

AN ACT

ENTITLED, An Act to ratify the Uniform Sales and Use Tax Administration Act, to implement the uniform and simplified features proposed by the Streamlined Sales Tax Project, and to declare an emergency.

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

Section 1. As used in this Act:

- (a) "Agreement," means the Streamlined Sales and Use Tax Agreement;
- (b) "Certified automated system," means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;
- (c) "Certified service provider," means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions;
- (d) "Person," means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity;
- (e) "Sales tax," means the tax levied under chapter 10-45;
- (f) "Seller," means any person making sales, leases, or rentals of personal property or services;
- (g) "State," means any state of the United States and the District of Columbia;
- (h) "Use tax," means the tax levied under chapter 10-46.

Section 2. The Legislature finds that this state should enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

Section 3. The Department of Revenue is authorized and directed to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax

administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the Department of Revenue is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

The Department of Revenue is further authorized to take other actions reasonably required to implement the provisions set forth in this Act. Other actions authorized by this Act include, but are not limited to, the adoption of rules pursuant to chapter 1-26 consistent with the Department of Revenue's rule-making authority in §§ 10-45-47.1 and 10-46-35.1 and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The secretary of revenue or the secretary's designee and two legislators are authorized to represent this state before the other states that are signatories to the agreement. The Executive Board of the Legislative Research Council shall appoint one senator and one representative to represent this state.

Section 4. No provision of the agreement authorized by this Act in whole or part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

Section 5. The Department of Revenue shall not enter into the Streamlined Sales and Use Tax Agreement unless the agreement requires each state to abide by the following requirements:

- (a) The agreement must set restrictions to achieve over time more uniform state rates through the following:
  - (1) Limiting the number of state rates.

- (2) Limiting the application of maximums on the amount of state tax that is due on a transaction.
  - (3) Limiting the application of thresholds on the application of state tax.
- (b) The agreement must establish uniform standards for the following:
- (1) The sourcing of transactions to taxing jurisdictions.
  - (2) The administration of exempt sales.
  - (3) The allowances a seller may take for bad debts.
  - (4) Sales and use tax returns and remittances.
- (c) The agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.
- (d) The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.
- (e) The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.
- (f) The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:
- (1) Restricting variances between the state and local tax bases.
  - (2) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.
  - (3) Restricting the frequency of changes in the local sales and use tax rates and setting

effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.

- (4) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.
  - (i) The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.
  - (j) The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provision of the agreement while a member.
  - (k) The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.
  - (l) The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

Section 6. The agreement authorized by this Act is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

Section 7. A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section.

A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

Section 8. Sections 1 to 7, inclusive, of this Act shall be known as and referred to as the Uniform Sales and Use Tax Administration Act.

Section 9. That § 10-1-44.1 be repealed.

Section 10. That § 10-1-44.2 be repealed.

Section 11. That § 10-1-44.3 be amended to read as follows:

10-1-44.3. As required by the agreement entered into pursuant to section 3 of this Act, the secretary of revenue may release lists of persons licensed under chapters 10-45 and 10-46 who are exempt from taxes imposed under chapters 10-45 and 10-46 to the extent necessary to verify each

person's exempt status.

Section 12. That § 10-1-44.4 be repealed.

Section 13. That § 10-45-1 be amended to read as follows:

10-45-1. Terms used in this chapter mean:

- (1) "Agricultural purposes," the producing, raising, or growing and harvesting of food or fiber upon agricultural land, including dairy products, livestock, and crops. The services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders, and cultivators are considered agricultural purposes;
- (2) "Business," any activity engaged in by any person or caused to be engaged in by such person with the object of gain, benefit, or advantage, either direct or indirect;
- (3) "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property or services including transportation, shipping, postage, handling, crating, and packing;
- (4) "Gross receipts," the total amount or consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
  - (a) The retailer's cost of the property or service sold;
  - (b) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer;
  - (c) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for any services necessary to complete the sale whether or not separately stated, including delivery charges; and

- (d) The value of exempt tangible personal property whether or not separately stated on the invoice, billing, or similar document given to the purchaser where taxable and exempt tangible personal property have been bundled together and sold by the retailer as a single product or piece of merchandise;

Gross receipts do not include:

- (a) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a retailer and taken by a purchaser on a sale;
  - (b) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and
  - (c) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (5) "Person," any individual, firm, copartnership, joint adventure, association, limited liability company, corporation, municipal corporation, estate, trust, business trust, receiver, the State of South Dakota and its political subdivisions, or any group or combination acting as a unit;
  - (6) "Relief agency," the state, and county, municipality or district thereof, or any agency engaged in actual relief work;
  - (7) "Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;
  - (8) "Retailer," any person engaged in the business of selling tangible goods, wares, or merchandise at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this chapter. The term also includes any person subject to the tax imposed by

§§ 10-45-4 and 10-45-5. The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself or herself out as engaging in the business of selling such tangible personal property at retail does not constitute such person a retailer;

- (9) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

Section 14. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of the tax imposed by this chapter, gross receipts do not include any fees or other interest imposed by a retailer for late charges on overdue accounts, no account, or nonsufficient funds checks.

Section 15. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of the tax imposed by this chapter, the sale price of property returned by customers are not gross receipts if the full sale price thereof is refunded either in cash or by credit.

Section 16. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of the tax imposed by this chapter, if any tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, and the tangible personal property taken in trade is subject to the sales tax imposed by this chapter when sold, the credit or trade-in value allowed by the retailer may not be included as gross receipts.

Section 17. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of the tax imposed by this chapter, on any sale made under a conditional sales contract, or under other forms of sale wherein the payment of the principal sum is extended over a

period longer than sixty days from the date of sale, only the portion of the sale amount that has actually been received in cash by the retailer during each reporting period is subject to the tax imposed by this chapter.

Section 18. That § 10-45-3 be amended to read as follows:

10-45-3. There is hereby imposed a tax of four percent on the gross receipts from the sale or resale of farm machinery and attachment units other than replacement parts; or irrigation equipment used exclusively for agricultural purposes by licensed South Dakota retailers. However, any trade-in or exchange of used farm machinery is involved in the transaction, the tax is only due and shall be collected only on the cash difference.

Section 19. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

There are exempted from the provisions of this chapter and the tax imposed by it, gross receipts from the sale of parts or repairs on machinery or equipment which are clearly identifiable as used primarily for agricultural purposes, including irrigation equipment, if the part replaces a farm machinery or irrigation equipment part assigned a specific or generic part number by the manufacturer of the farm machinery or irrigation equipment.

Section 20. That § 10-45-5 be amended to read as follows:

10-45-5. There is imposed a tax at the rate of four percent upon the gross receipts of any person from engaging in the business of leasing farm machinery or irrigation equipment used for agricultural purposes and four percent upon the gross receipts of any person from engaging or continuing in any of the following businesses or services in this state: abstracters; accountants; architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply; membership or entrance fees

for the use of a facility or for the right to purchase tangible personal property or services; photography; photo developing and enlarging; tire recapping; welding and all repair services; cable television; and rentals of tangible personal property except leases of tangible personal property between one telephone company and another telephone company, motor vehicles as defined by § 32-5-1 leased under a single contract for more than twenty-eight days and mobile homes. However, the specific enumeration of businesses and professions made in this section does not, in any way, limit the scope and effect of § 10-45-4.

Section 21. That § 10-45-5.3 be amended to read as follows:

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

Section 22. That § 10-45-8 be amended to read as follows:

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

Section 23. That § 10-45-24 be amended to read as follows:

10-45-24. Each retailer or person engaging in a business in this state whose receipts are subject to sales tax shall file with the Department of Revenue, an application for a permit. Each application shall be made on a form prescribed by the secretary of revenue and shall require the name under which the applicant transacts or intends to transact business, the location of each business, and other information as the secretary of revenue may require. The application shall be signed by the owner, if a natural person; by a member or partner, if an association or partnership; or by an executive officer or a person specifically authorized by the corporation to sign the application, if a corporation, to

which shall be attached the written evidence of the person's authority. The applicant shall have a permit for each place of business, unless the secretary of revenue grants a request for a statewide permit. A statewide permit may be granted if the applicant demonstrates the ability to comply with the filing, auditing, and record-keeping requirements specified in rules promulgated pursuant to § 10-45-47.1 for each location specified in the application.

Any seller registering under the agreement as defined in section 1 of this Act shall be registered in this state, provided this state has entered into the agreement as provided in section 3 of this Act. Any seller who is registered under such agreement is not required to sign the registration application and may register through an agent. Any seller who is registered under such agreement may cancel its registration at any time, but is liable for remitting any sales tax previously collected.

Section 24. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

In computing the tax to be remitted under this chapter as the result of any transaction, the tax amount shall be carried to the third decimal place. Amounts of tax less than one-half of one cent shall be disregarded and amounts of tax of one-half cent or more shall be considered an additional cent.

Section 25. That § 10-45-30 be amended to read as follows:

10-45-30. For purposes of this chapter, a bad debt is any portion of the purchase price of a transaction that a seller has reported as taxable and for which the seller legally claims as a bad debt deduction for federal income tax purposes. In computing the amount of tax due, a seller may deduct bad debts from the total amount upon which the tax is calculated for any return. Any deduction taken or refund paid which is attributed to bad debts may not include interest. Bad debts include worthless checks, worthless credit card payments, and uncollectible credit accounts. Bad debts do not include financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid, expenses

incurred in attempting to collect any debt, debts sold, or assigned to third parties for collection, and repossessed property. No bad debt deduction may be claimed by any person that has purchased accounts receivable for collection unless the person is a successor that has acquired the entire business of the seller that incurred the bad debt.

Bad debts shall be deducted within twelve months following the month in which the bad debt has been charged off for federal income tax purposes. If a deduction is taken for a bad debt and the seller subsequently collects the debt in whole or in part, the tax on the amount so collected shall be paid and reported on the next return due after the collection.

Notwithstanding the provisions of § 10-59-22, a seller may obtain a refund of tax on any amount of bad debt that exceeds the amount of taxable sales within the twelve-month period defined by that bad debt. A refund under this section may not include interest.

If a seller's filing responsibilities have been assumed by a certified service provider as defined in section 1 of this Act, the service provider may claim, on behalf of the seller, any bad debt allowance provided by this section. The service provider shall credit or refund the full amount of any bad debt allowance or refund received to the seller.

Section 26. That § 10-45-61 be amended to read as follows:

10-45-61. Notwithstanding § 10-54-1, a seller, who possesses an exemption certificate from a purchaser of tangible personal property or services which indicates the items or services being purchased are exempt, may rely on the exemption certificate and not charge sales tax to the provider of the exemption certificate until the provider of the exemption certificate gives notice that the items or services being purchased are no longer exempt by filing a new exemption certificate with the seller.

The exemption certificate shall be signed by the purchaser, provide the purchaser's name, address, and valid state tax license number, if applicable, and shall describe the types of tangible personal property and services being purchased exempt by the purchaser. However, any person filing an

electronic exemption certificate is not required to sign the exemption certificate.

The purchaser claiming the protection of an exemption certificate is responsible for assuring that the goods and services delivered thereafter are of a type covered by the exemption certificate. If there are items covered under the exemption certificate which are not being purchased exempt, it is the responsibility of the purchaser when ordering goods from a seller to indicate if any of the items purchased are not exempt, and the appropriate sales tax shall be charged on the portion of the sale that is not exempt. A seller of property or services which are generally described under the exemption certificate is not responsible for the collection of the tax unless otherwise directed by the purchaser.

If the purchaser later determines there is any tax due and owing, the purchaser shall remit the tax owed by the purchaser to the state. If the purchaser makes an exempt purchase and later determines that the goods or services purchased are not exempt, the purchaser shall report the transaction and pay the use tax on the next filing of the purchaser's return.

Any purchaser who knowingly and intentionally lists on an exemption certificate personal property or services which the purchaser knows, at the time the exemption certificate is filed with the seller, are not exempt, or provides an invalid exemption certificate with the intent to evade payment of the tax, and fails to timely report the same with the department is guilty of a Class 1 misdemeanor. The secretary of revenue may assess a penalty of up to fifty percent of the tax owed, in addition to the tax owed. No interest may be charged on the penalty.

The seller shall retain the exemption certificate for a period of three years from the date it is filed by the purchaser and provide the exemption certificate to the department upon request.

The secretary may promulgate rules pursuant to chapter 1-26 to adopt forms for exemption certificates.

Section 27. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of the tax imposed by this chapter, a retailer shall source sales of tangible personal property and services to the location where the tangible personal property or service is received. The department shall promulgate rules, pursuant to chapter 1-26, defining the location of receipt. The rules promulgated pursuant to this section may provide an alternative method of sourcing telecommunication services.

Section 28. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

Registration under the agreement and collection of tax imposed under this chapter or chapter 10-46 does not in and of itself create nexus for other taxes or fees imposed by this state.

Section 29. That § 10-46-1 be amended to read as follows:

10-46-1. Terms, as used in this chapter mean:

- (1) "Business," any activity engaged in by any person or caused to be engaged in by such person with the object of gain, benefit or advantage either direct or indirect;
- (2) "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property or services including transportation, shipping, postage, handling, crating, and packing;
- (3) "Fair market value," the price at which a willing seller and willing buyer will trade. Fair market value shall be determined at the time of purchase. If a public corporation is supplying tangible personal property that will be used in the performance of a contract, fair market value shall be determined pursuant to § 5-18-5.1. This definition also applies to chapter 10-45;
- (4) "Included in the measure of tax," the tangible personal property or the service was purchased from a retailer licensed under chapter 10-45 and that retailer has included the tax in the amount received from the sale;

- (5) "In this state" or "in the state," within the exterior limits of the State of South Dakota and includes all territory within such limits owned by or ceded to the United States of America;
- (6) "Purchase," any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. A transaction, whereby the possession of property is transferred but the seller retains the title as security for the payment of the price, is a purchase;
- (7) "Purchase price," shall have the same meaning as gross receipts defined in subdivision 10-45-1(4);
- (8) "Retailer," any person performing services in this state or engaged in the business of selling tangible personal property for use, storage or other consumption within the meaning of this chapter. However, if in the opinion of the secretary of revenue, it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the secretary of revenue may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter;
- (9) "Retailer maintaining a place of business in the state," any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agents operating within the state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily or whether such retailer or subsidiary is admitted to do business within this state pursuant to the laws of the State of South Dakota

granting the rights of foreign corporations to do business in this state;

- (10) "Secretary," the secretary of the Department of Revenue or any duly authorized and appointed assistant, deputies, or agents of the secretary charged with the administration or enforcement of this chapter;
- (11) "Storage," any keeping or retention in this state for use or other consumption in the State of South Dakota for any purpose except sale in the regular course of business;
- (12) "Tangible personal property," tangible goods, wares, merchandise, gas, and electricity if furnished or delivered to consumers or users within this state;
- (13) "Use," the exercise of right or power over tangible personal property incidental to the ownership of that property, except that it does not include the sale of that property in the regular course of business. Use also includes the use of the types of services, the gross receipts from the sale of which are to be included in the measure of the tax imposed by chapter 10-45, and any amendments thereto and the delivery or causing delivery into this state of tangible personal property intended to advertise products or services or promote or facilitate sales to South Dakota residents.

Section 30. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as follows:

There are exempted from the provisions of this chapter and the tax imposed by it, the use of parts or repairs on machinery or equipment which are clearly identifiable as used primarily for agricultural purposes, including irrigation equipment, if the part replaces a farm machinery or irrigation equipment part assigned a specific or generic part number by the manufacturer of the farm machinery or irrigation equipment.

Section 31. That § 10-59-27 be amended to read as follows:

10-59-27. Any taxpayer who has received written advice from the Department of Revenue

concerning the taxability of transactions shall be allowed to rely on such advice when filing tax returns. However, the taxpayer shall maintain a copy of the advice in the taxpayer's business records. The department may not maintain a position against a taxpayer which is inconsistent with a prior written opinion issued to the same taxpayer unless rescinded by the department, by a change in statutory law or reported case law, by a change in federal interpretation in cases if the department's written advice was predicated upon a federal interpretation or by a change in material facts or circumstances relating to the taxpayer. For the purposes of this section, written advice includes municipal boundary information, and zip codes and addresses located within municipalities provided by the department.

Section 32. That § 10-52-2 be amended to read as follows:

10-52-2. Any incorporated municipality within this state may impose any non-ad valorem tax in accordance with the provisions of this chapter, except upon fuel used for motor vehicles, by ordinance enacted by its local governing board. However, no tax may be levied on the sale, use, storage and consumption of items taxed under chapters 10-45 and 10-46, unless such tax conforms in all respects to the state tax on such items with the exception of the rate, and the rate levied does not exceed two percent.

Section 33. That § 10-52-2.1 be repealed.

Section 34. That § 10-52-2.5 be repealed.

Section 35. That § 10-52-2.6 be repealed.

Section 36. That § 10-52-2.9 be repealed.

Section 37. That § 10-52-3 be amended to read as follows:

10-52-3. Any tax imposed by the governing board of any municipality pursuant to the provisions of this chapter, may be referred to a vote of the people for its approval or disapproval in the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal ordinance which

was in effect on December 31, 2005, is continued under the provisions of this chapter if:

- (1) The governing board of the municipality has reviewed the existing tax ordinance to determine compliance with the provisions of this chapter; and
- (2) The governing board of the municipality documents the review, any amendment, and the intent to continue the tax in the official minutes of the governing board.

Any amendment made by the municipality to comply with the provisions of this Act or the determination to continue the tax under the provisions of this chapter is deemed to be an administrative decision pursuant to § 9-20-19 and is not subject to referendum.

Section 38. That § 10-52-2.10 be amended to read as follows:

10-52-2.10. Any incorporated municipality imposing a non-ad valorem tax in accordance with § 10-52-2 may issue municipal non-ad valorem tax revenue bonds pursuant to this section and chapter 6-8B in anticipation of the collection of the taxes. The bonds shall be payable solely from the collections of the taxes imposed by the municipality under § 10-52-2, as determined by the governing body. The governing body shall, in the resolution or ordinance authorizing the bonds, agree that it will continue to impose and collect the taxes so long as the bonds are outstanding. The governing body shall also pledge so much of the collections of the taxes as may be necessary to pay the principal premium and interest on the bonds and to maintain any debt service reserve established for the bonds. For bonds issued prior to January 1, 2006, the proceeds of the bonds may be used for land acquisition, the funding of public ambulances and medical emergency response vehicles, public hospitals or nonprofit hospitals with fifty or fewer licensed beds and other public health care facilities or nonprofit health care facilities with fifty or fewer licensed beds, capital asset acquisition and capital improvements, to establish a debt service reserve fund for the bonds and to pay not more than one year's capitalized interest on the bonds.

No election is required to authorize the issuance of municipal non-ad valorem tax revenue bonds.

The bonds shall be issued and sold as provided in chapter 6-8B.

Section 39. That § 10-52-8 be repealed.

Section 40. That § 10-52-9 be amended to read as follows:

10-52-9. Notwithstanding § 9-19-13, any new ordinance or amendment to an ordinance enacted under the authority of this chapter, and any tax rate affected thereby, can be effective only on January first or July first of a calendar year. The ordinance or amendment shall be effective on the earlier of January first or July first following at least ninety days notification by the municipality to the secretary of revenue that the ordinance or amendment has been enacted unless the ordinance or amendment is suspended by operation of a referendum. If an ordinance or amendment enacted under this chapter is referred and the referred ordinance or amendment is approved the effective date is the earlier of January first or July first following at least ninety days notification by the municipality to the secretary of revenue that the ordinance or amendment has been approved notwithstanding § 9-20-15. Notification of the enactment or approval of the ordinance shall be in writing and mailed, along with a copy of the ordinance or amendment, by registered or certified mail to the secretary of revenue.

Section 41. That § 10-52-11 be repealed.

Section 42. That § 10-52-12 be repealed.

Section 43. That § 10-52-13 be amended to read as follows:

10-52-13. For purposes of this chapter, any new resolution or amendment enacted by a municipality which changes the boundaries of the municipality is effective on the first day of the first month following at least ninety days notification by the municipality to the secretary of revenue that the resolution or amendment has been enacted unless the ordinance or amendment is suspended by operation of a referendum. If a resolution or amendment enacted pursuant to chapter 9-4 is referred and the referred resolution or amendment is approved, the effective date is the first day of the first month following at least ninety days notification by a municipality to the secretary of revenue that the

resolution or amendment has been approved. The municipality shall provide written notification of the enactment or approval of the resolution or amendment, along with a copy of the resolution or amendment by registered or certified mail or by any electronic means to the secretary of revenue. The municipality shall also provide any changes or additions to streets and addresses.

Section 44. That chapter 10-52 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of the tax imposed by this chapter, the transportation of tangible personal property and passengers shall be taxed only if the origins and destination of the property or passenger are within the same municipality.

Section 45. The Legislature hereby finds that the amendments to chapter 10-52 contained in this Act shall result in a broader and more uniform tax base for the sales tax levied by municipalities under this chapter, and that, absent a reduction in the current tax levy of a municipality, it is anticipated that total sales tax revenues of a municipality may increase as a result of these amendments. However, so long as a municipality has any bonds or other obligations outstanding which are secured directly or indirectly by the pledge or collection and application of sales taxes levied pursuant to chapter 10-52 as in effect immediately prior to January 1, 2006, no municipality may reduce its tax levy under chapter 10-52 to a rate which, in the exercise of the sound discretion of the governing body, would be expected to produce less total revenue than was collected in the immediately preceding year.

Section 46. Sections 18, 19, 20, 21, 30, 32, 33, 34, 35, 36, 41, 42, and 44 are effective on January 1, 2006.

Section 47. Except as may be required by section 45 of this Act, it is the intent of the Legislature that the provisions of this Act be revenue neutral to all levels of government. Any municipality that has reviewed its sales tax ordinance as required by section 37 of this Act shall determine and enact a rate of taxation that, in the exercise of the sound discretion of the governing body, would be

expected to produce no more total revenue than was collected in the immediately preceding year. However, nothing herein shall prohibit any increase in revenues that are projected to occur because of economic growth.

Section 48. Section 47 of this Act is repealed on January 1, 2007.

Section 49. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and sections 1 through 12 of this Act shall be in full force and effect from and after its passage and approval.

An Act to ratify the Uniform Sales and Use Tax Administration Act, to implement the uniform and simplified features proposed by the Streamlined Sales Tax Project, and to declare an emergency.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1001

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1001  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

=====

STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_ , 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State