

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF DATABYTES INC.'S</b>	)	<b>FINDINGS OF FACT,</b>
<b>FAILURE TO TIMELY PAY THE GROSS</b>	)	<b>CONCLUSIONS OF LAW AND</b>
<b>RECEIPTS TAX</b>	)	<b>FINAL ORDER; NOTICE OF</b>
	)	<b>ENTRY OF FINAL ORDER</b>
	)	
	)	<b>TC21-119</b>

On November 24, 2021, the South Dakota Public Utilities Commission (Commission) issued an Order for and Notice of Show Cause Hearing against DataBytes Inc. (Company) for failure to timely pay the gross receipts tax. The hearing was held as scheduled on January 4, 2022, at 9:00 A.M., CST, in Room 413, Capitol Building, 500 E. Capitol, Pierre, South Dakota. The reason for the hearing was to give the Company an opportunity to show cause why the Commission should not take action against the Company for failure to timely pay the gross receipts tax as required by SDCL 49-1A-3. No representative of the Company appeared at the hearing. After hearing the testimony, the Commission voted unanimously to assess a ten percent penalty per month on the delinquent gross receipts tax, to pursue collections activity if the amount owed is not paid within thirty days of this order, and to prohibit the Company from doing business in the state until all gross receipts taxes, penalties, and fees are paid in full.

The Commission, having heard the testimony presented at the hearing, makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. The Company is a wireless telecommunications company, not required to have a Certificate of Authority to operate in South Dakota. Staff Exhibit 1.
2. Cindy Kemnitz, Finance Manager for the Commission, sent invoices to the Company requesting payment of the gross receipts tax as authorized by SDCL 49-1A-3. She testified that the Company failed to timely pay the gross receipts tax. Staff Exhibit 1.
3. A copy of the Order for and Notice of Show Cause Hearing was sent by email to the Company on November 24, 2021. Staff Exhibit 1.
4. No representative of the Company appeared at the hearing to show cause why the Commission should not take action against the Company for failure to timely pay the gross receipts tax.

**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to SDCL 49-1A-3, 49-1A-4, 49-1A-5, 49-1A-6, and 49-31-3.
2. Pursuant to SDCL 49-1A-3 and 49-1A-4, the Commission assesses a tax on the annual intrastate gross receipts received by a telecommunications company from the company's customers within the state of South Dakota. Pursuant to SDCL 49-1A-5, the gross receipts tax is

due on July fifteenth of each year.

3. The Company has failed to timely pay the gross receipts tax.

4. The Commission has the authority, under 49-1A-6, to assess a penalty of ten percent of the amount owed for each month of the delinquency and pursue collection of the gross receipts tax and penalties.

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED, that the Company shall pay its gross receipts tax and a ten percent penalty per month on the delinquent gross receipts tax shall be assessed. It is further

ORDERED, that if the Company fails to pay the gross receipts tax and all associated penalties within thirty days of the date of this order, the matter shall be turned over to the South Dakota Obligation Recovery Center. It is further

ORDERED, that the Company is prohibited from doing business in the state until all gross receipts taxes fees, and penalties are paid in full.

#### NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 10<sup>th</sup> day of January 2022. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 10<sup>th</sup> day of January 2022.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.
By: <u>Karen E. Bremer</u>
Date: <u>01/10/22</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Chris Nelson  
CHRIS NELSON, Commissioner

Kristie Fiegen  
KRISTIE FIEGEN, Commissioner

Gary Hanson  
GARY HANSON, Commissioner