

2021 South Dakota Legislature

919

Senate Bill 104

Introduced by: Senator Heinert

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- 1 An Act to reduce the rate of sales tax on certain food.
- 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 3 **Section 1.** That § 10-45-2 be AMENDED.
- 4 10-45-2. Tax on sale of tangible property--Exceptions.

There—Subject to the provisions of § 10-45-2.10, 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.

Section 2. That a NEW SECTION be added:

11 **10-45-2.10.** Tax on sale of food.

During the period beginning July 1, 2021, and ending June 30, 2022, the tax imposed under § 10-45-2 on gross receipts from the sale of food is four percent.

During the period beginning July 1, 2022, and ending June 30, 2023, the tax imposed under § 10-45-2 on gross receipts from the sale of food is three percent.

During the period beginning July 1, 2023, and ending June 30, 2024, the tax imposed under § 10-45-2 on gross receipts from the sale of food is two percent.

During the period beginning July 1, 2024, and ending June 30, 2025, the tax imposed under § 10-45-2 on gross receipts from the sale of food is one percent.

Beginning on July 1, 2025, the tax imposed under § 10-45-2on gross receipts from the sale of food is zero percent.

22 **Section 3.** That § 10-45-1 be AMENDED.

23 **10-45-1. Definition of terms.**

24 Terms used in this chapter mean:

- (1) "Agricultural purposes," the producing, raising, growing, or harvesting of food or fiber upon agricultural land, including dairy products, livestock, and crops. The services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders, and cultivators are considered agricultural purposes. The harvesting of timber on land within the state is considered an agricultural purpose;
 - (2) "Bakery item," any bread, roll, bun, biscuit, bagel, croissant, pastry, donut, danish, cake, torte, pie, tart, muffin, cookie, and tortilla;
 - (3) "Business," any activity engaged in by any person or caused to be engaged in by such person with the object of gain, benefit, or advantage, either direct or indirect;
 - (3)(4) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. The term, candy, does not include any preparation containing flour and does not require refrigeration;
 - (4)(5) "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property, any product transferred electronically, or services including transportation, shipping, postage, handling, crating, and packing. The term does not include postage for direct mail;
 - (5)(6) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for its taste or nutritional value. The term, food, includes any bakery item, but does not include any alcoholic beverages beverage, tobacco, soft drink, candy, dietary supplement, or prepared food;
 - (6) Repealed by SL 2007, ch 56, § 1.
 - (7) "Person," any individual, firm, copartnership, joint adventure, association, limited liability company, corporation, municipal corporation, estate, trust, business trust, receiver, the State of South Dakota and its political subdivisions, or any group or combination acting as a unit;
 - (8) "Prepared food," any food sold in a heated state or heated by the seller; two or more food ingredients mixed or combined by the seller for sale as a single item; or food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.
 - Prepared food does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug

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1	Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003		
2	so as to prevent food borne illnesses;		
3	(8A) (9)	"Product transferred electronically," any product obtained by the purchaser	
4	by means other than tangible storage media. A product transferred electronically		
5	does not include any intangible such as a patent, stock, bond, goodwill, trademark,		
6	franchise, or copyright.		
7	(9) (10)	"Relief agency," the state, and county, municipality or district thereof, or any	
8	agency engaged in actual relief work;		
9	(10) (11)	"Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other	
10	than for resale, sublease, or subrent;		
11	(11) (12)	"Retailer," any person engaged in the business of selling tangible goods,	
12	wares, or merchandise at retail, or the furnishing of gas, electricity, water, and		
13	comn	communication service, and tickets or admissions to places of amusement and	
14	athle	athletic events as provided in this chapter, and the sale at retail of products	
15	trans	transferred electronically. The term also includes any person subject to the tax	
16	impo	imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale of tangible	
17	personal property or any product transferred electronically at retail by a person who		
18	does not hold himself or herself out as engaging in the business of selling such		
19	tangible personal property or products transferred electronically at retail does not		
20	const	itute such person a retailer;	
21	(12) (13)	"Sale," any transfer, exchange, or barter, conditional or otherwise, in any	
22	manr	manner or by any means whatsoever, for a consideration;	
23	(13) (14)	"Soft drinks," any nonalcoholic beverages that contain natural or artificial	
24	swee	sweeteners. The term, soft drinks, does not include any beverage that contains milk	
25	or milk products, soy, rice of similar milk substitutes, or greater than fifty percent		
26	of vegetable or fruit juice by volume;		
27	(14) (15)	"Tangible personal property," personal property that can be seen, weighed,	
28	meas	sured, felt, or touched, or that is in any other manner perceptible to the senses.	

The term includes electricity, water, gas, steam, and prewritten computer software.

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