

# State of South Dakota

EIGHTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2011

672S0345

## HOUSE BILL NO. 1222

Introduced by: Representatives Brunner, Elliott, Magstadt, Rozum, Street, and Turbiville and  
Senators Cutler, Adelstein, Bradford, Gray, Maher, and Nelson (Tom)

1 FOR AN ACT ENTITLED, An Act to temporarily increase the state sales and use tax to fund  
2 education and other budget needs and to declare an emergency.

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

4 Section 1. That § 10-45-2 be amended to read as follows:

5 10-45-2. There is hereby imposed a tax upon the privilege of engaging in business as a  
6 retailer, a tax of ~~four~~ five percent upon the gross receipts of all sales of tangible personal  
7 property consisting of goods, wares, or merchandise, except as otherwise provided in this  
8 chapter, sold at retail in the State of South Dakota to consumers or users.

9 Section 2. That § 10-45-5 be amended to read as follows:

10 10-45-5. There is imposed a tax at the rate of ~~four~~ five percent upon the gross receipts of any  
11 person from engaging or continuing in any of the following businesses or services in this state:  
12 abstracters; accountants; ancillary services; architects; barbers; beauty shops; bill collection  
13 services; blacksmith shops; car washing; dry cleaning; dyeing; exterminators; garage and service  
14 stations; garment alteration; cleaning and pressing; janitorial services and supplies; specialty  
15 cleaners; laundry; linen and towel supply; membership or entrance fees for the use of a facility



1 or for the right to purchase tangible personal property, any product transferred electronically,  
2 or services; photography; photo developing and enlarging; tire recapping; welding and all repair  
3 services, except farm machinery, farm attachment units, or irrigation equipment repair services;  
4 cable television; and rentals of tangible personal property except leases of tangible personal  
5 property between one telephone company and another telephone company, motor vehicles as  
6 defined by § 32-5-1 leased under a single contract for more than twenty-eight days and mobile  
7 homes. However, the specific enumeration of businesses and professions made in this section  
8 does not, in any way, limit the scope and effect of § 10-45-4.

9 Section 3. That § 10-45-5.3 be amended to read as follows:

10 10-45-5.3. There is imposed, at the rate of ~~four~~ five percent, an excise tax on the gross  
11 receipts of any person engaging in oil and gas field services (group no. 138) as enumerated in  
12 the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy  
13 Division of the Office of Management and Budget, Office of the President.

14 Section 4. That § 10-45-6 be amended to read as follows:

15 10-45-6. There is hereby imposed a tax of ~~four~~ five percent upon the gross receipts from  
16 sales, furnishing, or service of gas, electricity, and water, including the gross receipts from such  
17 sales by any municipal corporation furnishing gas, and electricity, to the public in its proprietary  
18 capacity, except as otherwise provided in this chapter, when sold at retail in the State of South  
19 Dakota to consumers or users.

20 Section 5. That § 10-45-6.1 be amended to read as follows:

21 10-45-6.1. Except as provided in § 10-45-6.2, there is hereby imposed a tax of ~~four~~ five  
22 percent upon the gross receipts from providing any intrastate, interstate, or international  
23 telecommunications service that originates or terminates in this state and that is billed or  
24 charged to a service address in this state, or that both originates and terminates in this state.

1 However, the tax imposed by this section does not apply to:

2 (1) Any eight hundred or eight hundred type service unless the service both originates  
3 and terminates in this state;

4 (2) Any sale of a telecommunication service to a provider of telecommunication  
5 services, including access service, for use in providing any telecommunication  
6 service; or

7 (3) Any sale of interstate telecommunication service provided to a call center that has  
8 been certified by the secretary of revenue to meet the criterion established in § 10-45-  
9 6.3 and the call center has provided to the telecommunications service provider an  
10 exemption certificate issued by the secretary indicating that it meets the criterion.

11 If a call center uses an exemption certificate to purchase services not meeting the criterion  
12 established in § 10-45-6.3, the call center is liable for the applicable tax, penalty, and interest.

13 Section 6. That § 10-45-6.2 be amended to read as follows:

14 10-45-6.2. There is hereby imposed a tax of ~~four~~ five percent upon the gross receipts of  
15 mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that  
16 originate and terminate in the same state and are billed to a customer with a place of primary  
17 use in this state or are deemed to have originated or been received in this state and to be billed  
18 or charged to a service address in this state if the customer's place of primary use is located in  
19 this state regardless of where the service actually originates or terminates. Notwithstanding any  
20 other provision of this chapter and for purposes of the tax imposed by this section, the tax  
21 imposed upon mobile telecommunication services shall be administered in accordance with 4  
22 U.S.C. §§ 116-126 as in effect on July 28, 2000.

23 Section 7. That § 10-45-8 be amended to read as follows:

24 10-45-8. There is imposed a tax of ~~four~~ five percent upon the gross receipts from all sales

1 of tickets or admissions to places of amusement and athletic contests or events, except as  
2 otherwise provided in this chapter.

3 Section 8. That § 10-45-71 be amended to read as follows:

4 10-45-71. There is imposed a tax of ~~four~~ five percent on the gross receipts from the  
5 transportation of passengers. The tax imposed by this section shall apply to any transportation  
6 of passengers if the passenger boards and exits the mode of transportation within this state.

7 Section 9. That § 10-46-2.1 be amended to read as follows:

8 10-46-2.1. For the privilege of using services in South Dakota, except those types of services  
9 exempted by § 10-46-17.3, there is imposed on the person using the service an excise tax equal  
10 to ~~four~~ five percent of the value of the services at the time they are rendered. However, this tax  
11 may not be imposed on any service rendered by a related corporation as defined in subdivision  
12 10-43-1(11) for use by a financial institution as defined in subdivision 10-43-1(4) or on any  
13 service rendered by a financial institution as defined in subdivision 10-43-1(4) for use by a  
14 related corporation as defined in subdivision 10-43-1(11). For the purposes of this section, the  
15 term related corporation includes a corporation which together with the financial institution is  
16 part of a controlled group of corporations as defined in 26 U.S.C. § 1563 as in effect on  
17 January 1, 1989, except that the eighty percent ownership requirements set forth in 26 U.S.C.  
18 § 563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent. For the  
19 purpose of this chapter, services rendered by an employee for the use of his employer are not  
20 taxable.

21 Section 10. That § 10-46-2.2 be amended to read as follows:

22 10-46-2.2. An excise tax is imposed upon the privilege of the use of rented tangible personal  
23 property and any product transferred electronically in this state at the rate of ~~four~~ five percent  
24 of the rental payments upon the property.

1 Section 11. That § 10-46-58 be amended to read as follows:

2 10-46-58. There is imposed a tax of ~~four~~ five percent on the privilege of the use of any  
3 transportation of passengers. The tax imposed by this section shall apply to any transportation  
4 of passengers if the passenger boards and exits the mode of transportation within this state.

5 Section 12. That § 10-46-69 be amended to read as follows:

6 10-46-69. There is hereby imposed a tax of ~~four~~ five percent upon the privilege of the use  
7 of mobile telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002,  
8 that originate and terminate in the same state and are billed to a customer with a place of  
9 primary use in this state. Notwithstanding any other provision of this chapter and for purposes  
10 of the tax imposed by this section, the tax imposed upon mobile telecommunication services  
11 shall be administered in accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000.

12 Section 13. That § 10-46-69.1 be amended to read as follows:

13 10-46-69.1. Except as provided in § 10-46-69, there is hereby imposed a tax of ~~four~~ five  
14 percent upon the privilege of the use of any intrastate, interstate, or international  
15 telecommunications service that originates or terminates in this state and that is billed or  
16 charged to a service address in this state, or that both originates and terminates in this state.

17 However, the tax imposed by this section does not apply to:

18 (1) Any eight hundred or eight hundred type service unless the service both originates  
19 and terminates in this state;

20 (2) Any sale of a telecommunication service to a provider of telecommunication  
21 services, including access service, for use in providing any telecommunication  
22 service; or

23 (3) Any sale of interstate telecommunication service provided to a call center that has  
24 been certified by the secretary of revenue to meet the criterion established in § 10-45-

1           6.3 and the call center has provided to the telecommunications service provider an  
2           exemption certificate issued by the secretary indicating that it meets the criterion.

3           If a call center uses an exemption certificate to purchase services not meeting the criterion  
4           established in § 10-45-6.3, the call center is liable for the applicable tax, penalty, and interest.

5           Section 14. That § 10-46-69.2 be amended to read as follows:

6           10-46-69.2. There is hereby imposed a tax of ~~four~~ five percent upon the privilege of the use  
7           of any ancillary services.

8           Section 15. The provisions of this Act are repealed on November 1, 2011.

9           Section 16. Whereas, this Act is necessary for the support of the state government and its  
10          existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
11          full force and effect on April 1, 2011, after its passage and approval.