

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

780A0594

HOUSE BILL NO. 1243

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) "Personal communications service," digital wireless telephone technology, including
10 portable phones, pagers, fax machines, and computers, which allows the consumer
11 to use the same telephone number wherever the consumer goes;

12 (4) "Secretary," the secretary of the Department of Revenue;

13 (5) "Selling public telecommunications services," the provision of telecommunications
14 services by a telecommunications company to a purchaser within the state for
15 consideration;

1 (6) "Telecommunications company," any person, municipal corporation, trustee, lessee,
2 or receiver owning, operating, managing, or controlling in whole or in part, any
3 telecommunications line, system, or exchange in this state, directly or indirectly, for
4 public use which is required to have a certificate of authority pursuant to chapter 49-
5 31;

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

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

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

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

21 (1) Cash discounts allowed and taken;

22 (2) Any tax collected pursuant to Chapter 10-45;

23 (3) Any tax collected pursuant to Chapter 10-52;

24 (4) Any gross receipts or sales tax imposed by an Indian nation or tribe;

25 (5) Any federal communications excise tax;

1 (6) Any 911 emergency surcharge imposed pursuant to chapter 34-45; or

2 (7) Any telecommunications access fee imposed pursuant to § 49-31-51.

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

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

7 Section 5. A telecommunications company is liable for any telecommunications gross receipts
8 tax the company from the sale of any telecommunications service which is subject to the
9 telecommunications gross receipts tax.

10 Section 6. For the purposes of this Act, to prevent evasion of the gross receipts tax and to
11 aid in its administration, all sales of any telecommunications company engaged in the business
12 of selling telecommunications are deemed subject to the telecommunications gross receipts tax.

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

16 Section 8. The telecommunications gross receipts tax does not apply to the sales price of any
17 telecommunications service by another telecommunications company which will be resold to
18 another telecommunications company. The telecommunication company purchasing the
19 telecommunications service with the intent to resell the service shall certify that fact to the
20 telecommunications company selling the service at the time of the sale by the means of a resale
21 certificate. The Department of Revenue shall, by rules promulgated pursuant to chapter 1-26,
22 establish the form and procedures for the resale certificate.

23 Section 9. The telecommunications gross receipts tax does not apply to the sales price of any
24 telecommunications service that is provided by one member of a controlled group.

25 Section 10. The telecommunications gross receipts tax does not apply to the sales price of

1 any telecommunications by any agency of federal or state government.

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

8 Section 12. The telecommunications gross receipts tax shall be in addition to all other taxes
9 imposed by the State of South Dakota, or by any municipal corporation or political subdivision
10 thereof, unless otherwise specifically exempted by this Act.

11 Section 13. The secretary of revenue shall establish, by rules promulgated pursuant to
12 chapter 1-26, schedules for the collection of the telecommunications gross receipts tax. The
13 schedules established shall spread the tax proportionately on fractions of dollars.

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

24 Section 15. The secretary of revenue shall grant and issue to each applicant a
25 telecommunications gross receipts tax license. A license is not assignable and is valid only for

1 the telecommunications company to which it was issued. Any license issued is valid and effective
2 without further payment of fees until canceled or revoked.

3 Section 16. The secretary of revenue may refuse to issue a telecommunications gross receipts
4 tax license to any person who is delinquent in payment of other taxes levied by the State of South
5 Dakota. The secretary may also require an applicant to furnish a bond to the state, or other
6 adequate security, as security for payment of any gross receipts tax that may become due, or
7 require a bond or security as a condition precedent to remaining in business as
8 telecommunications company.

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

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

18 Section 18. Any telecommunications company that is the holder of a telecommunications
19 gross receipts tax license and that has failed to file a return, or that has filed a return and has
20 failed to pay the tax due the state under this law on or before the fifteenth of the second month
21 following the reporting period authorized, may no longer continue as a telecommunications
22 company and its telecommunications gross receipts tax license is hereby revoked and canceled.

23 Section 19. Appeals from decisions of the secretary of revenue in contested cases may be
24 taken in accordance with chapter 1-26.

25 Section 20. The secretary of revenue may not reinstate the license of a telecommunications

1 company, which has been canceled or revoked as provided in section 18 of this Act, until all the
2 telecommunications gross receipts tax due the state and a ten dollar reinstatement fee has been
3 paid. The secretary may also require the telecommunications company to file a bond as security
4 for any future liability.

5 Section 21. Any telecommunications company subject to the telecommunications gross
6 receipts tax shall keep records of all receipts and telecommunications service sales. The records
7 shall, at all times during business hours of the day, be subject to inspection by the Department
8 of Revenue to determine the amount of tax due. The records shall be preserved for a period of
9 three years unless the secretary of revenue, in writing, authorized their destruction or disposal
10 at an earlier date.

11 Section 22. The secretary of revenue may promulgate rules pursuant to chapter 1-26
12 concerning:

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

20 Section 23. Any person who:

- 21 (1) Makes any false or fraudulent return in attempting to defeat or evade the
22 telecommunications gross receipts tax is guilty of a Class 6 felony;
- 23 (2) Fails to pay the telecommunications gross receipts tax due under this Act within thirty
24 days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- 25 (3) Fails to keep the records required by section 21 of this Act or refuses to exhibit these

1 records to the Department of Revenue for the purpose of examination is guilty of a
2 Class 1 misdemeanor;

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

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

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

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

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

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

23 For purposes of this section, the term, telecommunications company, includes corporate
24 officers having control, supervision of or charged with the responsibility for making tax returns
25 or payments pursuant to section 24 of this Act.

1 Section 24. If a corporation subject to the gross receipts tax under this Act fails for any
2 reason to file the required returns or to pay the tax due, any of its officers having control, or
3 supervision of, or charged with the responsibility for making such returns and payments are
4 personally liable for such failure. The dissolution of a corporation does not discharge an officer's
5 liability for a prior failure of the corporation to make a return or remit the tax due. The sum due
6 for such a liability may be assessed and collected as provided by law.

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

14 Section 25. That § 10-59-1 be amended to read as follows:

15 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
16 or fees imposed by this Act, chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A,
17 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,
18 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

19 Section 26. Any telecommunications company subject to the tax imposed pursuant to § 10-
20 33-17 may claim a credit against the tax levied by section 3 of this Act or § 10-33-21 and applied
21 to the tax liability. No carryover may be accumulated as a tax credit from one year to the next
22 year. The amount of tax imposed pursuant to § 10-33-17 shall be certified on forms provided by
23 the Department of Revenue.

24 Section 27. That § 10-33-21 be amended to read as follows:

25 10-33-21. All persons, corporations, cooperatives, and associations engaged in furnishing

1 and providing telephone and exchange service comprising rental and toll service by means of
 2 wired circuits and otherwise and whose annual gross receipts are less than twenty-five million
 3 dollars shall be taxed on the basis of gross receipts, according to one of the two following
 4 schedules. Whichever schedule provides the lesser percentage of tax shall be applied by the
 5 Department of Revenue:

6 SCHEDULE A

7		Percentage of
8	Average Number of Customers	Tax on
9	Per Mile of Line (Density)	Gross Revenue
10	Not more than 1	2
11	More than 1, but not more than 2	3
12	More than 2, but not more than 3	4
13	More than 3	5

15 SCHEDULE B

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

23

24 ~~However, no telephone company operating in this state shall be taxed less than an amount~~
 25 ~~equal to fifty cents per year per telephone serviced.~~ Companies that provide personal
 26 communications and cellular shall be taxed under schedule B.

1 Section 28. That § 10-33-26 be amended to read as follows:

2 10-33-26. The tax imposed by § 10-33-21 shall be in lieu of ~~all taxes levied by the state,~~
3 ~~counties, municipalities, townships, school districts, or other political subdivisions of the state~~
4 ~~on the personal and real property of the company which is used or intended for use in the~~
5 ~~furnishing and providing telephone and exchange service, rental and toll service~~ the tax imposed
6 by section 3 of this Act, but ~~shall~~ may not be in lieu of the retail occupational sales and use tax,
7 and this chapter ~~shall~~ may in no manner exempt such companies from the payment of ~~such~~ the
8 retail occupational sales and use tax.

9 Section 29. That § 10-33-28 be repealed.

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

14 Section 30. That § 10-33-30 be repealed.

15 ~~10-33-30. This chapter shall have no application to a telephone utility owned and operated~~
16 ~~by a municipality.~~

17 Section 31. The money received by the secretary of revenue from the tax imposed by section
18 3 of this Act and § 10-33-21 shall be credited by the secretary to the state general fund.