imposed by an Indian nation or tribe;
- 21 (5) Any federal communications excise tax;
- 22 (6) Any 911 emergency surcharge imposed pursuant to chapter 34-45; or
- 23 (7) Any telecommunications access fee imposed pursuant to § 49-31-51.

24 Section 3. The seller of any telecommunications service shall pay a gross receipts tax on the  
25 sale of telecommunication services at the rate of four percent of the sales price.

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

3 Section 5. For the purposes of this Act, to prevent evasion of the gross receipts tax and to  
4 aid in its administration, all sales of any telecommunications company engaged in the business  
5 of selling telecommunications are deemed subject to the telecommunications gross receipts tax.

6 Section 6. The telecommunications gross receipts tax does not apply to the sales price of any  
7 wide area telephone service or private communications service originating or terminating in this  
8 state.

9 Section 7. The telecommunications gross receipts tax does not apply to the sales price of any  
10 telecommunications service by another telecommunications company which will be resold to  
11 another telecommunications company. The telecommunication company purchasing the  
12 telecommunications service with the intent to resell the service shall certify that fact to the  
13 telecommunications company selling the service at the time of the sale by the means of a resale  
14 certificate. The Department of Revenue shall, by rules promulgated pursuant to chapter 1-26,  
15 establish the form and procedures for the resale certificate.

16 Section 8. The telecommunications gross receipts tax does not apply to the sales price of any  
17 telecommunications service that is provided by one member of a controlled group.

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

24 Section 10. The telecommunications gross receipts tax shall be in addition to all other taxes  
25 imposed by the State of South Dakota, or by any municipal corporation or political subdivision

1 thereof, unless otherwise specifically exempted by this Act.

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

5 Section 12. Any telecommunications company engaging in a business in this state whose sales  
6 are subject to the telecommunications gross receipts tax shall file with the Department of  
7 Revenue, an application for a telecommunications gross receipts tax license. An application for  
8 a license shall be made upon a form prescribed by the secretary of revenue and shall set forth the  
9 name under which the applicant transacts or intends to transact business, the location of the place  
10 of business, and such other information as the secretary of revenue may require. The application  
11 shall be signed by the owner, if a natural person; in the case of an association or partnership, by  
12 a member or partner thereof; or in the case of a corporation, by an executive officer thereof or  
13 some person specifically authorized by the corporation to sign the application, to which shall be  
14 attached the written evidence of the person's authority.

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

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

25 Section 15. Any person who is the holder of a telecommunications gross receipts tax license

1 or is a telecommunications company whose receipts are subject to telecommunications gross  
2 receipts tax in this state shall file a return and remit the tax on or before the twentieth day of the  
3 month following each monthly period. If the telecommunications company files the return and  
4 remits the tax by electronic transfer to the state, the telecommunications company shall file the  
5 return and remit the tax on or before the last day of the month following each monthly period.

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

9 Section 16. Any telecommunications company that is the holder of a telecommunications  
10 gross receipts tax license and that has failed to file a return, or that has filed a return and has  
11 failed to pay the tax due the state under this law on or before the fifteenth of the second month  
12 following the reporting period authorized, may no longer continue as a telecommunications  
13 company and its telecommunications gross receipts tax license is hereby revoked and canceled.

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

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

21 Section 19. Any telecommunications company subject to the telecommunications gross  
22 receipts tax shall keep records of all receipts and telecommunications service sales. The records  
23 shall, at all times during business hours of the day, be subject to inspection by the Department  
24 of Revenue to determine the amount of tax due. The records shall be preserved for a period of  
25 three years unless the secretary of revenue, in writing, authorized their destruction or disposal

1 at an earlier date.

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

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

11 Section 21. Any person who:

- 12 (1) Makes any false or fraudulent return in attempting to defeat or evade the  
13 telecommunications gross receipts tax is guilty of a Class 6 felony;
- 14 (2) Fails to pay the telecommunications gross receipts tax due under this Act within thirty  
15 days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- 16 (3) Fails to keep the records required by section 19 of this Act or refuses to exhibit these  
17 records to the Department of Revenue for the purpose of examination is guilty of a  
18 Class 1 misdemeanor;
- 19 (4) Fails to file a return required by this chapter within thirty days from the date the return  
20 is due is guilty of a Class 1 misdemeanor;
- 21 (5) Engages in business as a telecommunications company under this Act without  
22 obtaining a telecommunications gross receipts tax license is guilty of a Class 1  
23 misdemeanor;
- 24 (6) Engages in business as a telecommunications company under this Act after the  
25 company's telecommunications gross receipts tax license has been revoked or

1 canceled by the secretary of revenue is guilty of a Class 6 felony;

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

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

6 (9) Engages in business as a telecommunications company under this Act without  
7 obtaining a telecommunications gross receipts tax license after having been notified  
8 in writing by the secretary of revenue that the telecommunications company is subject  
9 to the provisions of this Act is guilty of a Class 6 felony. It is not a violation of this  
10 subdivision if the telecommunications company providing any telecommunications  
11 service files an application for a telecommunications gross receipts tax license and  
12 meets all lawful prerequisites for obtaining such license within three days from receipt  
13 of written notice from the secretary.

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

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

23 If the corporate officers elect not to be personally liable for the failure to file the required  
24 returns or to pay the tax due, the corporation shall provide the Department of Revenue with a  
25 surety bond or certificate of deposit as security for payment of any tax that may become due. The

1 bond or certificate of deposit provided for in this section shall be in an amount equal to the  
 2 estimated annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This  
 3 section does not apply to elected or appointed officials of a municipality if they are bonded  
 4 pursuant to §§ 9-14-6 and 9-14-6.1.

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

6 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes  
 7 or fees imposed by this Act, chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A,  
 8 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,  
 9 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

10 Section 24. Any telecommunications company subject to the tax imposed pursuant to § 10-  
 11 33-17 may claim a credit against the tax levied by section 3 of this Act or § 10-33-21 and applied  
 12 to the tax liability. No carryover may be accumulated as a tax credit from one year to the next  
 13 year. The amount of tax imposed pursuant to § 10-33-17 shall be certified on forms provided by  
 14 the Department of Revenue.

15 Section 26A. That § 10-33-17 be amended to read as follows:

16 10-33-17. All telephone property ~~so~~ assessed by the Department of Revenue shall be taxed  
 17 ~~in the following manner:~~

18 ~~— (1) — Property within corporate limits shall be subject to all taxes that taxation in the same~~  
 19 ~~manner as is all other property within the same corporate limits is subject to for the~~  
 20 ~~current year;~~

21 ~~— (2) — Property without corporate limits shall be subject to a rate of taxation which shall be~~  
 22 ~~equal to the average rate of taxation borne by other property outside the corporate~~  
 23 ~~limits for the current year, which rate shall be the average rate of all state, county,~~  
 24 ~~school, municipal, road, bridge, and other local taxes on other property, which tax so~~  
 25 ~~levied and extended shall be in lieu of all other taxes jurisdiction is subject to taxation.~~

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

2 10-33-21. All persons, corporations, cooperatives, and associations engaged in furnishing  
3 and providing telephone and exchange service comprising rental and toll service by means of  
4 wired circuits and otherwise and whose annual gross receipts are less than twenty-five million  
5 dollars shall be taxed on the basis of gross receipts, according to one of the two following  
6 schedules. Whichever schedule provides the lesser percentage of tax shall be applied by the  
7 Department of Revenue:

8 SCHEDULE A

	Percentage of Tax on
Average Number of Customers	Gross Revenue
Per Mile of Line (Density)	
Not more than 1	2
More than 1, but not more than 2	3
More than 2, but not more than 3	4
<del>More than 3</del>	5

16  
17 SCHEDULE B

	Percentage of Tax on
Gross Annual Revenue	Gross Revenue
Not more than \$ 15,000	2
More than \$15,000 but not more than 20,000	3
More than \$20,000 but not more than <del>50,000</del> <u>\$25,000,000</u>	4
<del>More than \$50,000 but not more than \$ 25,000,000</del>	5

25  
26 ~~However, no telephone company operating in this state shall be taxed less than an amount~~

1 ~~equal to fifty cents per year per telephone serviced. Companies that provide mobile service shall~~  
2 ~~be taxed under schedule B.~~

3 Section 26. That § 10-33-26 be amended to read as follows:

4 10-33-26. The tax imposed by § 10-33-21 shall be in lieu of ~~all taxes levied by the state,~~  
5 ~~counties, municipalities, townships, school districts, or other political subdivisions of the state~~  
6 ~~on the personal and real property of the company which is used or intended for use in the~~  
7 ~~furnishing and providing telephone and exchange service, rental and toll service the tax imposed~~  
8 ~~by section 3 of this Act, but ~~shall~~ may not be in lieu of the retail occupational sales and use tax,~~  
9 and this chapter ~~shall~~ may in no manner exempt such companies from the payment of ~~such the~~  
10 retail occupational sales and use tax.

11 Section 27. That § 10-33-28 be repealed.

12 ~~— 10-33-28. The county treasurer shall allocate and transmit the taxes imposed by § 10-33-21~~  
13 ~~and collected from each such company to the school treasurers of each school district in which~~  
14 ~~such company operates on the basis of the gross receipts received by such company from its~~  
15 ~~operations within each such school district within the county.~~

16 Section 28. That § 10-33-30 be repealed.

17 ~~— 10-33-30. This chapter shall have no application to a telephone utility owned and operated~~  
18 ~~by a municipality.~~

19 Section 29. The money received by the secretary of revenue from the tax imposed by section  
20 3 of this Act and § 10-33-21 shall be credited by the secretary to the state general fund.

21 Section 30. That chapter 10-33 be amended by adding thereto a NEW SECTION to read as  
22 follows:

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

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.