

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

177I0718

SENATE BILL NO. 217

Introduced by: Senators Brown and Olson (Ed) and Representatives Smidt, O'Brien, Olson (Mel), and Sebert

1 FOR AN ACT ENTITLED, An Act to exempt materials used in certain projects outside of the
2 state from the use tax.

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

4 Section 1. That § 10-46-5 be amended to read as follows:

5 10-46-5. If a contractor or subcontractor, as defined in chapters 10-46A and 10-46B, uses
6 tangible personal property in the performance of ~~his~~ a contract or to fulfill contract or
7 subcontract obligations, whether the title to the property is in the name of the contractor,
8 subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of the
9 property would be subject to pay the sales or use tax, the contractor or subcontractor shall pay
10 a tax at the rate prescribed by § 10-45-2; However, any tangible personal property fabricated
11 by a contractor or subcontractor in South Dakota and used by such contractor or subcontractor,
12 as defined in chapters 10-46A and 10-46B, in the performance of a contract for any public
13 corporation of any other state of the United States or the District of Columbia or any
14 organization located in any other state of the United States or the District of Columbia that has
15 been recognized as an exempt organization under § 501(c)(3) of the Internal Revenue Code, is



1 exempted from the provisions of this chapter. The value of the tangible personal property shall
2 be measured by the purchase price or fair market value of the property, whichever is greater,
3 unless the property has been previously subjected to a sales or use tax, in this state and the tax
4 due thereon has been paid. However, if the contractor or subcontractor fabricates tangible
5 personal property for use in the performance of his a contract, fair market value excludes the
6 value of the contractor's or subcontractor's fabrication costs. If a manufacturer's product is being
7 installed by such manufacturer outside of this state and the value of the installation work is less
8 than ten percent of the total value of the contract, no use tax is owed on the material and tangible
9 personal property used in the product. Such manufacturer is not considered a contractor or
10 subcontractor for the purposes of this section.