

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

400P0152

## HOUSE TAXATION ENGROSSED NO. **HB 1010** - 1/22/2008

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

1 FOR AN ACT ENTITLED, An Act to define telecommunication services for taxation purposes.

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

3 Section 1. That § 10-45-6.1 be amended to read as follows:

4 10-45-6.1. Except as provided in § 10-45-6.2, there is hereby imposed a tax of four percent  
5 upon the gross receipts from providing any telecommunication service that originates or  
6 terminates in this state and that is billed or charged to a service address in this state, or that both  
7 originates and terminates in this state. However, the tax imposed by this section does not apply  
8 to:

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

11 (2) Any sale of a telecommunication service to a provider of telecommunication  
12 services, including access service, for use in providing any telecommunication  
13 service; or

14 (3) Any sale of interstate telecommunication service provided to a call center that has



1           been certified by the secretary of revenue to meet the criterion established in § 10-45-  
2           6.3 and the call center has provided to the telecommunications service provider an  
3           exemption certificate issued by the secretary indicating that it meets the criterion.

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

6           ~~For the purposes of this section, the term, telecommunication service, is the transmission~~  
7           ~~of signs, signals, writings, images, sounds, messages, data, or other information of any nature~~  
8           ~~by wire, radio, lightwaves, electromagnetic means.~~

9           Section 2. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
10          follows:

11          The term, telecommunications service, as used in this chapter means the electronic  
12          transmission, conveyance, or routing of voice, data, audio, video, or any other information or  
13          signals to a point, or between or among points. The term, telecommunications service, includes  
14          such transmission, conveyance, or routing in which computer processing applications are used  
15          to act on the form, code, or protocol of the content for purposes of transmission, conveyance,  
16          or routing without regard to whether such service is referred to as voice over internet protocol  
17          services or is classified by the Federal Communications Commission as enhanced or value  
18          added. Telecommunications service does not include:

- 19          (1)   Data processing and information services that allow data to be generated, acquired,  
20               stored, processed, or retrieved and delivered by an electronic transmission to a  
21               purchaser where such purchaser's primary purpose for the underlying transaction is  
22               the processed data or information;
- 23          (2)   Installation or maintenance of wiring or equipment on a customer's premises;
- 24          (3)   Tangible personal property;

- 1 (4) Advertising, including directory advertising;
- 2 (5) Billing and collection services provided to third parties;
- 3 (6) Internet access service;
- 4 (7) Radio and television audio and video programming services, regardless of the  
5 medium, including the furnishing of transmission, conveyance and routing of such  
6 services by the programming service provider. Radio and television audio and video  
7 programming services shall include but not be limited to cable service as defined in  
8 47 USC 522(6), as of June 1, 2007, and audio and video programming services  
9 delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- 10 (8) Ancillary services; or
- 11 (9) Digital products delivered electronically, including but not limited to software,  
12 music, video, reading materials, or ring tones.

13 The term, telecommunications service, includes the following services:

- 14 (1) "800 service," any telecommunications service that allows a caller to dial a toll-free  
15 number without incurring a charge for the call;
- 16 (2) "900 service," an inbound toll telecommunications service purchased by a subscriber  
17 that allows the subscriber's customers to call in to the subscriber's prerecorded  
18 announcement or live service. A 900 service does not include the charge for the  
19 collection of services provided by the seller of the telecommunications services to the  
20 subscriber or service or product sold by the subscriber to the subscriber's customer;
- 21 (3) "Fixed wireless service," a telecommunications service that provides radio  
22 communication between fixed points;
- 23 (4) "Mobile wireless service," a telecommunications service that is transmitted,  
24 conveyed, or routed regardless of the technology used, where either the origination

1 point or termination point, or both, of the transmission, conveyance, or routing are  
2 not fixed;

3 (5) "Paging service," a telecommunications service that provides transmission of coded  
4 radio signals for the purpose of activation specific pages. Such transmissions may  
5 include either messages or sounds, or both;

6 (6) "Prepaid calling service," the right to access exclusively telecommunications  
7 services, which must be paid for in advance and which enables the origination of  
8 calls using an access number or authorization code, whether manually or  
9 electronically dialed, and that is sold in predetermined units or dollars of which the  
10 number declines with use in a known amount;

11 (7) "Prepaid wireless calling service," a telecommunications service that provides the  
12 right to utilize mobile wireless service as well as other nontelecommunications  
13 services, including the download of digital products delivered electronically, content  
14 and ancillary services, which must be paid for in advance that is sold in  
15 predetermined units or dollars of which the number declines with use in a known  
16 amount;

17 (8) "Private communication service," a telecommunications service that entitles the  
18 customer to exclusive or priority use of a communications channel or group of  
19 channels between or among termination points, regardless of the manner in which  
20 such channel or channels are connected, and includes switching capacity, extension  
21 lines, stations, and any other associated services that are provided in connection with  
22 the use of such channel or channels; and

23 (9) "Value-added non-voice data service," a service that otherwise meets the definition  
24 of telecommunications services in which computer processing applications are used

1 to act on the form, content, code, or protocol of the information or data primarily for  
2 a purpose other than transmission, conveyance, or routing.

3 Section 3. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 The term, telecommunications service, as used in this chapter means the electronic  
6 transmission, conveyance, or routing of voice, data, audio, video, or any other information or  
7 signals to a point, or between or among points. The term, telecommunications service, includes  
8 such transmission, conveyance, or routing in which computer processing applications are used  
9 to act on the form, code, or protocol of the content for purposes of transmission, conveyance,  
10 or routing without regard to whether such service is referred to as voice over internet protocol  
11 services or is classified by the Federal Communications Commission as enhanced or value  
12 added. Telecommunications service does not include:

- 13 (1) Data processing and information services that allow data to be generated, acquired,  
14 stored, processed, or retrieved and delivered by an electronic transmission to a  
15 purchaser where such purchaser's primary purpose for the underlying transaction is  
16 the processed data or information;
- 17 (2) Installation or maintenance of wiring or equipment on a customer's premises;
- 18 (3) Tangible personal property;
- 19 (4) Advertising, including directory advertising;
- 20 (5) Billing and collection services provided to third parties;
- 21 (6) Internet access service;
- 22 (7) Radio and television audio and video programming services, regardless of the  
23 medium, including the furnishing of transmission, conveyance and routing of such  
24 services by the programming service provider. Radio and television audio and video

1 programming services shall include but not be limited to cable service as defined in  
2 47 USC 522(6), as of June 1, 2007, and audio and video programming services  
3 delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;  
4 (8) Ancillary services; or  
5 (9) Digital products delivered electronically, including but not limited to software,  
6 music, video, reading materials, or ring tones.

7 The term, telecommunications service, includes the following services:

- 8 (1) "800 service," any telecommunications service that allows a caller to dial a toll-free  
9 number without incurring a charge for the call;
- 10 (2) "900 service," an inbound toll telecommunications service purchased by a subscriber  
11 that allows the subscriber's customers to call in to the subscriber's prerecorded  
12 announcement or live service. A 900 service does not include the charge for the  
13 collection of services provided by the seller of the telecommunications services to the  
14 subscriber or service or product sold by the subscriber to the subscriber's customer;
- 15 (3) "Fixed wireless service," a telecommunications service that provides radio  
16 communication between fixed points;
- 17 (4) "Mobile wireless service," a telecommunications service that is transmitted,  
18 conveyed, or routed regardless of the technology used, where either the origination  
19 point or termination point, or both, of the transmission, conveyance, or routing are  
20 not fixed;
- 21 (5) "Paging service," a telecommunications service that provides transmission of coded  
22 radio signals for the purpose of activation specific pages. Such transmissions may  
23 include either messages or sounds, or both;
- 24 (6) "Prepaid calling service," the right to access exclusively telecommunications

1 services, which must be paid for in advance and which enables the origination of  
2 calls using an access number or authorization code, whether manually or  
3 electronically dialed, and that is sold in predetermined units or dollars of which the  
4 number declines with use in a known amount;

5 (7) "Prepaid wireless calling service," a telecommunications service that provides the  
6 right to utilize mobile wireless service as well as other nontelecommunications  
7 services, including the download of digital products delivered electronically, content  
8 and ancillary services, which must be paid for in advance that is sold in  
9 predetermined units or dollars of which the number declines with use in a known  
10 amount;

11 (8) "Private communication service," a telecommunications service that entitles the  
12 customer to exclusive or priority use of a communications channel or group of  
13 channels between or among termination points, regardless of the manner in which  
14 such channel or channels are connected, and includes switching capacity, extension  
15 lines, stations, and any other associated services that are provided in connection with  
16 the use of such channel or channels; and

17 (9) "Value-added non-voice data service," a service that otherwise meets the definition  
18 of telecommunications services in which computer processing applications are used  
19 to act on the form, content, code, or protocol of the information or data primarily for  
20 a purpose other than transmission, conveyance, or routing.