

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

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HOUSE ENGROSSED NO. **HB 1104** - 02/19/2003

Introduced by: Representatives Peterson (Bill), Adelstein, Bartling, Begalka, Burg, Frost, Hanson, Juhnke, Lange, Madsen, Miles, Pederson (Gordon), Sebert, Sigdestad, Teupel, and Thompson and Senators McCracken, Apa, de Hueck, Dennert, Duxbury, Jaspers, and Symens

1 FOR AN ACT ENTITLED, An Act to impose an excise tax on the gross receipts of personal
2 communications system, wireless, and cellular telecommunications companies.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Department," the South Dakota Department of Revenue;

6 (2) "Engaging in business," carrying on or causing to be carried on any activity with the
7 purpose of direct or indirect benefit;

8 (3) "Secretary," the secretary of the Department of Revenue;

9 (5) "Telecommunications company," any person, as defined by § 2-14-2, trustee, lessee,
10 receiver, or municipality providing any telecommunications service as defined in
11 section 2 of this Act;

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

13 Section 2. The term, telecommunications service, as used in this Act, means wireless personal
14 communications services, wireless local loop services, enhanced special mobile radio services,



1 fixed wireless services, and cellular services that provide two-way communication. The term,
2 telecommunications service, does not include the provision of terminal equipment used to
3 originate or terminate such service. The term, telecommunications service, does not include
4 specialized mobile radio service, non-network two-way radio telephone service, private mobile
5 radio service, one-way cable television service, or two-way cable system subscriber interaction
6 that may be required for the selection of video or other programming services.

7 Section 3. The term, gross receipts, as used in this Act, includes only revenue of a
8 telecommunications company from the sale at retail of intrastate and interstate
9 telecommunications services. Sale at retail does not include special access or toll-free incoming
10 calls or the sale of any telecommunications service by a telecommunications company to another
11 telecommunications company if the service is resold or becomes a component part of the sale by
12 the second telecommunications company. Any hospital, hotel, motel, or place that provides
13 temporary accommodations selling telecommunications services to its patients or guests is not
14 a telecommunications company for the purposes of this Act.

15 Section 4. There is hereby imposed a tax of four percent upon the gross receipts of
16 telecommunications services, as defined in section 2 of this Act, that originate and terminate in
17 the same state and are billed to a customer with a place of primary use in this state or are deemed
18 to have originated or been received in this state and to be billed or charged to a service address
19 in this state if the customer's place of primary use is located in this state regardless of where the
20 service actually originates or terminates. Notwithstanding any other provision of this Act and for
21 purposes of the tax imposed by this section, the tax imposed upon mobile telecommunication
22 services shall be administered in accordance with 4 U.S.C. §§ 116-126 as of July 28, 2000.

23 Section 5. The secretary shall deposit any revenue collected from the tax imposed by this Act
24 into the general fund.

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

12 Section 7. The secretary shall grant and issue to each applicant a telecommunications gross
13 receipts tax license. A license is not assignable and is valid only for the telecommunications
14 company to which it was issued. Any license issued is valid and effective without further payment
15 of fees until canceled or revoked.

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

22 Section 9. Any person who is the holder of a telecommunications gross receipts tax license
23 or is a telecommunications company whose receipts are subject to telecommunications gross
24 receipts tax in this state shall file a return and remit the tax on or before the twentieth day of the

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

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

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

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

14 Section 12. The secretary may not reinstate the license of a telecommunications company,
15 which has been canceled or revoked as provided in this Act, until all the telecommunications
16 gross receipts tax due the state and a ten dollar reinstatement fee has been paid. The secretary
17 may also require the telecommunications company to file a bond as security for any future
18 liability.

19 Section 13. Any refund or allowance made by any telecommunication service or any amount
20 written off the books of a telecommunications company reporting financial information on an
21 accrual basis may be reported as an uncollectible debt and deducted from the gross receipts of
22 any telecommunications service. If any uncollectible debt is subsequently collected, the amount
23 is subject to the telecommunications gross receipts tax and shall be reported to the department
24 in the month of collection.

1 Section 14. Any telecommunications company subject to the telecommunications gross
2 receipts tax shall keep records of all receipts and telecommunications service sales. The records
3 are, at all times during business hours of the day, subject to inspection by the department to
4 determine the amount of tax due. The records shall be preserved for a period of three years
5 unless the secretary, in writing, authorized their destruction or disposal at an earlier date.

6 Section 15. The secretary may promulgate rules, pursuant to chapter 1-26, concerning:

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

12 Section 16. Any person who:

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

1 company's telecommunications gross receipts tax license has been revoked or
2 canceled by the secretary is guilty of a Class 6 felony;

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

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

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

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

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

24 If any responsible corporate officer elects not to be personally liable for the failure to file the

1 required returns or to pay the tax due, the corporation shall provide the department with a surety
2 bond or certificate of deposit as security for payment of any tax that may become due. The bond
3 or certificate of deposit provided for in this section shall be in an amount equal to the estimated
4 annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section
5 does not apply to elected or appointed officials of a municipality if they are bonded pursuant to
6 §§ 9-14-6 and 9-14-6.1.

7 Section 18. Any real and personal property owned by a telecommunications company that
8 is used or intended for use in furnishing and providing telecommunication services is exempt
9 from real and personal property taxes levied by the state, counties, municipalities, townships, or
10 other political subdivisions of the state.