

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

555H0018

HOUSE BILL NO. 1001

Introduced by: Representatives Brown (Richard), Glenski, Peterson (Jim), and Smidt and
Senators McCracken, Dennert, and Reedy at the request of the Interim
Streamlined Sales Tax Project Task Force

1 FOR AN ACT ENTITLED, An Act to ratify the Uniform Sales and Use Tax Administration Act
2 and to implement the uniform and simplified features proposed by the Streamlined Sales Tax
3 Project.

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

5 Section 1. As used in this Act:

- 6 (a) "Agreement," means the Streamlined Sales and Use Tax Agreement;
- 7 (b) "Certified automated system," means software certified jointly by the states that are
8 signatories to the agreement to calculate the tax imposed by each jurisdiction on a
9 transaction, determine the amount of tax to remit to the appropriate state, and
10 maintain a record of the transaction;
- 11 (c) "Certified service provider," means an agent certified jointly by the states that are
12 signatories to the agreement to perform all of the seller's sales tax functions;
- 13 (d) "Person," means an individual, trust, estate, fiduciary, partnership, limited liability
14 company, limited liability partnership, corporation, or any other legal entity;



1 (e) "Sales tax," means the tax levied under chapter 10-45;

2 (f) "Seller," means any person making sales, leases, or rentals of personal property or
3 services;

4 (g) "State," means any state of the United States and the District of Columbia;

5 (h) "Use tax," means the tax levied under chapter 10-46.

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

9 Section 3. The Department of Revenue is authorized and directed to enter into the
10 Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize
11 sales and use tax administration in order to substantially reduce the burden of tax compliance for
12 all sellers and for all types of commerce. In furtherance of the agreement, the Department of
13 Revenue is authorized to act jointly with other states that are members of the agreement to
14 establish standards for certification of a certified service provider and certified automated system
15 and establish performance standards for multistate sellers.

16 The Department of Revenue is further authorized to take other actions reasonably required
17 to implement the provisions set forth in this Act. Other actions authorized by this Act include,
18 but are not limited to, the adoption of rules and regulations and the joint procurement, with other
19 member states, of goods and services in furtherance of the cooperative agreement.

20 The Department of Revenue or the department's designee is authorized to represent this state
21 before the other states that are signatories to the agreement.

22 Section 4. No provision of the agreement authorized by this Act in whole or part invalidates
23 or amends any provision of the law of this state. Adoption of the agreement by this state does
24 not amend or modify any law of this state. Implementation of any condition of the agreement in

1 this state, whether adopted before, at, or after membership of this state in the agreement, must
2 be by the action of this state.

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

5 (a) The agreement must set restrictions to achieve over time more uniform state rates
6 through the following:

7 (1) Limiting the number of state rates.

8 (2) Limiting the application of maximums on the amount of state tax that is due on
9 a transaction.

10 (3) Limiting the application of thresholds on the application of state tax.

11 (b) The agreement must establish uniform standards for the following:

12 (1) The sourcing of transactions to taxing jurisdictions.

13 (2) The administration of exempt sales.

14 (3) The allowances a seller may take for bad debts.

15 (4) Sales and use tax returns and remittances.

16 (c) The agreement must require states to develop and adopt uniform definitions of sales
17 and use tax terms. The definitions must enable a state to preserve its ability to make
18 policy choices not inconsistent with the uniform definitions.

19 (d) The agreement must provide a central, electronic registration system that allows a
20 seller to register to collect and remit sales and use taxes for all signatory states.

21 (e) The agreement must provide that registration with the central registration system and
22 the collection of sales and use taxes in the signatory states will not be used as a factor
23 in determining whether the seller has nexus with a state for any tax.

24 (f) The agreement must provide for reduction of the burdens of complying with local

1 sales and use taxes through the following:

2 (1) Restricting variances between the state and local tax bases.

3 (2) Requiring states to administer any sales and use taxes levied by local
4 jurisdictions within the state so that sellers collecting and remitting these taxes
5 will not have to register or file returns with, remit funds to, or be subject to
6 independent audits from local taxing jurisdictions.

7 (3) Restricting the frequency of changes in the local sales and use tax rates and
8 setting effective dates for the application of local jurisdictional boundary
9 changes to local sales and use taxes.

10 (4) Providing notice of changes in local sales and use tax rates and of changes in
11 the boundaries of local taxing jurisdictions.

12 (i) The agreement must outline any monetary allowances that are to be provided by the
13 states to sellers or certified service providers.

14 (j) The agreement must require each state to certify compliance with the terms of the
15 agreement prior to joining and to maintain compliance, under the laws of the member
16 state, with all provision of the agreement while a member.

17 (k) The agreement must require each state to adopt a uniform policy for certified service
18 providers that protects the privacy of consumers and maintains the confidentiality of
19 tax information.

20 (l) The agreement must provide for the appointment of an advisory council of private
21 sector representatives and an advisory council of nonmember state representatives to
22 consult with in the administration of the agreement.

23 Section 6. The agreement authorized by this Act is an accord among individual cooperating
24 sovereigns in furtherance of their governmental functions. The agreement provides a mechanism

1 among the member states to establish and maintain a cooperative, simplified system for the
2 application and administration of sales and use taxes under the duly adopted law of each member
3 state.

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

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

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

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

24 Section 8. Sections 1 to 7, inclusive, of this Act shall be known as and referred to as the

1 Uniform Sales and Use Tax Administration Act.

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

3 ~~—10-1-44.1. The Governor may, for the purpose of entering into a compact, negotiate and~~
4 ~~enter into a compact with officials of other states for the development, implementation, and~~
5 ~~administration of a simplified sales and use tax collection system. The compact shall conform~~
6 ~~generally to the provisions of chapter 1-24 relating to the joint exercise of governmental powers~~
7 ~~with other public agencies. The compact shall provide for the collection, reporting, auditing, and~~
8 ~~distribution of taxes imposed under chapters 10-45 and 10-46. The compact shall provide for the~~
9 ~~joint selection of persons to act as agents of the compact states for the collection and remittance~~
10 ~~of taxes imposed under chapters 10-45 and 10-46.~~

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

12 ~~—10-1-44.2. If the Governor enters into a compact pursuant to § 10-1-44.1, the Governor may~~
13 ~~direct the secretary of revenue to enter into a joint contract with any person to act as an agent~~
14 ~~of South Dakota for the collection and remittance of taxes imposed under chapters 10-45 and~~
15 ~~10-46.~~

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

17 10-1-44.3. ~~Notwithstanding the provisions of § 10-1-28.2, if the Governor enters into a~~
18 ~~compact pursuant to § 10-1-44.1, the Governor may direct~~ As required by the agreement entered
19 into pursuant to section 3 of this Act, the secretary of revenue ~~to~~ may release lists of persons
20 licensed under chapters 10-45 and 10-46 who are exempt from taxes imposed under chapters
21 10-45 and 10-46 to the extent necessary to verify each person's exempt status.

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

23 ~~—10-1-44.4. Any compact entered into by the Governor pursuant to § 10-1-44.1 is effective~~
24 ~~upon the Governor's signature and ratification by the Legislature.~~

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

2 10-45-1. Terms used in this chapter mean:

3 (1) "Agricultural purposes," the producing, raising, or growing and harvesting of food or
4 fiber upon agricultural land, including dairy products, livestock, and crops. The
5 services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders,
6 and cultivators are considered agricultural purposes;

7 (2) "Business," any activity engaged in by any person or caused to be engaged in by ~~him~~
8 such person with the object of gain, benefit, or advantage, either direct or indirect;

9 (3) "Delivery charges," charges by the retailer for preparation and delivery to a location
10 designated by the purchaser of tangible personal property or services including
11 transportation, shipping, postage, handling, crating, and packing;

12 (4) ~~"Gross receipts," the amount received in money, credits, property, or other money's~~
13 ~~worth in consideration of sales at retail within this state. No deduction may be taken~~
14 ~~for the cost of the property sold, the cost of materials used, the cost of labor or~~
15 ~~services purchased, amounts paid for interest or discounts, or any other expenses~~
16 ~~whatsoever, nor may any deduction be allowed for losses. Gross receipts do not~~
17 ~~include any fees or other interest imposed by a retailer for late charges on overdue~~
18 ~~accounts, no account, and nonsufficient funds checks. Discounts for any purpose~~
19 ~~allowed and taken on sales may not be included as gross receipts, nor may the sale~~
20 ~~price of property returned by customers when the full sale price thereof is refunded~~
21 ~~either in cash or by credit. If any tangible personal property is taken in trade or in a~~
22 ~~series of trades as a credit or part payment of a retail sale taxable under this chapter,~~
23 ~~and the tangible personal property taken in trade will be subject to the sales tax~~
24 ~~imposed by this chapter when sold, the credit or trade-in value allowed by the retailer~~

1 ~~may not be included as gross receipts. On all sales made under conditional sales~~
2 ~~contract, or under other forms of sale wherein the payment of the principal sum is~~
3 ~~extended over a period longer than sixty days from the date of sale, only the portion~~
4 ~~of the sale amount that has actually been received in cash by the retailer during each~~
5 ~~reporting period is subject to the tax imposed by this chapter total amount or~~
6 ~~consideration, including cash, credit, property, and services, for which tangible~~
7 ~~personal property or services are sold, leased, or rented, valued in money, whether~~
8 ~~received in money or otherwise, without any deduction for the following:~~

- 9 (a) The retailer's cost of the property or service sold;
- 10 (b) The cost of materials used, labor or service cost, interest, losses, all costs of
11 transportation to the retailer, all taxes imposed on the retailer, and any other
12 expense of the retailer;
- 13 (c) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for
14 any services necessary to complete the sale whether or not separately stated,
15 including delivery charges; and
- 16 (d) The value of exempt tangible personal property whether or not separately
17 stated on the invoice, billing, or similar document given to the purchaser where
18 taxable and exempt tangible personal property have been bundled together and
19 sold by the retailer as a single product or piece of merchandise;

20 Gross receipts do not include:

- 21 (a) Discounts, including cash, term, or coupons that are not reimbursed by a third
22 party that are allowed by a retailer and taken by a purchaser on a sale;
- 23 (b) Interest, financing, and carrying charges from credit extended on the sale of
24 tangible personal property or services, if the amount is separately stated on the

1 invoice, bill of sale or similar document given to the purchaser; and

2 (c) Any taxes legally imposed directly on the consumer that are separately stated

3 on the invoice, bill of sale, or similar document given to the purchaser;

4 ~~(4)~~(5) "Person," any individual, firm, copartnership, joint adventure, association, limited
5 liability company, corporation, municipal corporation, estate, trust, business trust,
6 receiver, the State of South Dakota and its political subdivisions, or any group or
7 combination acting as a unit;

8 ~~(5)~~(6) "Relief agency," the state, and county, municipality or district thereof, or any agency
9 engaged in actual relief work;

10 ~~(6)~~(7) "Retail sale" or "sale at retail," ~~the sale of either tangible personal property or~~
11 ~~services, or both, to the consumer or user thereof, or to any person for any purpose~~
12 ~~other than for resale; the sale of natural or artificial gas, electric energy, water, and~~
13 ~~communication service to consumers or users; and the sale of tickets or admissions~~
14 ~~to places of amusement or athletic contests~~ any sale, lease, or rental for any purpose
15 other than for resale, sublease, or subrent;

16 ~~(7)~~(8) "Retailer," ~~every~~ any person engaged in the business of selling tangible goods, wares,
17 or merchandise at retail, or the furnishing of gas, electricity, water, and
18 communication service, and tickets or admissions to places of amusement and athletic
19 events as provided in this chapter. ~~"Retailer"~~ The term also includes ~~every~~ any person
20 subject to the tax imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale
21 of tangible personal property at retail by a person who does not hold himself or herself
22 out as engaging in the business of selling such tangible personal property at retail does
23 not constitute such person a retailer;

24 ~~(8)~~(9) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or

1 by any means whatsoever, for a consideration.

2 Section 14. That § 10-45-1 be amended by adding thereto NEW SUBDIVISIONS to read
3 as follows:

4 "Computer," any electronic device that accepts information in digital or similar form and
5 manipulates it for a result based on a sequence of instructions;

6 "Computer program," any set of statements or instructions to be used directly or indirectly
7 in a computer to bring about a certain result. The term does not include separately identifiable
8 informational content;

9 "Custom software," software that is designed for a specific user where the cost of prewritten
10 software is no more than ten percent of the sales price;

11 "Digital product," any product, including but not limited to, data, text, images, sounds, mask
12 works, or computer programs and their equivalents, including collections and compilation of
13 them, in electronic form which is obtained from or through the use of a computer or which is in
14 an electronic form capable of being processed by a computer;

15 "Drug," any compound substance or preparation:

16 (a) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of
17 disease in human or other animals;

18 (b) Intended to affect the structure or any function of the body of human or other
19 animals;

20 (c) Intended for use as a component of any article specified in subsection (a) or
21 (b); or

22 (d) The label of which identifies the product as a drug by containing as required
23 pursuant to 21 C.F.R. § 201.66 as amended on January 1, 2002, one or both
24 of the following:

- 1 (i) Drug Facts box found on the label; or
- 2 (ii) A statement of the active ingredients with a list of those ingredients
- 3 contained in the compound substance or preparation; but does not
- 4 include medicated items which are normally used for personal hygiene
- 5 or grooming by healthy persons;

6 "Electronic," technology having electrical, digital, magnetic, wireless, optical,
7 electromagnetic, or similar capabilities;

8 "Lease or rental," any transfer of possession or control of tangible personal property for a
9 fixed or indeterminate term for consideration. A lease or rental may include future options to
10 purchase or extend. The term does not include:

- 11 (a) Any transfer of possession or control of property under a security agreement
- 12 or deferred payment plan that requires the transfer of title upon completion of
- 13 the required payments;
- 14 (b) Any transfer of possession or control of property under an agreement that
- 15 requires the transfer of title upon completion of the required payments and
- 16 payment of an option price that does not exceed one hundred dollars or one
- 17 percent of the total required payments, whichever is less; or
- 18 (c) Any agreement to provide tangible personal property for a fixed or
- 19 indeterminate period of time along with an operator.

20 The term does include agreements covering motor vehicles and trailers where the amount of
21 consideration may be increased or decreased by reference to the amount realized upon sale or
22 disposition of the property as defined in 26 USC 7701(h)(1) as amended on July 1, 2002. The
23 definition provided for this term in this subdivision shall be used for the purposes of this chapter
24 regardless if a transaction is characterized as a lease or rental under generally accepted

1 accounting principles, provided in Title 57A of the Internal Revenue Code as amended on July 1,
2 2002, or other federal, state, or local law.

3 "Modified software," software that has been changed for a specific user to the extent the
4 charges for the changes are separately stated;

5 "Prescription," any order, formula, or recipe issued in any form of oral, written, electronic,
6 or other means of transmission by a physician authorized by the laws of this state;

7 "Software," any organized and interrelated set of one or more computer programs, which
8 may include documentation and examples that describe how the software may be tailored and
9 used for specific applications;

10 "Tangible personal property," personal property that can be seen, weighed, measured, felt
11 or touched, or that is in any other manner perceptible to the senses. Tangible personal property
12 includes electricity, water, gas, and steam.

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

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

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

20 For purposes of the tax imposed by this chapter, discounts for any purpose allowed and taken
21 on sales may not be included as gross receipts, nor may the sale price of property returned by
22 customers if the full sale price thereof is refunded either in cash or by credit.

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

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

6 Section 18. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 For purposes of the tax imposed by this chapter, on any sale made under a conditional sales
9 contract, or under other forms of sale wherein the payment of the principal sum is extended over
10 a period longer than sixty days from the date of sale, only the portion of the sale amount that has
11 actually been received in cash by the retailer during each reporting period is subject to the tax
12 imposed by this chapter.

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

15 There is imposed a tax of four percent on the gross receipts from the sale of digital products,
16 except as otherwise provided in this chapter, sold at retail in the state of South Dakota.

17 Section 20. That § 10-45-3 be amended to read as follows:

18 10-45-3. There is hereby imposed a tax of ~~three~~ four percent on the gross receipts from the
19 sale or resale of farm machinery and attachment units other than replacement parts; or irrigation
20 equipment used exclusively for agricultural purposes by licensed South Dakota retailers;
21 ~~provided, however, that whenever.~~ However, any trade-in or exchange of used farm machinery
22 is involved in the transaction, the tax ~~shall~~ is only be due and shall be collected only on the cash
23 difference.

24 Section 21. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Parts or repairs on machinery or equipment which are clearly identifiable as used primarily
3 for agricultural purposes, if the part replaces a farm machinery part assigned a specific or generic
4 part number by the manufacturer of the farm machinery, are exempt from the tax imposed by this
5 chapter.

6 Section 22. That § 10-45-5 be amended to read as follows:

7 10-45-5. There is imposed a tax at the rate of ~~three~~ four percent upon the gross receipts of
8 any person from engaging in the business of leasing farm machinery or irrigation equipment used
9 for agricultural purposes and four percent upon the gross receipts of any person from engaging
10 or continuing in any of the following businesses or services in this state: abstracters; accountants;
11 architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry
12 cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and
13 pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply;
14 membership or entrance fees for the use of a facility or for the right to purchase tangible personal
15 property or services; photography; photo developing and enlarging; tire recapping; welding and
16 all repair services; cable television; and rentals of tangible personal property except leases of
17 tangible personal property between one telephone company and another telephone company,
18 motor vehicles as defined by § 32-5-1 leased under a single contract for more than twenty-eight
19 days and mobile homes ~~provided, however, that.~~ However, the specific enumeration of
20 businesses and professions made in this section does not, in any way, limit the scope and effect
21 of § 10-45-4.

22 Section 23. That § 10-45-5.3 be amended to read as follows:

23 10-45-5.3. There is imposed, at the rate of ~~three~~ four percent, an excise tax on the gross
24 receipts of any person engaging in oil and gas field services (group no. 138) as enumerated in

1 the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division
2 of the Office of Management and Budget, Office of the President.

3 Section 24. That § 10-45-8 be amended to read as follows:

4 10-45-8. There is imposed a tax of four percent upon the gross receipts from all sales of
5 tickets or admissions to places of amusement and athletic contests or events, except as otherwise
6 provided in this chapter.

7 Section 25. That § 10-45-24 be amended to read as follows:

8 10-45-24. Each retailer or person engaging in a business in this state whose receipts are
9 subject to sales tax shall file with the Department of Revenue, an application for a permit. Each
10 application shall be made on a form prescribed by the secretary of revenue and shall require the
11 name under which the applicant transacts or intends to transact business, the location of each
12 business, and other information as the secretary of revenue may require. The application shall be
13 signed by the owner, if a natural person; by a member or partner, if an association or partnership;
14 or by an executive officer or a person specifically authorized by the corporation to sign the
15 application, if a corporation, to which shall be attached the written evidence of the person's
16 authority. The applicant shall have a permit for each place of business, unless the secretary of
17 revenue grants a request for a statewide permit. A statewide permit may be granted if the
18 applicant demonstrates the ability to comply with the filing, auditing, and record-keeping
19 requirements specified in rules promulgated pursuant to § 10-45-47.1 for each location specified
20 in the application.

21 Any seller registering under the agreement as defined in section 1 of this Act shall be
22 registered in this state, provided this state has entered into the agreement as provided in section
23 3 of this Act. Any seller who is registered under such agreement is not required to sign the
24 registration application and may register through an agent. Any seller who is registered under

1 such agreement may cancel its registration at any time, but is liable for remitting any sales tax
2 previously collected.

3 Section 26. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
4 follows:

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

9 Section 27. That § 10-45-30 be amended to read as follows:

10 ~~10-45-30. Taxes paid on gross receipts represented by accounts found to be worthless and~~
11 ~~actually charged off for income tax purposes, may be credited upon a subsequent payment of the~~
12 ~~tax herein provided; if such accounts are thereafter collected by the retailer, a tax shall be paid~~
13 ~~upon the amount so collected. For purposes of this chapter, a bad debt is any portion of the~~
14 ~~purchase price of a transaction that a seller has reported as taxable and for which the seller~~
15 ~~legally claims as a bad debt deduction for federal income tax purposes. In computing the amount~~
16 ~~of tax due, a seller may deduct bad debts from the total amount upon which the tax is calculated~~
17 ~~for any return. Any deduction taken or refund paid which is attributed to bad debts may not~~
18 ~~include interest. Bad debts include worthless checks, worthless credit card payments, and~~
19 ~~uncollectible credit accounts. Bad debts do not include financing charges or interest, sales or use~~
20 ~~taxes charged on the purchase price, uncollectible amounts on property that remain in the~~
21 ~~possession of the seller until the full purchase price is paid, expenses incurred in attempting to~~
22 ~~collect any debt, debts sold, or assigned to third parties for collection, and repossessed property.~~
23 No bad debt deduction may be claimed by any person that has purchased accounts receivable for
24 collection unless the person is a successor that has acquired the entire business of the seller that

1 incurred the bad debt.

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

6 Notwithstanding the provisions of § 10-59-19, a seller may obtain a refund of tax on any
7 amount of bad debt that exceeds the amount of taxable sales within the twelve-month period
8 defined by that bad debt. A refund under this section may not include interest.

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

13 Section 28. That § 10-45-61 be amended to read as follows:

14 10-45-61. Notwithstanding § 10-54-1, a seller, who possesses a ~~resale~~ an exemption
15 certificate from a purchaser of tangible personal property or services which indicates the items
16 or services being purchased are ~~for resale in the regular course of business~~ exempt, may rely on
17 the ~~resale~~ exemption certificate and not charge sales tax to the provider of the ~~resale~~ exemption
18 certificate until the provider of the ~~resale~~ exemption certificate gives notice that the items or
19 services being purchased are no longer ~~for resale~~ exempt by filing a new ~~resale~~ exemption
20 certificate with the seller.

21 The ~~resale~~ exemption certificate shall be signed by the purchaser, provide the purchaser's
22 name, address, and valid state ~~sales~~ tax license number, if applicable, and shall describe the types
23 of tangible personal property and services being purchased ~~for resale~~ exempt by the purchaser
24 ~~in the regular course of business~~. However, any person filing an electronic exemption certificate

1 is not required to sign the exemption certificate.

2 The purchaser claiming the protection of a ~~resale~~ an exemption certificate is responsible for
3 assuring that the goods and services delivered thereafter are of a type covered by the ~~resale~~
4 exemption certificate. If there are items covered under the ~~resale~~ exemption certificate which are
5 not being purchased ~~for resale~~ exempt, it is the responsibility of the purchaser when ordering
6 goods from a seller to indicate if any of the items purchased are not ~~for resale~~ exempt, and the
7 appropriate sales tax shall be charged on the portion of the sale that is not ~~for resale~~ exempt. A
8 seller of property or services which are generally described under the ~~resale~~ exemption certificate
9 is not responsible for the collection of the tax unless otherwise directed by the purchaser ~~or~~
10 ~~unless the state establishes that the seller did not accept the resale certificate in good faith.~~
11 ~~Absent knowledge of circumstances by the seller which would put the holder of the resale~~
12 ~~certificate upon inquiry as to its validity, good faith does not require the seller to investigate the~~
13 ~~nature of the purchaser's business.~~

14 If the purchaser later determines there is any tax due and owing, the purchaser shall remit the
15 tax owed by the purchaser to the state. If the purchaser ~~purchases for resale but later elects not~~
16 ~~to resell the goods and consumes or uses them~~ makes an exempt purchase and later determines
17 that the goods or services purchased are not exempt, the purchaser shall report the transaction
18 and pay the use tax on the next filing of his the purchaser's return.

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

1 may be charged on the penalty.

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

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

6 Section 29. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 For purposes of the tax imposed by this chapter, a retailer shall source sales of tangible
9 personal property, digital products, and services to the location where the tangible personal
10 property, digital product, or service is received. The department shall promulgate rules, pursuant
11 to chapter 1-26, defining the location of receipt.

12 Section 30. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Registration under the agreement and collection of tax imposed under this chapter or chapter
15 10-46 does not in and of itself create nexus for other taxes or fees imposed by this state.

16 Section 31. That § 10-46-1 be amended to read as follows:

17 10-46-1. Terms, as used in this chapter mean:

18 (1) "Business," any activity engaged in by any person or caused to be engaged in by ~~him~~
19 such person with the object of gain, benefit or advantage either direct or indirect;

20 (2) "Delivery charges," charges by the retailer for preparation and delivery to a location
21 designated by the purchaser of tangible personal property or services including
22 transportation, shipping, postage, handling, crating, and packing;

23 (3) "Fair market value," the price at which a willing seller and willing buyer will trade.

24 Fair market value shall be determined at the time of purchase. If a public corporation

1 is supplying tangible personal property that will be used in the performance of a
2 contract, fair market value shall be determined pursuant to § 5-18-5.1. This definition
3 also applies to chapter 10-45;

4 ~~(3)~~(4) "Included in the measure of tax," the tangible personal property or the service was
5 purchased from a retailer licensed under chapter 10-45 and that retailer has included
6 the tax in the amount received from the sale;

7 ~~(4)~~(5) "In this state" or "in the state," within the exterior limits of the State of South Dakota
8 and includes all territory within such limits owned by or ceded to the United States
9 of America;

10 ~~(5)~~(6) "Purchase," any transfer, exchange, or barter, conditional or otherwise, in any manner
11 or by any means whatsoever, for a consideration. A transaction, whereby the
12 possession of property is transferred but the seller retains the title as security for the
13 payment of the price, is a purchase;

14 ~~(6)~~(7) "~~Purchase price" or "sales price," the total amount for which tangible personal~~
15 ~~property is sold, including any services that are part of the sale, valued in money,~~
16 ~~whether paid in money or otherwise, and includes any amount for which credit is~~
17 ~~given to the purchaser by the seller without any deduction therefrom on account of~~
18 ~~the cost of the property sold, the cost of materials used, labor or service cost, interest~~
19 ~~charged, losses or any other expense whatsoever. However, cash discounts allowed~~
20 ~~and taken on sales may not be included~~ shall have the same meaning as gross receipts
21 defined in subdivision 10-45-1(4);

22 ~~(7)~~(8) "Retailer," any person performing services in this state or engaged in the business of
23 selling tangible personal property for use, storage or other consumption within the
24 meaning of this chapter. However, if in the opinion of the secretary of revenue, it is

1 necessary for the efficient administration of this chapter to regard any salesmen,
2 representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors,
3 supervisors, employers, or persons under whom they operate or from whom they
4 obtain the tangible personal property sold by them irrespective of whether they are
5 making sales on their own behalf or on behalf of such dealers, distributors,
6 supervisors, employers, or persons, the secretary of revenue may so regard them and
7 may regard the dealers, distributors, supervisors, employers, or persons as retailers
8 for purposes of this chapter;

9 ~~(8)~~(9) "Retailer maintaining a place of business in the state," any retailer having or
10 maintaining within this state, directly or by a subsidiary, an office, distribution house,
11 sales house, warehouse, or other place of business, or any agents operating within the
12 state under the authority of the retailer or its subsidiary, irrespective of whether such
13 place of business or agent is located here permanently or temporarily or whether such
14 retailer or subsidiary is admitted to do business within this state pursuant to the laws
15 of the State of South Dakota granting the rights of foreign corporations to do
16 business in this state;

17 ~~(9)~~(10) "Secretary," the secretary of the Department of Revenue or any duly
18 authorized and appointed assistant, deputies, or agents of the secretary charged
19 with the administration or enforcement of this chapter;

20 ~~(10)~~(11) "Storage," any keeping or retention in this state for use or other consumption
21 in the State of South Dakota for any purpose except sale in the regular course
22 of business;

23 ~~(11)~~(12) "Tangible personal property," ~~tangible goods, wares, merchandise, gas, and~~
24 ~~electricity if furnished or delivered to consumers or users within this state~~

1 personal property that can be seen, weighed, measured, felt or touched, or that
2 is in any other manner perceptible to the senses. Tangible personal property
3 includes electricity, water, gas, and steam;

4 (12)(13) "Use," the exercise of right or power over tangible personal property incidental
5 to the ownership of that property, except that it does not include the sale of
6 that property in the regular course of business. Use also includes the use of the
7 types of services, the gross receipts from the sale of which are to be included
8 in the measure of the tax imposed by chapter 10-45, and any amendments
9 thereto and the delivery or causing delivery into this state of tangible personal
10 property intended to advertise products or services or promote or facilitate
11 sales to South Dakota residents.

12 Section 32. That § 10-46-1 be amended by adding thereto NEW SUBDIVISIONS to read
13 as follows:

14 "Computer," any electronic device that accepts information in digital or similar form and
15 manipulates it for a result based on a sequence of instructions;

16 "Computer program," any set of statements or instructions to be used directly or indirectly
17 in a computer to bring about a certain result. The term does not include separately identifiable
18 informational content;

19 "Custom software," software that is designed for a specific user where the cost of prewritten
20 software is no more than ten percent of the sales price;

21 "Digital product," any product, including but not limited to, data, text, images, sounds, mask
22 works, or computer programs and their equivalents, including collections and compilation of
23 them, in electronic form which is obtained from or through the use of a computer or which is in
24 an electronic form capable of being processed by a computer;

1 "Drug," any compound substance or preparation:

2 (a) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of
3 disease in human or other animals;

4 (b) Intended to affect the structure or any function of the body of human or other
5 animals;

6 (c) Intended for use as a component of any article specified in subsection (a) or
7 (b); or

8 (d) The label of which identifies the product as a drug by containing as required
9 pursuant to 21 C.F.R. § 201.66 as amended on January 1, 2002, one or both
10 of the following:

11 (i) Drug Facts box found on the label; or

12 (ii) A statement of the active ingredients with a list of those ingredients
13 contained in the compound substance or preparation; but does not
14 include medicated items which are normally used for personal hygiene
15 or grooming by healthy persons;

16 "Electronic," technology having electrical, digital, magnetic, wireless, optical,
17 electromagnetic, or similar capabilities;

18 "Lease or rental," any transfer of possession or control of tangible personal property for a
19 fixed or indeterminate term for consideration. A lease or rental may include future options to
20 purchase or extend. The term does not include:

21 (a) Any transfer of possession or control of property under a security agreement
22 or deferred payment plan that requires the transfer of title upon completion of
23 the required payments;

24 (b) Any transfer of possession or control of property under an agreement that

1 requires the transfer of title upon completion of the required payments and
2 payment of an option price that does not exceed one hundred dollars or one
3 percent of the total required payments, whichever is less; or

4 (c) Any agreement to provide tangible personal property for a fixed or
5 indeterminate period of time along with an operator.

6 The term does include agreements covering motor vehicles and trailers where the amount of
7 consideration may be increased or decreased by reference to the amount realized upon sale or
8 disposition of the property as defined in 26 USC 7701(h)(1) as amended on July 1, 2002. The
9 definition provided for this term in this subdivision shall be used for the purposes of this chapter
10 regardless if a transaction is characterized as a lease or rental under generally accepted
11 accounting principles, provided in Title 57A of the Internal Revenue Code as amended on July 1,
12 2002, or other federal, state, or local law.

13 "Modified software," software that has been changed for a specific user to the extent the
14 charges for the changes are separately stated;

15 "Prescription," any order, formula, or recipe issued in any form of oral, written, electronic,
16 or other means of transmission by a physician authorized by the laws of this state;

17 "Software," any organized and interrelated set of one or more computer programs, which
18 may include documentation and examples that describe how the software may be tailored and
19 used for specific applications;

20 Section 33. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 A tax is hereby imposed on the privilege of the use, storage, and consumption in this state
23 of digital products purchased for use in this state at the same rate as is imposed by section 19 of
24 this Act.

1 Section 34. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Parts or repairs on machinery or equipment which are clearly identifiable as used primarily
4 for agricultural purposes, if the part replaces a farm machinery part assigned a specific or generic
5 part number by the manufacturer of the farm machinery, are exempt from the tax imposed by this
6 chapter.

7 Section 35. That § 10-59-27 be amended to read as follows:

8 10-59-27. Any taxpayer who has received written advice from the Department of Revenue
9 concerning the taxability of transactions shall be allowed to rely on such advice when filing tax
10 returns. However, the taxpayer shall maintain a copy of the advice in ~~their~~ the taxpayer's business
11 records. The department may not maintain a position against a taxpayer which is inconsistent
12 with a prior written opinion issued to the same taxpayer unless rescinded by the department, by
13 a change in statutory law or reported case law, by a change in federal interpretation in cases if
14 the department's written advice was predicated upon a federal interpretation or by a change in
15 material facts or circumstances relating to the taxpayer. For the purposes of this section, written
16 advice includes municipal boundary information, and zip codes and addresses located within
17 municipalities provided by the department.

18 Section 36. That § 10-52-2 be amended to read as follows:

19 10-52-2. Any incorporated municipality within this state may impose any non-ad valorem tax
20 in accordance with the provisions of this chapter, except upon fuel used for motor vehicles, by
21 ordinance enacted by its local governing board. However, no tax may be levied on the sale, use,
22 storage and consumption of items taxed under chapters 10-45 and 10-46, unless such tax
23 conforms in all respects to the state tax on such items with the exception of the rate, and the rate
24 levied does not exceed two percent.

1 ~~— If a municipality increases its tax rate above one percent, the revenue generated from the tax~~
2 ~~increase may only be used for capital improvement, to include lease-purchase agreements of~~
3 ~~realty, land acquisition, the funding of public ambulances and medical emergency response~~
4 ~~vehicles, public hospitals, or nonprofit hospitals with fifty or fewer licensed beds, and other~~
5 ~~public health care facilities or nonprofit health care facilities with fifty or fewer licensed beds, the~~
6 ~~transfer to the special 911 fund authorized by § 34-45-12, the purchasing of fire fighting vehicles~~
7 ~~and equipment, debt retirement and the minor rehabilitation, major rehabilitation, or~~
8 ~~reconstruction of streets as defined in the June, 1994, South Dakota Department of~~
9 ~~Transportation Pavement Condition Survey Guide for City Streets.~~

10 Section 37. That § 10-52-2.1 be repealed.

11 ~~— 10-52-2.1. All local taxes duly enacted under § 10-52-2 before July 3, 1977, are hereby~~
12 ~~ratified and may continue in force; provided, that no rate, which as of July 1, 1977, is in excess~~
13 ~~of the rate specified in § 10-52-2, shall be increased.~~

14 Section 38. That § 10-52-2.5 be repealed.

15 ~~— 10-52-2.5. The gross receipts from selling food, as defined by the Food Stamp Act of 1977~~
16 ~~(P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983, in rules~~
17 ~~promulgated pursuant thereto, are exempt from the provisions of this chapter and from the tax~~
18 ~~imposed by it if the tax rate imposed by a municipality through the provisions of § 10-52-2 is in~~
19 ~~excess of one percent. The provisions of this section do not apply to municipalities qualifying~~
20 ~~under § 10-52-2.1 unless such municipalities increase their existing non-ad valorem tax and the~~
21 ~~new rate is in excess of one percent. A municipality may, by local option, exempt food, as~~
22 ~~defined by the Food Stamp Act of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as~~
23 ~~amended through January 1, 1983, from the tax imposed by § 10-52-2 if the tax rate is one~~
24 ~~percent or less. A municipality with a tax rate in excess of one percent on January 1, 1983,~~

1 pursuant to ~~§ 10-52-2.1~~, may, by local option, exempt food, as defined by the Food Stamp Act
 2 of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983,
 3 from the tax.

4 Section 39. That § 10-52-2.6 be repealed.

5 ~~10-52-2.6. Parts or repairs on machinery or equipment which are clearly identifiable as used~~
 6 ~~primarily for agricultural purposes, if the part replaces a farm machinery part assigned a specific~~
 7 ~~or generic part number by the manufacturer of the farm machinery, farm machinery and~~
 8 ~~equipment, and agricultural animal health products and medicines are exempt from the tax~~
 9 ~~imposed by this chapter.~~

10 Section 40. That § 10-52-2.9 be repealed.

11 ~~10-52-2.9. Any municipality which increases its tax rate above the rate it had on January 1,~~
 12 ~~1983, may exempt therefrom those items which were exempt before the increase.~~

13 Section 41. That § 10-52-3 be amended to read as follows:

14 10-52-3. Any tax imposed by the governing board of any municipality pursuant to the
 15 provisions of this chapter, may be referred to a vote of the people for its approval or disapproval
 16 in the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal
 17 ordinance which was in effect on July 1, 2002, is continued under the provisions of this chapter
 18 if:

19 (1) The governing board of the municipality has reviewed the existing tax ordinance to
 20 determine compliance with the provisions of this chapter; and

21 (2) The governing board of the municipality documents the review, any amendment, and
 22 the intent to continue the tax in the official minutes of the governing board.

23 Any amendment made by the municipality to comply with the provisions of this Act or the
 24 determination to continue the tax under the provisions of this chapter is deemed to be an

1 administrative decision pursuant to § 9-20-19 and is not subject to referendum.

2 Section 42. That § 10-52-2.10 be amended to read as follows:

3 10-52-2.10. Any incorporated municipality imposing a non-ad valorem tax in accordance
4 with § 10-52-2, ~~or imposing an additional non-ad valorem tax in accordance with § 10-52-8,~~ may
5 issue municipal non-ad valorem tax revenue bonds pursuant to this section and chapter 6-8B in
6 anticipation of the collection of the taxes. The bonds shall be payable solely from the collections
7 of the taxes imposed by the municipality under § 10-52-2 ~~or 10-52-8, or both,~~ as determined by
8 the governing body. The governing body shall, in the resolution or ordinance authorizing the
9 bonds, agree that it will continue to impose and collect the taxes so long as the bonds are
10 outstanding. The governing body shall also pledge so much of the collections of the taxes as may
11 be necessary to pay the principal premium and interest on the bonds and to maintain any debt
12 service reserve established for the bonds. The proceeds of the bonds may be used for land
13 acquisition, the funding of public ambulances and medical emergency response vehicles, public
14 hospitals or nonprofit hospitals with fifty or fewer licensed beds and other public health care
15 facilities or nonprofit health care facilities with fifty or fewer licensed beds, capital asset
16 acquisition and capital improvements, to establish a debt service reserve fund for the bonds and
17 to pay not more than one year's capitalized interest on the bonds. If the proceeds of the tax
18 imposed by § 10-52-8 are pledged to payment of the bonds, the land acquisition and capital
19 improvements financed with the proceeds of the bonds shall relate to the purposes enumerated
20 in § 10-52-8.

21 No election is required to authorize the issuance of municipal non-ad valorem tax revenue
22 bonds. The bonds shall be issued and sold as provided in chapter 6-8B.

23 Section 43. That § 10-52-8 be repealed.

24 ~~10-52-8. Notwithstanding the tax rate limitations of § 10-52-2 or 10-52-2.1, any municipality~~

1 ~~may impose an additional municipal non-ad valorem tax at the rate of one percent upon the gross~~
2 ~~receipts of all leases or rentals of hotel, motel, campsites, or other lodging accommodations~~
3 ~~within the municipality for periods of less than twenty-eight consecutive days, or sales of~~
4 ~~alcoholic beverages as defined in § 35-1-1, or establishments where the public is invited to eat,~~
5 ~~dine, or purchase and carry out prepared food for immediate consumption, or ticket sales or~~
6 ~~admissions to places of amusement, athletic, and cultural events, or any combination thereof. The~~
7 ~~tax shall be levied for the purpose of land acquisition, architectural fees, construction costs,~~
8 ~~payments for civic center, auditorium, or athletic facility buildings, including the maintenance,~~
9 ~~staffing, and operations of such facilities and the promotion and advertising of the city, its~~
10 ~~facilities, attractions, and activities. Such taxes shall conform in all respects to the state sales and~~
11 ~~use tax on such items with the exception of the rate.~~

12 Section 44. That § 10-52-9 be amended to read as follows:

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

1 Section 45. That § 10-52-11 be repealed.

2 ~~10-52-11. Veterinarian services (group no. 074) and animal specialty services except~~
3 ~~veterinary (industry no. 0752) as enumerated in the Standard Industrial Classification Manual,~~
4 ~~1987, as prepared by the Statistical Policy Division of the Office of Management and Budget,~~
5 ~~Office of the President are exempt from the provisions of this chapter. In addition, there are~~
6 ~~specifically exempted from the provisions of this chapter and the computation of the tax imposed~~
7 ~~by it, gross receipts from transportation services and the collection and disposal of solid waste.~~

8 Section 46. That § 10-52-12 be repealed.

9 ~~10-52-12. The following services enumerated in the Standard Industrial Classification~~
10 ~~Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and~~
11 ~~Budget, Office of the President are exempt from the provisions of this chapter: establishments~~
12 ~~primarily engaged in air transportation, noncertified carriers (group no. 452).~~

13 Section 47. That § 10-52-13 be amended to read as follows:

14 10-52-13. For purposes of this chapter, any new resolution or amendment enacted by a
15 municipality which changes the boundaries of the municipality is effective on the first day of the
16 first month following at least ~~sixty~~ ninety days notification by the municipality to the secretary
17 of revenue that the resolution or amendment has been enacted unless the ordinance or
18 amendment is suspended by operation of a referendum. If a resolution or amendment enacted
19 pursuant to chapter 9-4 is referred and the referred resolution or amendment is approved, the
20 effective date is the first day of the first month following at least ~~sixty~~ ninety days notification
21 by a municipality to the secretary of revenue that the resolution or amendment has been
22 approved. The municipality shall provide written notification of the enactment or approval of the
23 resolution or amendment, along with a copy of the resolution or amendment by registered or
24 certified mail or by any electronic means to the secretary of revenue. The municipality shall also

- 1 provide any changes or additions to streets and addresses.