

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

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SENATE BILL NO. 130

Introduced by: Senators Apa, de Hueck, Koskan, McCracken, Napoli, and Sutton (Duane)
and Representatives Teupel, Hennies, Lange, Madsen, McCoy, and Rhoden

1 FOR AN ACT ENTITLED, An Act to centrally assess certain wireless, cellular, and personal
2 communications system telecommunications companies.

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

4 Section 1. Each wireless telecommunications company, cellular telecommunications
5 company, and personal communications system telecommunications company doing business in
6 the state shall furnish to the Department of Revenue on or before April fifteenth of each year,
7 a report under oath on forms furnished by the department according to instructions issued by the
8 secretary of revenue with reference to property owned, leased, or controlled on the first day of
9 January of the year for which the report is made. The report shall include the name of company,
10 nature of company, location of principal office, officers of company, annual financial statement,
11 number of stations by county, and any other information as the secretary requires. The report
12 shall be sworn to and verified by an officer of the company.

13 Section 2. Terms used in this Act mean:

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

15 (2) "Engaging in business," carrying on or causing to be carried on any activity with the



1 purpose of direct or indirect benefit;

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

3 (4) "Station," a subscriber service address located in this state with a distinct call number
4 designation or distinct extension number designation. If this is not a defined location,
5 the term, station, means the location of the primary user of telecommunications
6 equipment as determined by the telecommunications number, authorization code, or
7 billing address;

8 (5) "Telecommunications company" or "company," any person, as defined by § 2-14-2,
9 trustee, lessee, receiver, or municipality providing any telecommunications service as
10 defined in section 3 of this Act.

11 Section 3. The term, telecommunications service, as used in this Act, means personal
12 communications services, wireless local loop services, fixed wireless services, and cellular
13 services that provide two-way communication. The term, telecommunications service, does not
14 include the provision of terminal equipment used to originate or terminate such service. The
15 term, telecommunications service, does not include specialized mobile radio service, private
16 mobile radio service, one-way cable television service, or two-way cable system subscriber
17 interaction that may be required for the selection of video or other programming services.

18 Section 4. The report required by section 1 of this Act shall show the following concerning
19 the financial organization and operation of the company:

20 (1) The amount of capital stock authorized and the amount issued as preferred stock or
21 as common stock, and the present actual cash value of each stock;

22 (2) All assets and liabilities; and

23 (3) All receipts and disbursements.

24 Section 5. If any telecommunications company fails to make the report required by section

1 1 of this Act, on or before April fifteenth of each year, the department in its discretion may add
2 twenty-five percent to the assessable value of the property of the company.

3 Section 6. All property, real and personal, which is actually and necessarily used in providing
4 telecommunications service in this state, and which belongs to any telecommunications company
5 in this state which is not subject to the provisions of chapter 10-33 shall be assessed for the
6 purpose of taxation by the department, and not otherwise.

7 Section 7. The department shall assess the property of each telecommunications company
8 on the fifth day of July of each year. In making the assessment, the department shall consider all
9 the reports, facts, information filed, with any other information obtainable, concerning the value
10 of the property of each telecommunications company and may add any property omitted from
11 the return of any company. In making the assessment, which shall be with reference to value and
12 ownership on January first of the year for which the assessment is made, the department shall
13 take into consideration, among other things, the amount of gross earnings and net incomes, and
14 the value to each telecommunications company of its franchises, rights, and privileges, granted
15 by the federal government or under the laws of this state. In making the assessment the
16 department shall fix a value on all the property of each company.

17 Section 8. For the purpose of aiding the department in making an assessment of the property
18 of telecommunications companies, the Public Utilities Commission shall collect information and
19 facts concerning the value of property of each telecommunications company in this state,
20 including the value of the franchises, if any. The Public Utilities Commission may inspect the
21 books, records, and property of each company and shall make this information available to the
22 department upon request.

23 Section 9. For the purpose of determining the fair market value of the property of any
24 telecommunications company, the department shall take into consideration the cost approach,

1 the market approach, and the income approach to appraisal. In the market approach, the
2 department shall consider the actual or market value of the shares of stock outstanding, the
3 actual or market value of all bonds outstanding, and all other indebtedness as may be applicable
4 for operating the company. In the income approach, the department may consider the company's
5 growth rate and the rate of inflation in determining the capitalization rate. The department may
6 take into consideration any other information or data of any kind or nature which the department
7 may deem material in arriving at the fair market value of the property.

8 Section 10. After the assessment is made, the department shall give notice by mail to the
9 officers of each telecommunications company making return to the department, setting out the
10 assessment and fixing a date at least ten days in advance when the representatives of any
11 telecommunications company, so desiring, may appear before the secretary of revenue and be
12 heard in all matters relating to the correctness of the assessment of the property of the company.
13 The secretary of revenue may promulgate rules pursuant to chapter 1-26 concerning the conduct
14 of the hearings. After the date of hearing, and on or before the fourth Monday of August, the
15 department shall finally equalize the assessments and notify each company by mail. The
16 department shall certify the value finally determined to the county auditor of each county in
17 which the company assessed owns property.

18 Section 11. The secretary of revenue shall, after assessing telecommunications company
19 property as provided in this Act, compute a tax on that valuation by applying to that portion of
20 the valuation which by law is subject to tax, the average tax levy. The average tax levy is
21 determined by dividing the total taxable valuation of all nonagricultural property for the
22 preceding year within the state into the total of all state and local property taxes levied on
23 nonagricultural property for the present year.

24 Section 12. The taxes imposed by this Act shall be allocated by the secretary of revenue to

1 each county based on the county's pro rata share of the total number of stations that the
2 telecommunications company has within the state. The taxes allocated to each county shall be
3 further allocated as follows:

4 (1) Fifty percent of the tax assessed on each telecommunications company within a
5 county shall be allocated to each school district lying wholly or partially within the
6 county. Each school district shall receive an amount based on its pro rata share of the
7 total taxable value of all property within the county; and

8 (2) Fifty percent of the tax assessed on each telecommunications company within a
9 county shall be deposited in the county general fund.

10 Section 13. All statutes relating to the enforcement of the payment of delinquent taxes apply
11 to all taxes levied under the provisions of this Act. If any taxes levied under the provisions of this
12 Act are delinquent, the county treasurer having control of the delinquent taxes may proceed to
13 collect the tax in the same manner and with the same right and power as the sheriff under
14 execution. However, no process is necessary to authorize county treasurer to sell any property
15 belonging to any telecommunications company for the collection of the delinquent taxes.

16 Section 14. The secretary may promulgate rules, pursuant to chapter 1-26, concerning:

- 17 (1) The filing of reports;
- 18 (2) Determining the application and allocation of the telecommunications tax and
19 exemptions;
- 20 (3) Taxpayer record-keeping requirements; and
- 21 (4) Determining auditing methods.