

AN ACT

ENTITLED, An Act to revise the definition of a bad debt and modify the circumstances under which a bad debt may be deducted for taxation purposes.

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

Section 1. That § 10-45-30 be amended to read as follows:

10-45-30. For purposes of this chapter, a bad debt means the same as the term is defined at 26 U.S.C. 166 as of January 1, 2005, and is any portion of the purchase price of a transaction that a seller has reported as taxable and for which the seller or any party related to the seller within the meaning of section 267 or 707 of the Internal Revenue Code (related party), as of January 1, 2003, or any disregarded entity for federal income tax purposes that is owned by the seller or a related party, has written off as uncollectible for federal income tax purposes. In computing the amount of tax due, a seller may deduct bad debts from the total amount upon which the tax is calculated for any return. Any deduction taken or refund paid which is attributed to bad debts may not include interest. Bad debts include worthless checks, worthless credit card payments, and uncollectible credit accounts. Bad debts do not include financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, debts sold, or assigned to unrelated third parties for collection, and repossessed property. No bad debt deduction may be claimed by any person that has purchased accounts receivable for collection unless the person is a successor that has acquired the entire business of the seller that incurred the bad debt, the person is a related party, or the person is a disregarded entity for federal income tax purposes that is owned by the seller or a related party.

A bad debt may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income

tax purposes. For purposes of this section, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return. If a deduction is taken for a bad debt and the seller subsequently collects the debt in whole or in part, the tax on the amount so collected shall be paid and reported on the next return due after the collection. A seller may allocate its bad debts among states if the books and records of the seller claiming the bad debt can support such allocation.

If a seller's amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, the seller may obtain a credit or refund of tax on any amount of bad debt as provided in chapter 10-59. However, a credit or refund under this paragraph may not include interest.

If a seller's filing responsibilities have been assumed by a certified service provider as defined in § 10-45C-1, the service provider may claim, on behalf of the seller, any bad debt allowance provided by this section. The service provider shall credit or refund the full amount of any bad debt allowance or refund received to the seller.

An Act to revise the definition of a bad debt and modify the circumstances under which a bad debt may be deducted for taxation purposes.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1037

Chief Clerk
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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1037
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