

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

583Z0742

## HOUSE BILL NO. 1288

Introduced by: Representatives Rasmussen, Lesmeister, Peterson (Sue), and Wiese and  
Senator Kolbeck

1 FOR AN ACT ENTITLED, An Act to provide contractors' excise, sales, and use tax refunds for  
2 the filming of certain motion pictures, documentaries, television advertisements, or  
3 television films.

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

5 Section 1. That the code be amended by adding a NEW SECTION to read:

6 Terms used in this Act mean:

- 7 (1) "Department," the Department of Revenue;
- 8 (2) "Filming date," the first date a person begins the production in this state;
- 9 (3) "Person," any person who is engaged in the business of producing nationally or  
10 regionally distributed productions;
- 11 (4) "Production," a nationally or regionally distributed motion picture, documentary,  
12 single television advertisement, or television film made in this state, in whole or in  
13 part, for theatrical, television, video, internet, or other viewing. The term does not  
14 include the production of television coverage of news and athletic events or any  
15 production that contains any obscene material or performance as described in



1 § 22-24-27;

2 (5) "Project cost," the amount paid in money for a production. The term does not include  
3 expenditures made for marketing or advertising a production, other than a television  
4 advertisement. Nor does the term include expenditures made for goods or services  
5 obtained out of state for which no sales and use taxes were paid pursuant to chapters  
6 10-45 and 10-46; and

7 (6) "Secretary," the secretary of the Department of Revenue.

8 Section 2. That the code be amended by adding a NEW SECTION to read:

9 As provided in this Act, any person holding a permit issued pursuant to this Act may apply  
10 for and obtain a refund or credit for sales or use tax imposed and paid by the person under the  
11 provisions of chapter 10-45 or 10-46 and contractors' excise taxes imposed and paid under the  
12 provisions of chapter 10-46A or 10-46B on the project costs.

13 Section 3. That the code be amended by adding a NEW SECTION to read:

14 The refund of taxes for a production pertains only to project costs incurred and paid after  
15 July 1, 2018, and within thirty-six months of the approval of the application required by this  
16 Act. No refund may be made unless:

17 (1) The project costs that are incurred in this state exceed the sum of fifty thousand  
18 dollars in taxable costs; and

19 (2) The person applying for the refund obtains a permit from the secretary as set forth in  
20 this Act.

21 Section 4. That the code be amended by adding a NEW SECTION to read:

22 If the project cost for a production is two hundred thousand dollars or more in taxable costs,  
23 the refund shall be one hundred percent of the taxes attributed to the taxable project costs.

24 Project costs between the sum of fifty thousand dollars and one hundred ninety-nine

1 thousand nine hundred ninety-nine dollars are eligible for a seventy-five percent refund if all  
2 other requirements of this Act are met.

3 Section 5. That the code be amended by adding a NEW SECTION to read:

4 Any person desiring to claim a refund pursuant to this Act shall apply for a permit from the  
5 secretary at least thirty days before the start date of the production. The application for a permit  
6 shall be submitted on a form prescribed by the secretary. A separate application shall be made  
7 and submitted for each production. Upon approval of the application, the secretary shall issue  
8 a permit entitling the applicant to submit refund claims as provided by this Act. The permit or  
9 refund claims are not assignable or transferable except as collateral or security pursuant to  
10 chapter 57A-9.

11 Section 6. That the code be amended by adding a NEW SECTION to read:

12 Any claim for refund shall be submitted on forms prescribed by the secretary and shall be  
13 supported by any documentation the secretary may require. The secretary may deny any claim  
14 if the claimant has failed to provide information or documentation requested or considered  
15 necessary by the secretary to determine the validity of the claim.

16 Section 7. That the code be amended by adding a NEW SECTION to read:

17 Any person issued a permit pursuant to this Act shall submit a return to the department  
18 within ninety days after the completion of the project in South Dakota. The secretary shall  
19 determine and pay the amount of the tax refund within sixty days of receipt of the return. If  
20 electronic funds transfer is available to the secretary, the secretary shall pay the refund by  
21 electronic funds transfer if requested by the claimant.

22 Section 8. That the code be amended by adding a NEW SECTION to read:

23 If any claim has been fraudulently presented or supported as to any item in the claim, or if  
24 the claimant fails to meet all the conditions of this Act, the claim may be rejected in its entirety.

1 Section 9. That the code be amended by adding a NEW SECTION to read:

2 Any person aggrieved by the denial in whole or in part of a refund claimed under this Act,  
3 may, within thirty days after service of the notice of the denial by the secretary, request a  
4 hearing, upon notice, before the secretary. The hearing shall be conducted pursuant to chapter  
5 1-26.

6 Section 10. That the code be amended by adding a NEW SECTION to read:

7 Any person, aggrieved by a decision of the secretary under this Act, may, within thirty days  
8 of receipt of written notice of the secretary's decision, make written application to the secretary  
9 for a hearing to be conducted pursuant to chapter 1-26. Any hearing is to be conducted and any  
10 appeal taken pursuant to the provisions of chapters 1-26 and 1-26D. A copy of the hearing  
11 examiner's proposed decision, findings of fact, and conclusions of law shall be served on all  
12 parties when furnished to the secretary.