

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

400R0265

HOUSE BILL NO. 1039

Introduced by: The Committee on Taxation at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the use of an
2 exemption certificate for tax purposes.

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

4 Section 1. That § 10-45-61 be amended to read as follows:

5 10-45-61. Notwithstanding § 10-54-1, a seller, who possesses an exemption certificate from
6 a purchaser of tangible personal property, any product transferred electronically, or services
7 which indicates the items or services being purchased are exempt, may rely on the exemption
8 certificate and not charge sales tax to the provider of the exemption certificate until the provider
9 of the exemption certificate gives notice that the items or services being purchased are no longer
10 exempt by filing a new exemption certificate with the seller.

11 The exemption certificate shall be signed by the purchaser; The exemption certificate shall
12 provide the purchaser's name, address, and valid state tax license number, if applicable, ~~and~~
13 ~~shall describe the types of tangible personal property, any product transferred electronically, and~~
14 ~~services being purchased exempt by the purchaser.~~ However, any person filing an electronic
15 exemption certificate is not required to sign the exemption certificate.



1 The purchaser claiming the protection of an exemption certificate is responsible for assuring
2 that the goods and services delivered thereafter are of a type covered by the exemption
3 certificate. ~~If there are items covered under the exemption certificate which are not being~~
4 ~~purchased exempt, it is the responsibility of the purchaser when ordering goods from a seller~~
5 ~~to indicate if any of the items purchased are not exempt, and the appropriate sales tax shall be~~
6 ~~charged on the portion of the sale that is not exempt.~~ A seller of property, any product
7 transferred electronically, or services which are generally described under the exemption
8 certificate is not responsible for the collection of the tax unless otherwise directed by the
9 purchaser.

10 If the purchaser later determines there is any tax due and owing, the purchaser shall remit
11 the tax owed by the purchaser to the state. If the purchaser makes an exempt purchase and later
12 determines that the goods or services purchased are not exempt, the purchaser shall report the
13 transaction and pay the use tax on the next filing of the purchaser's return.

14 Any purchaser who knowingly ~~and intentionally lists on an exemption certificate personal~~
15 ~~property, any product transferred electronically, or services which the purchaser knows, at the~~
16 ~~time the exemption certificate is filed with the seller, are not exempt, or provides an invalid~~
17 ~~exemption certificate~~ files an exemption certificate with a retailer in order to purchase tangible
18 personal property, any product transferred electronically, or services with the intent to evade
19 payment of the tax, and fails to timely report the same with the department is guilty of a Class
20 1 misdemeanor. The secretary of revenue and regulation may assess a penalty of up to fifty
21 percent of the tax owed, in addition to the tax owed. No interest may be charged on the penalty.

22 The seller shall retain the exemption certificate for a period of three years from the date it
23 is filed by the purchaser and provide the exemption certificate to the department upon request.

24 The secretary may promulgate rules pursuant to chapter 1-26 to adopt forms for exemption

1 certificates.