

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

822B0740

HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB1238** - 2/11/98

Introduced by: Representative Gabriel

1 FOR AN ACT ENTITLED, An Act to establish a telecommunications gross receipts tax, to
2 provide for its distribution, and to repeal certain property taxes and certain gross receipts
3 taxes paid by certain telecommunications companies.

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 as of January 1, 1998;

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

11 (5) "Telecommunications company," any person as defined by § 2-14-2, trustee, lessee,
12 receiver, or municipality providing any telecommunications service;

13 (6) "Telecommunications gross receipts tax," the gross receipts tax imposed by this Act.

14 Section 2. The term, telecommunications service, as used in this Act, means the transmission
15 of signs, signals, writings, images, sounds, messages, data, or other information of any nature

1 for two-way communication by wire, radio, light waves, electromagnetic means, or other similar
2 means. The term does not include the provision of terminal equipment used to originate or
3 terminate such service. The term does include radio common carrier services, mobile services,
4 radio paging services, and two-way television services.

5 Section 3. The term, gross receipts, as used in this Act, means all revenue of a
6 telecommunications company from the sale at retail of intrastate telecommunications services.
7 Sale at retail does not include the sale of any telecommunications service by a
8 telecommunications company to another telecommunications company if the service is resold or
9 becomes a component part of the sale by the second telecommunications company.

10 Section 4. There is hereby imposed a tax of four percent on the gross receipts of any
11 telecommunications company from the sale at retail of any telecommunications service.

12 Section 5. There is created in the state treasury the telecommunications gross receipts tax
13 fund. The secretary shall deposit any revenue collected from the tax imposed by section 4 of this
14 Act into this fund.

15 Section 6. The secretary shall make distributions from the telecommunications gross receipts
16 tax fund each March, June, September, and December to replace the distributions made to each
17 school district pursuant to chapter 10-33 prior to the repeal of that chapter by this Act. The
18 amount of the distribution to each school district pursuant to this section shall ensure that each
19 school district receives each calendar year as much as the school district received pursuant to
20 chapter 10-33 in calendar year 1996. The secretary shall approve vouchers and the state auditor
21 shall draw warrants to pay each school district its share of the distribution.

22 Section 7. The county may increase the revenue payable from taxes on real property above
23 limitations provided in § 10-13-35 by the amount of revenue that is lost by the county as a result
24 of this Act for taxes payable in calendar year 1999.

25 Section 8. The secretary shall make distributions from the telecommunications gross receipts

1 tax fund each March, June, September, and December to each school district which received
2 revenues from a municipal telephone system prior to the effective date of this Act. The amount
3 of the distribution to each such school district pursuant to this section shall ensure that each
4 school district receives as much as the school district received from a municipal telephone system
5 in calendar year 1996. A school district shall supply proof to the secretary of the amount
6 received in calendar year 1996 from a municipal telephone system before it may receive any
7 distributions pursuant to this section. The secretary shall approve vouchers and the state auditor
8 shall draw warrants to pay each school district its share of the distribution.

9 Section 9. Any property taxes levied pursuant to chapter 10-33 and payable for calendar year
10 1998 are due January 31, 1999. Any taxes imposed pursuant to chapter 10-33 and payable on
11 gross receipts for calendar year 1998 are due January 31, 1999.

12 Section 10. By January 31, 2000, the secretary shall determine if any telecommunications
13 company paid more property taxes for calendar year 1998 pursuant to section 9 of this Act than
14 the telecommunications company paid in telecommunications gross receipts tax pursuant to this
15 Act for calendar year 1999. If any telecommunications company paid a greater amount of
16 property taxes for calendar year 1998 than it paid in telecommunications gross receipts tax for
17 calendar year 1999, the secretary shall assess the telecommunications company the amount of
18 the difference. The telecommunications company shall pay the assessment to the department by
19 March 1, 2000. Any assessment collected shall be deposited in a special fund to be used for the
20 schools 21st century technology program. The moneys deposited in the fund shall be
21 appropriated pursuant to chapter 4-7 for use by the schools 21st century technology program.

22 Section 11. The secretary shall transfer any revenues remaining in the telecommunications
23 gross receipts tax fund, after the distributions required by this Act, to the property tax reduction
24 fund. Any revenue deposited in the property tax reduction fund pursuant to this Act shall be
25 dedicated to increasing the per student allocation established by § 13-13-10.1.

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

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

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

22 Section 15. Any person who is the holder of a telecommunications gross receipts tax license
23 or is a telecommunications company whose receipts are subject to telecommunications gross
24 receipts tax in this state shall file a return and remit the tax on or before the twentieth day of the
25 month following each monthly period. If the telecommunications company files the return and

1 remits the tax by electronic transfer to the state, the telecommunications company shall file the
2 return and remit the tax on or before the last day of the month following each monthly period.

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

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

11 Section 17. Any appeal from a decision of the secretary in a contested case shall be taken in
12 accordance with chapter 1-26.

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

18 Section 19. 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 gross receipts of
21 any telecommunications service. If any uncollectible debt is subsequently collected, the amount
22 is subject to the telecommunications gross receipts tax and shall be reported to the department
23 in the month of collection.

24 Section 20. Any telecommunications company subject to the telecommunications gross
25 receipts tax shall keep records of all receipts and telecommunications service sales. The records

1 shall, at all times during business hours of the day, be subject to inspection by the department to
2 determine the amount of tax due. The records shall be preserved for a period of three years
3 unless the secretary, in writing, authorized their destruction or disposal at an earlier date.

4 Section 21. The secretary may promulgate rules pursuant to chapter 1-26 concerning:

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

10 Section 22. Any person who:

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

1 the provisions of this Act is guilty of a Class 1 misdemeanor;

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

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

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

15 Section 23. If a corporation subject to the gross receipts tax under this Act fails for any
16 reason to file the required returns or to pay the tax due, any of its officers having control, or
17 supervision of, or charged with the responsibility for making such returns and payments are
18 personally liable for such failure. The dissolution of a corporation does not discharge an officer's
19 liability for a prior failure of the corporation to make a return or remit the tax due. The sum due
20 for such a liability may be assessed and collected as provided by law.

21 If the corporate officers elect not to be personally liable for the failure to file the required
22 returns or to pay the tax due, the corporation shall provide the department with a surety bond
23 or certificate of deposit as security for payment of any tax that may become due. The bond or
24 certificate of deposit provided for in this section shall be in an amount equal to the estimated
25 annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section

1 does not apply to elected or appointed officials of a municipality if they are bonded pursuant to
2 §§ 9-14-6 and 9-14-6.1.

3 Section 24. The tax imposed by this Act is in lieu of all personal and real property taxes
4 levied by the state, counties, municipalities, townships, school districts, or other political
5 subdivisions of the state on the portion of the personal and real property of the
6 telecommunications company which is used or intended for use in furnishing and providing
7 telecommunications service.

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

9 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
10 or fees imposed by this Act, chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A,
11 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,
12 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

13 Section 26. That §§ 10-33-1 to 10-33-30, inclusive, be repealed.

14 Section 27. The effective date of this Act is January 1, 1999.

1 **BILL HISTORY**

2 1/21/98 First read in House and referred to Taxation. H.J. 158

3 2/10/98 Scheduled for Committee hearing on this date.

4 2/10/98 Taxation Do Pass Amended, Passed, AYES 9, NAYS 4. H.J. 492