

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

915J0297

SENATE BILL NO. 196

Introduced by: Senator Kleven and Representative Lange

1 FOR AN ACT ENTITLED, An Act to grant counties the authority to impose a gross receipts
2 tax on certain lodging, alcoholic beverages, prepared food, and admissions.

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 Department of Revenue and Regulation;

6 (2) "Gross receipts," the total amount or consideration, including cash, credit, property,
7 and services, for which tangible personal property or services are sold, leased, or
8 rented, valued in money, whether received in money or otherwise, without any
9 deduction for the following:

10 (a) The retailer's cost of the property or service sold;

11 (b) The cost of materials used, labor or service cost, interest, losses, all costs of
12 transportation to the retailer, all taxes imposed on the retailer, and any other
13 expense of the retailer;

14 (c) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for
15 any services necessary to complete the sale whether or not separately stated,
16 including delivery charges; and



1 (d) The value of exempt tangible personal property whether or not separately
2 stated on the invoice, billing, or similar document given to the purchaser
3 where taxable and exempt tangible personal property have been bundled
4 together and sold by the retailer as a single product or piece of merchandise;

5 Gross receipts do not include:

6 (a) Discounts, including cash, term, or coupons that are not reimbursed by a third
7 party that are allowed by a retailer and taken by a purchaser on a sale;

8 (b) Interest, financing, and carrying charges from credit extended on the sale of
9 tangible personal property or services, if the amount is separately stated on the
10 invoice, bill of sale or similar document given to the purchaser; and

11 (c) Any taxes legally imposed directly on the consumer that are separately stated
12 on the invoice, bill of sale, or similar document given to the purchaser.

13 Section 2. Any county may impose a county non-ad valorem tax at a rate of one percent
14 upon the gross receipts of all leases or rentals of hotel, motel, campsites, or other lodging
15 accommodations within the county outside of any municipality for periods of less than
16 twenty-eight consecutive days, or sales of alcoholic beverages as defined in § 35-1-1, or
17 establishments where the public is invited to eat, dine, or purchase and carry out prepared food
18 for immediate consumption, or ticket sales or admissions to places of amusement, athletic, and
19 cultural events, or any combination thereof. The tax imposed by this Act may only be levied in
20 the area within the county that is outside the limits of any incorporated municipality. The tax
21 shall be levied for the purpose of the promotion and advertising of the county, its facilities,
22 attractions, and activities; economic development; and law enforcement and court related
23 expenditures within the county.

24 Section 3. The tax imposed by section 2 of this Act shall be collected and administered by

1 the department.

2 Section 4. Any person who is subject to the tax imposed by this Act shall make a return and
3 remittance to the department on forms prescribed and furnished by the department in the
4 following manner:

5 (1) Any person whose tax liability is one thousand dollars or more annually, shall file the
6 return and remit the tax on or before the twentieth day of the month following each
7 monthly period;

8 (2) Any person whose tax liability is less than one thousand dollars annually, shall file
9 the return and remit the tax on or before the last day of the month following each
10 two-month period; and

11 (3) Any person whose tax liability is one thousand dollars or more annually and who
12 remits the tax by electronic transfer to the state, shall file the return by electronic
13 means on or before the twenty-third day of the month following each monthly period
14 and remit the tax on or before the second to the last day of the month following each
15 monthly period.

16 The secretary of revenue and regulation may grant an extension of not more than five days
17 for filing a return and remittance. Unless an extension is granted, penalty or interest pursuant
18 to § 10-59-6 shall be paid if a return or remittance is not made on time.

19 Section 5. The secretary of revenue and regulation may require or allow some returns and
20 remittances to be filed on a monthly, bimonthly, semiannual, or annual basis and the return and
21 remittance is due the last day of the month following the reporting period. For any person issued
22 a temporary or seasonal tax permit pursuant to chapter 10-45, the returns and remittances may
23 be required at a time determined by the secretary. Section 10-59-6 applies to any return and
24 payment made pursuant to this section.

1 Section 6. The definitions, administrative, collection, and enforcement provisions of
2 chapters 10-45, 10-46, and 10-52A apply to the tax imposed by this Act, where applicable.

3 Section 7. The secretary of revenue and regulation may promulgate rules pursuant to chapter
4 1-26 concerning:

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

10 Section 8. Any person who:

- 11 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
12 by this Act is guilty of a Class 6 felony;
- 13 (2) Fails to pay tax due under this Act within thirty days from the date the tax becomes
14 due is guilty of a Class 1 misdemeanor;
- 15 (3) Fails to keep the records and books required by section 9 of this Act or refuses to
16 exhibit these records to the secretary of revenue or the secretary's agents for the
17 purpose of examination is guilty of a Class 1 misdemeanor;
- 18 (4) Fails to file a return required by this Act within thirty days from the date the return
19 is due is guilty of a Class 1 misdemeanor;
- 20 (5) Willfully violates any rule of the secretary of revenue and regulation for the
21 administration and enforcement of the provisions of this Act is guilty of a Class 1
22 misdemeanor; or
- 23 (6) Violates either subdivision (2) or subdivision (4) two or more times in any
24 twelve-month period is guilty of a Class 6 felony.

1 Section 9. Each person subject to tax under this Act shall keep records and books of all
2 receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other
3 pertinent papers and documents. The books and records and other papers and documents are,
4 at all times during business hours of the day, subject to inspection by the secretary of revenue
5 and regulation or the secretary's agents and employees to determine the amount of tax due. The
6 books and records shall be preserved for a period of three years unless the secretary of revenue
7 and regulation, in writing, authorized their destruction or disposal at an earlier date.

8 Section 10. Any tax imposed by the governing board of any county pursuant to the
9 provisions of this Act, may be referred to a vote of the people for its approval or disapproval in
10 the same manner as provided in chapter 7-18A.

11 Section 11. The administration of the taxes adopted under this Act shall be by the
12 department. The department may prescribe forms and promulgate rules pursuant to chapter 1-26
13 for the making of returns and for the ascertainment, assessment, and collection of the tax
14 imposed pursuant to this Act. The department shall keep full and accurate records of all moneys
15 received and distributed under this Act.

16 Section 12. All moneys received and collected on behalf of a county by the department,
17 pursuant to this Act, shall be credited to a special county tax fund and after deducting the
18 amount of refunds made, the amounts necessary to defray the cost of collecting the tax, and the
19 administrative expenses incident thereto, shall be paid within thirty days after collection to the
20 county entitled thereto.

21 Section 13. Notwithstanding § 7-18A-8, any new ordinance or amendment to an ordinance
22 enacted under the authority of this Act, and any tax rate affected thereby, can be effective only
23 on January first or July first of a calendar year. The ordinance or amendment shall be effective
24 on the earlier of January first or July first following at least ninety days notification by the

1 county to the secretary of revenue and regulation that the ordinance or amendment has been
2 enacted unless the ordinance or amendment is suspended by operation of a referendum. If an
3 ordinance or amendment enacted under this Act is referred and the referred ordinance or
4 amendment is approved the effective date shall be the earlier of January first or July first
5 following at least ninety days notification by the county to the secretary of revenue and
6 regulation that the ordinance or amendment has been approved notwithstanding § 7-18A-22.
7 Notification of the enactment or approval of the ordinance shall be in writing and mailed, along
8 with a copy of the ordinance or amendment, by registered or certified mail to the secretary of
9 revenue and regulation.