

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

228W0666

HOUSE BILL NO. **1227**

Introduced by: Representatives May and Verchio and Senator Bradford

1 FOR AN ACT ENTITLED, An Act to authorize counties to impose sales and use taxes.

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

3 Section 1. Any county may impose a non-ad valorem tax in accordance with the provisions
4 of this Act in the area of the county outside the corporate limits of any municipality, by
5 ordinance enacted by the board of county commissioners. However, no tax may be levied on the
6 sale, use, storage, and consumption of items taxed under chapters 10-45 and 10-46, unless the
7 tax conforms in all respects to the state tax on such items with the exception of the rate and the
8 rate levied by the county, which does not exceed two percent.

9 Section 2. Any tax, imposed by the governing board of any county pursuant to the provisions
10 of this Act, may be referred to a vote of the people for its approval or disapproval in the same
11 manner as provided in chapter 7-18A.

12 Section 3. Notwithstanding § 7-18A-8, any new ordinance or amendment to an ordinance
13 enacted under the authority of this Act, and any tax rate affected thereby, can be effective only
14 on January first or July first of a calendar year. The ordinance or amendment shall be effective
15 on the earlier of January first or July first following at least ninety days notification by the



1 county to the secretary of revenue that the ordinance or amendment has been enacted unless the
2 ordinance or amendment is suspended by operation of a referendum. If an ordinance or
3 amendment enacted under this Act is referred, and the referred ordinance or amendment is
4 approved, the effective date shall be the earlier of January first or July first following at least
5 ninety days notification by the county to the secretary of revenue that the ordinance or
6 amendment has been approved notwithstanding § 7-18A-14. Notification of the enactment or
7 approval of the ordinance shall be in writing and mailed, along with a copy of the ordinance or
8 amendment, by registered or certified mail to the secretary of revenue.

9 Section 4. The definitions, administration, collection, and enforcement provisions, of
10 chapters 10-45 and 10-46 apply to the tax imposed by this Act, where applicable.

11 Section 5. That § 10-52-1.1 be amended to read as follows:

12 10-52-1.1. Notwithstanding any other provision of law, gross receipts as defined in this
13 ~~chapter Act~~ do not include any tax imposed by this ~~chapter Act~~ and chapters 10-45, 10-45D, and
14 10-52A that is separately stated on the invoice, bill of sale, or similar document given to the
15 purchaser.

16 Section 6. The administration of the taxes adopted under this Act shall be by the Department
17 of Revenue. The department shall keep full and accurate records of all moneys received and
18 distributed under this Act.

19 Section 7. Each person subject to tax under this Act shall keep records and books of all
20 receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other
21 pertinent papers and documents. The books, records, papers, and documents are, at all times
22 during business hours of the day, subject to inspection by the secretary of revenue or the
23 secretary's agents and employees to determine the amount of tax due. The books and records
24 shall be preserved for a period of three years unless the secretary of revenue, in writing,

1 authorized their destruction or disposal at an earlier date.

2 Section 8. All moneys received and collected on behalf of a county by the Department of
3 Revenue, pursuant to this Act, shall be credited to a special county tax fund. After deducting the
4 amount of refunds made, the amounts necessary to defray the cost of collecting the tax, and the
5 administrative expenses incident thereto, the balance shall be paid within thirty days after
6 collection to the county entitled to the payment.

7 Section 9. The secretary of revenue may promulgate rules pursuant to chapter 1-26
8 concerning:

- 9 (1) Licensing, including bonding and filing license applications;
- 10 (2) The filing of returns and the assessment, payment, and collection of the tax;
- 11 (3) The application of the tax and exemptions;
- 12 (4) Taxpayer record-keeping requirements; and
- 13 (5) Audits.

14 Section 10. Any county imposing a non-ad valorem tax pursuant to this Act may issue
15 county non-ad valorem tax revenue bonds pursuant to this section and chapter 6-8B in
16 anticipation of the collection of the taxes. The bonds shall be payable solely from the collections
17 of the taxes imposed by the county under this Act, as determined by the board of county
18 commissioners. The board of county commissioners shall, in the resolution or ordinance
19 authorizing the bonds, agree that the county will continue to impose and collect the taxes so
20 long as the bonds are outstanding. The board of county commissioners shall also pledge so
21 much of the collections of the taxes as may be necessary to pay the principal premium and
22 interest on the bonds and to maintain any debt service reserve established for the bonds. The
23 proceeds of the bonds may be used for land acquisition, capital improvements, and capital asset
24 acquisition, to establish a debt service reserve fund for the bonds, and to pay not more than one

1 year's capitalized interest on the bonds.

2 No election is required to authorize the issuance of county non-ad valorem tax revenue
3 bonds. The bonds shall be issued and sold as provided in chapter 6-8B.

4 Section 11. No tax increase may be levied on materials incorporated in construction work
5 pursuant to construction contracts bid or entered into on or before the effective date of any tax
6 increase made pursuant to this Act.

7 Section 12. A county imposing a sales or use tax under this Act, may by ordinance enacted
8 by the board of county commissioners, provide for a refund for such taxes to the consumer or
9 user of machinery or other tangible personal property in the nature of a capital asset which is
10 used directly in the manufacturing, processing, fabricating, or compounding of personal property
11 which is intended to be sold or leased for final use consumption. The ordinance shall provide
12 a procedure for making application for refund and the payment of the refund by the county.

13 Section 13. A county imposing a sales or use tax under this chapter may by ordinance
14 enacted by the board of county commissioners provide for a refund of such taxes to a contractor
15 or subcontractor licensed pursuant to chapter 10-46A or 10-46B if the contractor or
16 subcontractor meets the requirements provided in § 10-61-1. The ordinance shall provide a
17 procedure for filing an application for the refund and receiving the payment of the refund by the
18 county.

19 Section 14. Any person who:

- 20 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
21 by this Act is guilty of a Class 6 felony;
- 22 (2) Fails to pay tax due under this Act within sixty days from the date the tax becomes
23 due is guilty of a Class 1 misdemeanor;
- 24 (3) Fails to keep the records and books required by § 10-52A-9 or refuses to exhibit these

1 records to the secretary of revenue or the secretary's agents for the purpose of
2 examination is guilty of a Class 1 misdemeanor;

3 (4) Fails to file a return required by this Act within sixty days from the date the return
4 is due is guilty of a Class 1 misdemeanor;

5 (5) Willfully violates any rule of the secretary of revenue for the administration and
6 enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor; or

7 (6) Violates either subdivision (2) or subdivision (4) two or more times in any
8 twelve-month period is guilty of a Class 6 felony.

9 Section 15. That § 10-52-18 be amended to read as follows:

10 10-52-18. Any person who holds a license issued pursuant to this ~~chapter~~ Act or who is a
11 person whose receipts are subject to the tax imposed by this ~~chapter~~ Act shall, except as
12 otherwise provided in this section, file a return, and pay any tax due, to the Department of
13 Revenue on or before the twentieth day of the month following each monthly period. The return
14 shall be filed on forms prescribed and furnished by the department.

15 If the person remits the tax by electronic transfer to the state, the person shall file the return
16 by electronic means on or before the twenty-third day of the month following each monthly
17 period and remit the tax on or before the second to the last day of the month following each
18 monthly period.

19 The secretary may require or allow a person to file a return, and pay any tax due, on a basis
20 other than monthly. The return and remittance is due the last day of the month following the
21 reporting period, or at a time otherwise determined by the secretary.

22 The secretary may grant an extension of not more than five days for filing a return and
23 remittance.

24 Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if a return

1 or remittance is not made on time.

2 Any person who holds a license issued pursuant to this Act or who is a person whose
3 receipts are subject to the tax imposed by this Act shall, except as otherwise provided in this
4 section, file a return, and pay any tax due, to the Department of Revenue on or before the
5 twentieth day of the month following each monthly period. The return shall be filed on forms
6 prescribed and furnished by the department. If the person remits the tax by electronic transfer
7 to the state, the person shall file the return by electronic means on or before the twenty-third day
8 of the month following each monthly period and remit the tax on or before the second to the last
9 day of the month following each monthly period. The secretary may require or allow a person
10 to file a return, and pay any tax due, on a basis other than monthly. The return and remittance
11 is due the last day of the month following the reporting period, or at a time otherwise
12 determined by the secretary. The secretary may grant an extension of not more than five days
13 for filing a return and remittance. Unless an extension is granted, penalty or interest under
14 § 10-59-6 shall be paid if a return or remittance is not made on time.

15 Section 16. That § 10-59-1 be amended to read as follows:

16 10-59-1. The provisions of this ~~chapter~~ Act may only apply to proceedings commenced
17 under this chapter concerning the taxes, the fees, the surcharges, or the persons subject to the
18 taxes, fees, or surcharges imposed by, or any civil or criminal investigation authorized by,
19 chapters 10-33A, 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-45D, 10-46, 10-46A, 10-46B, 10-
20 46E, 10-47B, 10-52, 10-52A, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, 34-45, and 34A-13
21 and §§ 22-25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, of the Act, and the provisions of
22 chapter 10-45B.