

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

400X0178

SENATE BILL NO. 52

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

1 FOR AN ACT ENTITLED, An Act to establish procedures for reporting federal tax changes
2 for purposes of the bank franchise tax.

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

4 Section 1. That chapter 10-43 be amended by adding a NEW SECTION to read:

5 A taxpayer who has filed a return with the department for a specific tax year and
6 subsequently has a change or correction to the taxpayer's net income, as a result of audit or
7 adjustment by the United States, that increases the taxpayer's taxable income in this state, shall
8 report the change or correction in writing to the secretary. The report shall be in the form of a
9 supplementary return and shall be filed within one hundred twenty days of the final adjustment
10 by the United States. Any additional tax due and applicable interest shall be paid at the time of
11 filing the supplementary return. The provisions of this section apply notwithstanding the
12 limitation period for collection of taxes provided under § 10-59-16.

13 Section 2. That chapter 10-43 be amended by adding a NEW SECTION to read:

14 A taxpayer who has filed a return with the department for a specific tax year and
15 subsequently has a change or correction to the taxpayer's net income, as a result of audit or



1 adjustment by the United States, that decreases the taxpayer's taxable income in this state, may
2 report the change or correction in writing to the secretary. The report shall be in the form of a
3 supplementary return and shall be filed within one hundred twenty days of the final adjustment
4 by the United States. Any refund for overpayment of tax, penalty, or interest shall be made
5 pursuant to §§ 10-59-22, 10-59-22.1, 10-59-23, and 10-59-24. The provisions of this section
6 apply notwithstanding §§ 10-59-17 and 10-59-19.

7 No court has jurisdiction of a suit to recover the taxes, penalties, or interest unless the
8 taxpayer seeking the recovery of the tax complies with the provisions of this section.

9 Section 3. That chapter 10-43 be amended by adding a NEW SECTION to read:

10 If a taxpayer fails to file a supplementary return as required by section 1 of this Act, the
11 secretary may determine the amount of additional tax due, if any, based on information available
12 to the secretary. The secretary's determination of additional tax due, together with interest and
13 penalty as provided in § 10-59-6, shall be made within six years after the time the
14 supplementary return was due.

15 The secretary may also impose a penalty of five thousand dollars or ten percent of the
16 additional tax due, whichever is greater, for failure to timely file a supplementary return and pay
17 any additional tax and applicable interest as required by section 1 of this Act. This penalty is in
18 addition to all other penalties provided by law and shall be deposited in the state general fund.

19 Section 4. That § 10-43-50 be repealed.

20 ~~10-43-50. As soon as practicable and in any event within three years after the return is filed,~~
21 ~~the secretary of revenue shall examine it and determine the correct amount of tax, and the~~
22 ~~amount so determined by the secretary is the tax. If the tax found due is greater than the amount~~
23 ~~previously paid, the excess, together with interest and penalty as provided in § 10-59-6 shall be~~
24 ~~paid by the taxpayer within ten days after the secretary gives notice to the taxpayer by registered~~

1 or certified mail.

2 Section 5. That § 10-43-51 be repealed.

3 ~~—10-43-51. If the secretary of revenue discovers from the examination of the return or~~
4 ~~otherwise that the income of the taxpayer, or any portion of the income, has not been listed in~~
5 ~~the return, or that no return was filed when one was due, the secretary may at any time within~~
6 ~~five years after the time when the return was due, determine the correct amount of the tax~~
7 ~~together with interest and penalty as provided in § 10-59-6. The tax, interest, and penalty shall~~
8 ~~be paid within ten days after the secretary of revenue has given notice of the tax, interest, and~~
9 ~~penalty to the taxpayer by registered or certified mail.~~

10 Section 6. That § 10-43-51.1 be repealed.

11 ~~—10-43-51.1. If a taxpayer makes a fraudulent return in an attempt to evade the tax imposed~~
12 ~~by this chapter, the secretary of revenue may at any time after the time when the return was due,~~
13 ~~determine the correct amount of the tax together with interest and penalty as provided in § 10-~~
14 ~~59-6 and the amount so determined shall be paid within ten days after the secretary gives notice~~
15 ~~thereof to the taxpayer by registered or certified mail.~~

16 Section 7. That § 10-43-55 be repealed.

17 ~~—10-43-55. If the amount of the tax, as determined by the secretary of revenue, is less than~~
18 ~~the amount paid, the excess shall be refunded with interest after sixty days from the date of~~
19 ~~payment at six percent per year pursuant to the procedure established by the secretary of revenue~~
20 ~~by rule promulgated pursuant to chapter 1-26.~~

21 Section 8. That § 10-43-60 be repealed.

22 ~~—10-43-60. An appeal may be taken by the taxpayer or the secretary of revenue to the~~
23 ~~Supreme Court of this state in the same manner that appeals are taken in other actions,~~
24 ~~irrespective of the amount involved.~~

1 Section 9. That ARSD 64:26:02:05 be repealed.

2 ~~64:26:02:05.— Supplementary return required upon subsequent increase in income —~~
3 ~~Exception if increase results from departmental adjustment. When the taxpayer has filed a return~~
4 ~~with the department for the tax year and a subsequent increase occurs in the taxpayer's net~~
5 ~~income or taxable income for that tax year, whether because of audit and adjustment by the~~
6 ~~United States or otherwise, the taxpayer shall file a supplementary return with the department~~
7 ~~for the tax year in which the income was earned. The return must be filed within 60 days after~~
8 ~~the final determination of the increase in income. A supplementary return need not be filed if~~
9 ~~the increase in the taxpayer's income is the result of an adjustment in the original return by the~~
10 ~~department.~~

11 Section 10. That ARSD 64:26:02:06 be repealed.

12 ~~64:26:02:06.— Supplementary return permitted upon subsequent decrease in income —~~
13 ~~Exception if decrease results from departmental adjustment. When the taxpayer has filed a~~
14 ~~return with the department for the tax year and a subsequent decrease occurs in the taxpayer's~~
15 ~~net income or taxable income for that tax year, whether because of audit and adjustment by the~~
16 ~~United States or otherwise, the taxpayer may file a supplementary return with the department~~
17 ~~for the tax year in which the decrease occurred. A supplementary return need not be filed if the~~
18 ~~decrease is the result of an adjustment in the original return by the department.~~

19 Section 11. The provisions of this Act only apply to returns that are related to tax years
20 ending in 2015 or thereafter and filed after December 31, 2015.