AN ACT

ENTITLED, An Act to revise the definition of gross receipts for sales tax purposes.

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

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

10-45-1. 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;

(2) "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) "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) "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property or services including transportation, shipping, postage, handling, crating, and packing;

(5) "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, does not include alcoholic beverages, tobacco, or prepared food;

(6)

(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 Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003, so as to prevent food borne illnesses;

(9) "Relief agency," the state, and county, municipality or district thereof, or any agency engaged in actual relief work;

(10) "Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

(11) "Retailer," any person engaged in the business of selling tangible goods, wares, or merchandise at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this chapter. The term also includes any person subject to the tax imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself or herself out as engaging in the business of selling such tangible personal property at retail does not constitute such person a retailer;

(12) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;

(13) "Soft drinks," any nonalcoholic beverages that contain natural or artificial sweeteners. The term, soft drinks, does not include any beverage that contains milk or milk products, soy, rice of similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume;

(14) "Tangible personal property," personal property that can be seen, weighed, measured, 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.

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

For the purposes of this chapter, the term, gross receipts, means the total amount or consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(1) The retailer's cost of the property or service sold;

(2) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer; and

(3) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for any services necessary to complete the sale whether or not separately stated, including delivery charges.

Section 3. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

Gross receipts, as defined in section 2 of this Act, include consideration received by the retailer

from third parties if:

(1) The retailer actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(2) The retailer has an obligation to pass the price reduction or discount through to the purchaser;

(3) The amount of the consideration attributable to the sale is fixed and determined by the retailer at the time of the sale of the item to the purchaser; and

(4) One of the following criteria is met:

(a) The purchaser presents a coupon, certificate, or other documentation to the retailer to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any retailer to whom the coupon, certificate, or documentation is presented;

(b) The purchaser identifies himself or herself to the retailer as a member of a group or organization entitled to a price reduction or discount (a preferred customer card that is available to any patron does not constitute membership in such a group); or

(c) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

For the purposes of this section, the purchaser is the end consumer.

Section 4. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

Gross receipts, as defined in section 2 of this Act, do not include:

(1) Discounts, including cash, term, or coupons that are not reimbursed by a third party that

are allowed by a retailer and taken by a purchaser on a sale;

(2) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

Section 5. That § 10-52A-1 be amended to read as follows:

10-52A-1. Terms used in this chapter mean:

(1) "Department," the Department of Revenue and Regulation.

Section 6. That chapter 10-52A be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, gross receipts, means the total amount or consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(1) The retailer's cost of the property or service sold;

(2) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer; and

(3) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for any services necessary to complete the sale whether or not separately stated, including delivery charges.

Section 7. That chapter 10-52A be amended by adding thereto a NEW SECTION to read as follows:

Gross receipts, as defined in section 6 of this Act, include consideration received by the retailer

from third parties if:

(1) The retailer actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(2) The retailer has an obligation to pass the price reduction or discount through to the purchaser;

(3) The amount of the consideration attributable to the sale is fixed and determinable by the retailer at the time of the sale of the item to the purchaser; and

(4) One of the following criteria is met:

(a) The purchaser presents a coupon, certificate, or other documentation to the retailer to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any retailer to whom the coupon, certificate, or documentation is presented;

(b) The purchaser identifies himself or herself to the retailer as a member of a group or organization entitled to a price reduction or discount (a preferred customer card that is available to any patron does not constitute membership in such a group); or

(c) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

For the purposes of this section, the purchaser is the end consumer.

Section 8. That chapter 10-52A be amended by adding thereto a NEW SECTION to read as follows:

Gross receipts, as defined in section 6 of this Act, do not include:

(1) Discounts, including cash, term, or coupons that are not reimbursed by a third party that

are allowed by a retailer and taken by a purchaser on a sale;

(2) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

An Act to revise the definition of gross receipts for sales tax purposes.

I certify that the attached Act originated in the

HOUSE as Bill No. 1080

_____
Chief Clerk

_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1080
File No. ____
Chapter No. _____

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State