

AN ACT

ENTITLED, An Act to revise certain provisions regarding tax collection agreements between the state and Indian tribes and to declare an emergency.

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

Section 1. That § 10-12A-1 be amended to read as follows:

10-12A-1. Terms as used in this chapter mean:

- (1) "Department," the South Dakota Department of Revenue;
- (2) "Indian country," those areas defined in 18 U.S.C. § 1151; and
- (3) "Tribal tax," any tax imposed by an Indian tribe on persons subject to the Indian tribe's taxing powers.

Section 2. That § 10-12A-2 be amended to read as follows:

10-12A-2. The Legislature finds that the public interest of both Indians and non-Indians is best served by close cooperation between the state government and the Indian tribes. The Legislature finds this cooperation to be especially important in the area of taxation. Accordingly, the department is hereby authorized to enter into tax collection agreements with Indian tribes.

Section 3. That § 10-12A-3 be repealed.

Section 4. That § 10-12A-4 be amended to read as follows:

10-12A-4. The department may enter into tax collection agreements with any Indian tribe under the provisions of this chapter and chapter 1-24. These agreements may provide for the collection of any of the following state taxes and any tribal taxes imposed by a tribe that are identical to the following state taxes:

- (1) The retail sales and service tax imposed by chapter 10-45;
- (2) The use tax imposed by chapter 10-46;
- (3) The contractors' excise tax imposed by chapter 10-46A;

- (4) The alternate contractors' excise tax imposed by chapter 10-46B;
- (5) The cigarette tax imposed by chapter 10-50;
- (6) The motor vehicle excise tax imposed by chapter 32-5B; or
- (7) The fuel excise tax imposed by chapter 10-47B.

The agreement may provide for the retention by the department of an agreed-upon percentage of the gross revenue as an administrative fee.

Section 5. That § 10-12A-4.1 be amended to read as follows:

10-12A-4.1. Any tax collection agreement entered into pursuant to this chapter is binding and effective only after it is approved by the Governor and attorney general of the State of South Dakota. Prior to approval by the Governor and the attorney general, notice of the pending agreement shall be published by the department in the legal newspaper of the county or counties to be affected by the agreement, not less than two weeks prior to approval.

Section 6. That § 10-12A-5 be amended to read as follows:

10-12A-5. A tax collection agreement between the department and an Indian tribe may provide, if agreed upon by the parties, that a fixed percentage of the total annual state and tribal tax proceeds from an area of Indian country shall be remitted to the Indian tribe in lieu of the exact amount of the revenue collected as a result of the imposition of tribal taxes.

Section 7. That § 10-12A-6 be amended to read as follows:

10-12A-6. Any tax collection agreements between the department and an Indian tribe shall be for a term not to exceed five years. Such agreement, however, is renewable upon expiration by the mutual consent of the parties.

Section 8. That § 10-12A-7 be repealed.

Section 9. That § 10-12A-8 be amended to read as follows:

10-12A-8. Nothing in this chapter may be construed to relinquish any jurisdiction the state might

have to levy or collect from any person any tax or fee within Indian country.

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

The authority granted by subdivision 10-12A-4(7) is hereby revoked if the South Dakota Supreme Court or the United States Supreme Court rules that the Hayden-Cartwright Act, 4 U.S.C. § 104, authorizes the state to impose state motor fuel taxes on enrolled tribal members on Indian country controlled by the member's tribe.

Section 11. 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 this Act shall be in full force and effect from and after its passage and approval.

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I certify that the attached Act originated in the

SENATE as Bill No. 226

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 226
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

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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