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JAN 09 2019

S.D. SEC. OF STATE

January 9, 2018

Mr. Don Haggar
Americans for Prosperity
5032 Bur Oak Place, Suite 100
Sioux Falls, SD 57108

Dear Mr. Haggar:

Pursuant to SDCL 12-13-25, this office is required to review each initiated measure. Further, this office is required by SDCL 12-13-24 and 12-13-25 to determine if each initiated measure is written in clear and coherent manner in the style and form of other legislation, is worded so that the effect of the initiated measure is not misleading or likely to cause confusion among voters, does not create unnecessary conflict with existing law, and may effectively be administered. You are under no obligation to accept any of the suggestions contained in this letter, but please keep in mind the legal standards established in SDCL 12-13-24 and 12-13-25.

Attached is a rewrite of your proposed initiated measure which would reduce the tax rates as you proposed in your submitted draft but would repeal SDCL 10-64-9 and amend the specific sections of law that establish a tax rate to avoid needless conflicts in the law that may cause confusion. If you have any questions regarding our suggested changes, please feel free to contact me.

It has been determined during this review that this proposed initiated measure may have an impact on revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions. Please provide the Legislative Research Council a copy of the measure as submitted in final form to the Attorney General, so we can develop any required fiscal note.

This letter constitutes neither an endorsement of your initiated measure nor a guarantee of its sufficiency. It does constitute fulfillment of your responsibility pursuant to SDCL 12-13-25 to submit your draft to this office for review and comment. If you proceed with your initiated measure, please take care to ensure that your statements or advertising do not imply that this office endorses or approves your proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Hancock".

Jason Hancock
Director

JH:DO:ct

Enclosure

CC: The Honorable Steve Barnett, Secretary of State
The Honorable Jason Ravnsborg, Attorney General

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Filed this _____ day of
January 2019
A handwritten signature in black ink, appearing to read "Steve Barnett".
STEVE BARNETT
SECRETARY OF STATE

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

Section 1. That 10-64-9 be repealed.

~~10-64-9. If the state is able to enforce the obligation to collect and remit sales tax on remote sellers who deliver tangible personal property, products transferred electronically, or services directly to the citizens of South Dakota, the additional net revenue from such obligation shall be used to reduce the rate of certain taxes. The rate of tax imposed by §§ 10-45-2, 10-45-5, 10-45-5.3, 10-45-6, 10-45-6.1, 10-45-6.2, 10-45-8, 10-45-71, 10-46-2.1, 10-46-2.2, 10-46-58, 10-46-69, 10-46-69.1, 10-46-69.2, 10-46E-1, and 10-58-1 shall be reduced by one-tenth percent on July first following the calendar year for which each additional twenty million dollar increment of net revenue is collected and remitted by such remote sellers. However, the rate of tax imposed by §§ 10-45-2, 10-45-5, 10-45-5.3, 10-45-6, 10-45-6.1, 10-45-6.2, 10-45-8, 10-45-71, 10-46-2.1, 10-46-2.2, 10-46-58, 10-46-69, 10-46-69.1, 10-46-69.2, 10-46E-1, and 10-58-1 may not be reduced below four percent pursuant to the provisions of this section.~~

Section 2. That 10-45-2 be amended to read:

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

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 3. That 10-45-5 be amended to read:

10-45-5. There is imposed a tax ~~at the rate of four and one-half percent~~ upon the gross receipts of any person from engaging or continuing in any of the following businesses or services in this state: abstracters; accountants; ancillary services; architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply; membership or entrance fees for the use of a facility or for the right to purchase tangible personal property, any product transferred electronically, or services; photography; photo developing and enlarging; tire recapping; welding and all repair services, except repair services for farm machinery, attachment units, and irrigation equipment used exclusively for agricultural purposes; cable television; and rentals of tangible personal property except leases of tangible personal property between one telephone company and another telephone company, motor vehicles as defined pursuant to § 32-5-1 leased under a single contract for more than twenty-eight days and mobile homes. However, the specific enumeration of businesses and professions made in this section does not, in any way, limit the scope and effect of the provisions of § 10-45-4.

The rate of the tax is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;

- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 4. That 10-45-5.3 be amended to read:

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

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 5. That 10-45-6 be amended to read:

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

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 6. That 10-45-6.1 be amended to read:

10-45-6.1. Except as provided in § 10-45-6.2, there is hereby imposed a tax ~~of four and one-half percent~~ upon the gross receipts from providing any intrastate, interstate, or international telecommunications service that originates or terminates in this state and that is billed or charged to a service address in this state, or that both originates and terminates in this state. However, the tax imposed by this section does not apply to:

- ~~(1) Any~~ any eight hundred or eight hundred type service unless the service both originates and terminates in this state;
- ~~(2) Any~~ any sale of a telecommunication service to a provider of telecommunication services, including access service, for use in providing any telecommunication service; or
- ~~(3) Any~~ any sale of interstate telecommunication service provided to a call center that has been certified by the secretary of revenue to meet the criterion established in § 10-45-6.3 and the call center has provided to the telecommunications service provider an exemption certificate issued by the secretary indicating that it meets the criterion.

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

The rate of the tax is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 7. That 10-45-6.2 be amended to read:

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

The rate of the tax is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 8. That 10-45-8 be amended to read:

10-45-8. There is imposed a tax ~~of four and one-half percent~~ upon the gross receipts from all sales of tickets or admissions to places of amusement and athletic contests or events, except as otherwise provided in this chapter. The rate of the tax is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 9. That 10-45-71 be amended to read:

10-45-71. There is imposed a tax ~~of four and one-half percent~~ on the gross receipts from the transportation of passengers. The tax imposed by this section shall apply to any transportation of passengers if the passenger boards and exits the mode of transportation within this state. The rate of the tax is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;

- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 10. That 10-46-2.1 be amended to read:

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

The rate of the tax is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 11. That 10-46-2.2 be amended to read:

10-46-2.2. An excise tax is imposed upon the privilege of the use of rented tangible personal property and any product transferred electronically in this state ~~at the rate of four and one-half percent of the.~~ The tax rate imposed on rental payments upon the property is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 12. That 10-46-58 be amended to read:

10-46-58. There is imposed a tax ~~of four and one-half percent~~ on the privilege of the use of any transportation of passengers. The tax imposed by this section shall apply to any transportation of passengers if the passenger boards and exits the mode of transportation within this state. The rate of the tax is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 13. That 10-46-69 be amended to read:

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

The rate of the tax is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 14. That 10-46-69.1 be amended to read:

10-46-69.1. Except as provided in § 10-46-69, there is hereby imposed a tax of ~~four and one-half percent~~ upon the privilege of the use of any intrastate, interstate, or international telecommunications service that originates or terminates in this state and that is billed or charged to a service address in this state, or that both originates and terminates in this state. However, the tax imposed by this section does not apply to:

- (1) — ~~Any~~ any eight hundred or eight hundred type service unless the service both originates and terminates in this state;
- (2) — ~~Any~~ any sale of a telecommunication service to a provider of telecommunication services, including access service, for use in providing any telecommunication service; or
- (3) — ~~Any~~ any sale of interstate telecommunication service provided to a call center that has been certified by the secretary of revenue to meet the criterion established in § 10-45-6.3 and the call center has provided to the telecommunications service provider an exemption certificate issued by the secretary indicating that it meets the criterion.

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

The rate of the tax is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 15. That 10-46-69.2 be amended to read:

10-46-69.2. There is hereby imposed a tax of ~~four and one-half percent~~ upon the privilege of the use of any ancillary services. The rate of the tax is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 16. That 10-46E-1 be amended to read:

10-46E-1. There is hereby imposed an excise tax of ~~four and one-half percent~~ on the gross receipts from the sale, resale, or lease of farm machinery, attachment units, and irrigation equipment used exclusively for agricultural purposes. However, if any trade-in or exchange of used farm machinery, attachment units, and irrigation equipment is involved in the transaction, the excise tax is only due and may only be collected on the cash difference.

The rate of the tax is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenths percent;
- (4) Effective July 1, 2024, four and one-tenth percent; and
- (5) Effective July 1, 2025, four percent.

Section 17. That 10-58-1 be amended to read:

10-58-1. There is imposed upon owners and operators a special amusement excise tax of ~~four and one-half percent of~~ on the gross receipts from the operation of any mechanical or electronic amusement device. The rate of the tax is as follows:

- (1) Effective July 1, 2021, four and four-tenths percent;
- (2) Effective July 1, 2022, four and three-tenths percent;
- (3) Effective July 1, 2023, four and two-tenth percent;
- (4) Effective July 1, 2024, four and one-tenths percent; and
- (5) Effective July 1, 2025, and thereafter, four percent.