

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0094

HOUSE BILL NO. 1022

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

1 FOR AN ACT ENTITLED, An Act to make certain members of limited liability companies and
2 partners of partnerships personally responsible for certain tax debts.

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

4 Section 1. That § 10-45-48.1 be amended to read as follows:

5 10-45-48.1. Any person who:

- 6 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
7 by this chapter is guilty of a Class 6 felony;
- 8 (2) Fails to pay tax due under this chapter within sixty days from the date the tax
9 becomes due is guilty of a Class 1 misdemeanor;
- 10 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
11 records to the secretary of revenue and regulation or ~~his~~ the secretary's agents for the
12 purpose of examination is guilty of a Class 1 misdemeanor;
- 13 (4) Fails to file a return required by this chapter within sixty days from the date the return
14 is due is guilty of a Class 1 misdemeanor;
- 15 (5) Engages in business as a retailer under this chapter without obtaining a sales tax



- 1 license is guilty of a Class 1 misdemeanor;
- 2 (6) Engages in business as a retailer under this chapter after ~~his~~ the person's sales tax
- 3 license has been revoked by the secretary of revenue and regulation is guilty of a
- 4 Class 6 felony;
- 5 (7) Willfully violates any rule of the secretary of revenue and regulation for the
- 6 administration and enforcement of the provisions of this chapter is guilty of a Class
- 7 1 misdemeanor;
- 8 (8) Violates either subdivision (2) or subdivision (4) two or more times in any
- 9 twelve-month period is guilty of a Class 6 felony; or
- 10 (9) Engages in business as a retailer under this chapter without obtaining a sales tax
- 11 license after having been notified in writing by the secretary of revenue and
- 12 regulation that the person is a retailer subject to the provisions of the sales and use
- 13 tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the
- 14 person engaging in business as a retailer files an application for a sales tax license
- 15 and meets all lawful prerequisites for obtaining such license within three days from
- 16 receipt of written notice from the secretary.

17 For purposes of this section, the term, person, includes corporate officers ~~having, members~~
 18 of limited liability companies, or partners that control, supervision of supervise, or are charged
 19 with the responsibility ~~for making of filing~~ of filing tax returns or remitting tax payments pursuant to
 20 § 10-45-55.

21 Section 2. That § 10-45-55 be amended to read as follows:

22 10-45-55. If a corporation, limited liability company, limited partnership, limited liability
 23 partnership, or limited liability limited partnership subject to tax under this chapter fails for any
 24 reason to file the required returns or to pay the tax due, any of its officers ~~having, members, or~~

1 ~~partners that~~ control, ~~or supervision of~~ supervise, or are charged with the responsibility for
2 ~~making such~~ of filing the returns and or remitting tax payments shall be personally liable for
3 ~~such the~~ failure. The dissolution of a corporation ~~shall~~, limited liability company, limited
4 partnership, limited liability partnership, or limited liability limited partnership does not
5 discharge an ~~officer's~~ officer, member, or partner's liability for a prior failure of the corporation,
6 limited liability company, limited partnership, limited liability partnership, or limited liability
7 limited partnership to ~~make~~ file a return or remit the tax due. The sum due for such a liability
8 may be assessed and collected as provided by law.

9 If the corporate officers, limited liability company members, or partners elect not to be
10 personally liable for the failure to file the required returns or to pay the tax due, the corporation,
11 limited liability company, limited partnership, limited liability partnership, or limited liability
12 limited partnership shall provide the Department of Revenue and Regulation with a surety bond
13 or certificate of deposit as security for payment of any tax that may become due. The bond or
14 certificate of deposit provided for in this section shall be in an amount equal to the estimated
15 annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not
16 apply to elected or appointed officials of a municipality if ~~they are~~ bonded pursuant to §§ 9-14-6
17 and 9-14-6.1.

18 Section 3. That § 10-46-47.1 be amended to read as follows:

19 10-46-47.1. If a corporation, limited liability company, limited partnership, limited liability
20 partnership, or limited liability limited partnership subject to tax under this chapter fails for any
21 reason to file the required returns or to pay the tax due, any of its officers ~~having~~, members, or
22 ~~partners that~~ control, ~~or supervision of~~ supervise, or are charged with the responsibility for
23 ~~making such~~ of filing the returns and or remitting tax payments shall be personally liable for
24 ~~such the~~ failure. The dissolution of a corporation ~~shall~~, limited liability company, limited

1 partnership, limited liability partnership, or limited liability limited partnership does not
2 discharge an ~~officer's~~ officer, member, or partner's liability for a prior failure of the corporation,
3 limited liability company, limited partnership, limited liability partnership, or limited liability
4 limited partnership to ~~make~~ file a return or remit the tax due. The sum due for such a liability
5 may be assessed and collected as provided by law.

6 If the corporate officers, limited liability company members, or partners elect not to be
7 personally liable for the failure to file the required returns or to pay the tax due, the corporation,
8 limited liability company, limited partnership, limited liability partnership, or limited liability
9 limited partnership shall provide the Department of Revenue and Regulation with a surety bond
10 or certificate of deposit as security for payment of any tax that may become due. The bond or
11 certificate of deposit provided for in this section shall be in an amount equal to the estimated
12 annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not
13 apply to elected or appointed officials if ~~they are~~ bonded pursuant to §§ 9-14-6 and 9-14-6.1.

14 Section 4. That § 10-46A-13 be amended to read as follows:

15 10-46A-13. If a corporation, limited liability company, limited partnership, limited liability
16 partnership, or limited liability limited partnership subject to tax under this chapter fails for any
17 reason to file the required returns or to pay the tax due, any of its officers ~~having,~~ members, or
18 partners that control, ~~or supervision of~~ supervise, or are charged with the responsibility for
19 ~~making such of filing the~~ returns ~~and or remitting tax~~ payments shall be personally liable for
20 ~~such the~~ failure. The dissolution of a corporation ~~shall,~~ limited liability company, limited
21 partnership, limited liability partnership, or limited liability limited partnership does not
22 discharge an ~~officer's~~ officer, member, or partner's liability for a prior failure of the corporation,
23 limited liability company, limited partnership, limited liability partnership, or limited liability
24 limited partnership to ~~make~~ file a return or remit the tax due. The sum due for such a liability

1 may be assessed and collected as provided by law.

2 If the corporate officers, limited liability company members, or partners elect not to be
3 personally liable for the failure to file the required returns or to pay the tax due, the corporation,
4 limited liability company, limited partnership, limited liability partnership, or limited liability
5 limited partnership shall provide the Department of Revenue and Regulation with a surety bond
6 or certificate of deposit as security for payment of any tax that may become due. The bond or
7 certificate of deposit provided for in this section shall be in an amount equal to the estimated
8 annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not
9 apply to elected or appointed officials of a municipality if ~~they are~~ bonded pursuant to §§ 9-14-6
10 and 9-14-6.1.

11 Section 5. That § 10-46A-13.1 be amended to read as follows:

12 10-46A-13.1. Any person who:

- 13 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
14 by this chapter is guilty of a Class 6 felony;
- 15 (2) Fails to pay tax due under this chapter within sixty days from the date the tax
16 becomes due is guilty of a Class 1 misdemeanor;
- 17 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
18 records to the secretary of revenue and regulation or ~~his~~ the secretary's agents for the
19 purpose of examination is guilty of a Class 1 misdemeanor;
- 20 (4) Fails to file a return required by this chapter within sixty days from the date the return
21 is due is guilty of a Class 1 misdemeanor;
- 22 (5) Engages in business under this chapter without obtaining a contractor's excise tax
23 license is guilty of a Class 1 misdemeanor;
- 24 (6) Engages in business under this chapter after ~~his~~ the person's contractor's excise tax

1 license has been revoked by the secretary of revenue and regulation is guilty of a
2 Class 6 felony;

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

5 (8) Engages in business under this chapter without obtaining a contractor's excise tax
6 license after having been notified in writing by the secretary of revenue and
7 regulation that the person is a contractor subject to the provisions of the contractors'
8 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision
9 if the person engaging in business files an application for a contractor's excise tax
10 license and meets all lawful prerequisites for obtaining such license within three days
11 from receipt of written notice from the secretary.

12 For purposes of this section, the term, person, includes corporate officers ~~having, members~~
13 of limited liability companies, or partners that control, supervision of supervise, or are charged
14 with the responsibility ~~for making of filing~~ tax returns or remitting tax payments pursuant to
15 § 10-46A-13.

16 Section 6. That § 10-46B-11 be amended to read as follows:

17 10-46B-11. If a corporation, limited liability company, limited partnership, limited liability
18 partnership, or limited liability limited partnership subject to tax under this chapter fails for any
19 reason to file the required returns or to pay the tax due, any of its officers ~~having, members, or~~
20 partners that control, or supervision of supervise, or are charged with the responsibility ~~for~~
21 ~~making such of filing the~~ returns ~~and or remitting tax~~ payments shall be personally liable for
22 ~~such the~~ failure. The dissolution of a corporation ~~shall, limited liability company, limited~~
23 partnership, limited liability partnership, or limited liability limited partnership does not
24 discharge an ~~officer's~~ officer, member, or partner's liability for a prior failure of the corporation,

1 limited liability company, limited partnership, limited liability partnership, or limited liability
2 limited partnership to make file a return or remit the tax due. The sum due for such a liability
3 may be assessed and collected as provided by law.

4 If the corporate officers, limited liability company members, or partners elect not to be
5 personally liable for the failure to file the required returns or to pay the tax due, the corporation,
6 limited liability company, limited partnership, limited liability partnership, or limited liability
7 limited partnership shall provide the Department of Revenue and Regulation with a surety bond
8 or certificate of deposit as security for payment of any tax that may become due. The bond or
9 certificate of deposit provided for in this section shall be in an amount equal to the estimated
10 annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not
11 apply to elected or appointed officials of a municipality if ~~they are~~ bonded pursuant to §§ 9-14-6
12 and 9-14-6.1.

13 Section 7. That § 10-46B-11.1 be amended to read as follows:

14 10-46B-11.1. Any person who:

- 15 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
16 by this chapter is guilty of a Class 6 felony;
- 17 (2) Fails to pay tax due under this chapter within sixty days from the date the tax
18 becomes due is guilty of a Class 1 misdemeanor;
- 19 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
20 records to the secretary of revenue and regulation or ~~his~~ the secretary's agents for the
21 purpose of examination is guilty of a Class 1 misdemeanor;
- 22 (4) Fails to file a return required by this chapter within sixty days from the date the return
23 is due is guilty of a Class 1 misdemeanor;
- 24 (5) Engages in business under this chapter without obtaining a contractor's excise tax

1 license is guilty of a Class 1 misdemeanor;

2 (6) Engages in business under this chapter after ~~his~~ the person's contractor's excise tax
3 license has been revoked by the secretary of revenue and regulation is guilty of a
4 Class 6 felony;

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

7 (8) Engages in business under this chapter without obtaining a contractor's excise tax
8 license after having been notified in writing by the secretary of revenue and
9 regulation that the person is a contractor subject to the provisions of the contractors'
10 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision
11 if the person engaging in business files an application for a contractor's excise tax
12 license and meets all lawful prerequisites for obtaining such license within three days
13 from receipt of written notice from the secretary.

14 For purposes of this section, the term, person, includes corporate officers ~~having, members~~
15 of limited liability companies, or partners that control, supervision of supervise, or are charged
16 with the responsibility ~~for making of filing~~ tax returns or remitting tax payments pursuant to
17 § 10-46B-11.

18 Section 8. That § 10-47B-41 be amended to read as follows:

19 10-47B-41. A corporation, limited liability company, limited partnership, limited liability
20 partnership, or limited liability limited partnership subject to the taxes imposed by this chapter
21 and its corporate officers, members, or partners are jointly and severally liable for the filing of
22 reports or returns and the payment of tax, penalty, and interest due. The dissolution of a
23 corporation, limited liability company, limited partnership, limited liability partnership, or
24 limited liability limited partnership does not discharge an ~~officer's~~ officer, member, or partner's

1 liability for a prior failure of the corporation, limited liability company, limited partnership,
2 limited liability partnership, or limited liability limited partnership to ~~make~~ file a return or remit
3 the tax due. An officer, member, or partner subject to personal liability is not discharged from
4 that liability upon vacating the office. An officer, member, or partner may be discharged from
5 future liability upon notifying the secretary in writing. The sum due for such a liability may be
6 assessed and collected as provided by law.

7 Section 9. That § 10-33A-17 be amended to read as follows:

8 10-33A-17. Any person who:

- 9 (1) Makes any false or fraudulent return in attempting to defeat or evade the
10 telecommunications gross receipts tax is guilty of a Class 6 felony;
- 11 (2) Fails to pay the telecommunications gross receipts tax due under this chapter within
12 sixty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- 13 (3) Fails to keep the records required by this chapter or refuses to exhibit these records
14 to the department for the purpose of examination is guilty of a Class 1 misdemeanor;
- 15 (4) Fails to file a return required by this chapter within sixty days from the date the return
16 is due is guilty of a Class 1 misdemeanor;
- 17 (5) Engages in business as a telecommunications company under this chapter without
18 obtaining a telecommunications gross receipts tax license is guilty of a Class 1
19 misdemeanor;
- 20 (6) Engages in business as a telecommunications company under this chapter after the
21 company's telecommunications gross receipts tax license has been revoked or
22 canceled by the secretary is guilty of a Class 6 felony;
- 23 (7) Willfully violates any rule of the secretary for the administration and enforcement of
24 the provisions of this chapter is guilty of a Class 1 misdemeanor;

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

3 (9) Engages in business as a telecommunications company under this chapter without
4 obtaining a telecommunications gross receipts tax license after having been notified
5 in writing by the secretary that the telecommunications company is subject to the
6 provisions of this chapter is guilty of a Class 6 felony. However, it is not a violation
7 of this subdivision if the telecommunications company providing any
8 telecommunications service files an application for a telecommunications gross
9 receipts tax license and meets all lawful prerequisites for obtaining such license
10 within three days from receipt of written notice from the secretary.

11 For purposes of this section, the term, ~~telecommunications company~~ person, includes
12 corporate officers ~~having, members of limited liability companies, or partners that control,~~
13 ~~supervision of~~ supervise, or are charged with the responsibility for ~~making of filing~~ filing tax returns
14 or remitting tax payments pursuant to this chapter.

15 Section 10. That § 10-33A-18 be amended to read as follows:

16 10-33A-18. If a corporation, limited liability company, limited partnership, limited liability
17 partnership, or limited liability limited partnership subject to the gross receipts tax under this
18 chapter fails for any reason to file the required returns or to pay the tax due, any of its officers
19 ~~having, members, or partners that control, or supervision of~~ supervise, or are charged with the
20 responsibility for ~~making such of filing the~~ filing the returns ~~and or remitting tax~~ payments are personally
21 liable for ~~such the~~ the failure. The dissolution of a corporation, limited liability company, limited
22 partnership, limited liability partnership, or limited liability limited partnership does not
23 discharge an ~~officer's~~ officer, member, or partner's liability for a prior failure of the corporation,
24 limited liability company, limited partnership, limited liability partnership, or limited liability

1 limited partnership to ~~make~~ file a return or remit the tax due. The sum due for such a liability
2 may be assessed and collected as provided by law.

3 If ~~any~~ the responsible corporate ~~officer~~ elects officers, limited liability company members,
4 or partners elect not to be personally liable for the failure to file the required returns or to pay
5 the tax due, the corporation, limited liability company, limited partnership, limited liability
6 partnership, or limited liability limited partnership shall provide the department with a surety
7 bond or certificate of deposit as security for payment of any tax that may become due. The bond
8 or certificate of deposit provided for in this section shall be in an amount equal to the estimated
9 annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section
10 does not apply to elected or appointed officials of a municipality if ~~they are~~ bonded pursuant to
11 §§ 9-14-6 and 9-14-6.1.