

Sales Tax Exemption



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Introduction

When South Dakota implemented its sales and use tax system in the 1930s, some transactions were excluded¹ or exempt. A number of additional exemptions have been granted since that time. The purpose of this issue memorandum is to analyze the rationales of these exemptions.

Background

At the conclusion of the Great Depression, South Dakota government needed an additional source of revenue. Sales tax was an attractive option because of its low rate, large yield, and relatively low administrative burden. Therefore, in 1935, the Legislature, for the first time, imposed a sales tax of two percent on the retail sale of tangible personal property. In 1965, the sales tax base was expanded to include some services. The sales tax base was further expanded in 1979 to include all services. The sales tax base was also expanded in 2008 to include products transferred electronically. Accordingly, subject to exemptions, the sales tax presently applies to the sale, lease or rent of tangible personal property, the performance of services, and the electronic transfer of products.

Since only a retailer having a sales tax nexus in South Dakota is required to collect sales tax, a use tax was enacted in 1939 to supplement the sales tax by imposing a use tax upon the storage, use, or other consumption of non-exempt tangible personal property or non-exempt services on which either no sales tax was collected or on which the amount of sales tax collected was less than the amount that would have been collected under South Dakota's rate. When the use tax applies, the user of the tangible personal property or the service receives a credit to the extent sales tax was charged and collected under the laws of another state at the time of the purchase, so that the combined sales and use tax paid by the user is equivalent to the amount that would have been collected under South Dakota's sales tax rate.

The rate of the sales and use tax has periodically been amended. In 1965, the sales and use tax rate was increased to three percent. In 1969, the sales and use tax rate was increased to four percent. In 2016, the sales and use tax rate was increased to its current rate of four and a half percent. An incorporated municipality may also impose sales and use tax at a rate of up to two percent. Accordingly, if both the state rate and the maximum municipal rate are applicable, the current combined sales and use tax rate is six and a half percent.

The sales and use tax does not apply to all sales. The sales and use tax is not applicable to purchases that are made for resale purposes, including the purchase of packaging for products and the purchase by manufacturers and processors of tangible personal property which will become an ingredient or component part of manufactured or processed property. However, any items that are dissipated in processing, such as the cleaning supplies used in providing janitorial services, are not considered purchases for resale purposes.

Purchases that are not made for resale purposes are considered retail sales and are thereby subject to sales and use tax in the absence of an applicable exemption. Exemptions are in place for specific products and services, for

¹ There is a technical distinction between a transaction that is excluded and a transaction that is exempt. An excluded transaction is one that is not covered by the

implementing statutes of the sales and use tax system. An exempt transaction is one that is covered by the implementing statutes and removed from the system by a

separate statute. For convenience, this issue memorandum refers to both an exclusion and an exemption as an exemption.

specific entities, for specific entities making specific purchases, and for certain purchases made in South Dakota that are delivered out-of-state. Many of these exemptions were put in place from the start while the others were added over time. The attached chart describes each of the 149 exemptions currently in place and provides their statutory references, history, and actual or presumed rationales. Each of the rationales have been categorized and color coded on the chart as follows:

- Required by federal law (5)
- Reduce government operating expenses (9)
- Courtesy (2)
- Goods and services used for production (38)
- Special tax applies in lieu of sales and use tax (12)
- Reduce burdens of administrating the sales and use tax system (16)
- Satisfy needs that the government would otherwise be asked to satisfy (12)
- Make the sales and use tax less regressive (10)
- Increase taxable sales (9)
- Prevent businesses from being harmed by the sales and use tax system (36)

The first three categories are self-explanatory. The other seven categories are either supported by fundamental principles of taxation or are justified deviations from these fundamental principles. This issue memorandum will analyze the fundamental principles of taxation and explain how these seven categories of exemptions relate to them.

Fundamental Principle 1: The Proper Base for Application of the Sales and Use Tax is Consumer Expenditures of Goods and Services as Opposed to Producer Expenditures of Goods and Services

Sales and use tax should ideally be charged a single time, which is at the time goods or services are purchased for consumption. The exemptions that align with this fundamental have been color coded yellow.

When goods and services that are used to produce a consumer good or service are taxed in one or more stages of production contrary to this fundamental, then the total tax incorporated into the consumer prices of the goods and services will be greater than the legislated tax rate. The difference in tax paid and the effective tax rate is illustrated in the following table by depicting two jurisdictions having a legislated sales and use tax rate of four percent but with only one jurisdiction exempting goods and services that are used in the production of widgets:



Transaction	Sales and Use Tax Paid in Jurisdiction A - 4% rate and goods and services used in production exempt	Sales and Use Tax Paid in Jurisdiction B - 4% rate and goods and services used in production not exempt
Producer purchases raw materials for \$100	Total before tax: \$100 Tax: \$0 Total after tax: \$100	Total before tax: \$100 Tax: \$4 Total after tax: \$104.00
Producer pays \$50 to designer for widget case design	Total before tax: \$50 Tax: \$0 Total after tax: \$50	Total before tax: \$50 Tax: \$2 Total after tax: \$52
Producer outsources production of cases for \$50	Total before tax: \$50 Tax: \$0 Total after tax: \$50	Total before tax: \$50 Tax: \$2 Total after tax: \$52
Producer pays \$50 to advertiser to market widgets	Total before tax: \$50 Tax: \$0 Total after tax: \$50	Total before tax: \$50 Tax: \$2 Total after tax: \$52
Producer pays \$25 to transport widgets	Total before tax: \$25 Tax: \$0 Total after tax: \$25	Total before tax: \$25 Tax: \$1 Total after tax: \$26
Producer marks up widgets to make \$50 profit.	Total production costs: \$275 Plus \$50 markup: \$325 Tax on sale: \$13	Total production costs: \$286 Plus \$50 markup: \$336 Tax on sale: \$13.44
TOTALS	Total cost to consumer: \$338 Total tax paid by consumer: \$13 Effective tax rate: 4%	Total cost to consumer: \$349.44 Total tax paid by consumer: \$24.44 Effective tax rate: 7.27%

Taxing the goods and services that are used in the production of consumer goods generally leads to the following consequences:

- The tax in the production-taxed jurisdiction will not constitute a uniform percentage of consumer expenditures since some goods require more taxable producer goods than others, thereby discriminating against households based off their relative preferences for various goods;
- Businesses in that jurisdiction would have incentive to do as many of the production processes in-house, thereby causing loss of efficiency in production; and
- Businesses in that jurisdiction will be placed at a competitive disadvantage in competing with firms in a jurisdiction not taxing goods and services used in production and in selling in world markets.

Full compliance with this fundamental is difficult to achieve because some goods or services can be purchased for production or consumption, which makes it difficult for a retailer to determine whether sales tax should be charged and collected in a transaction involving such goods or services. When a tax system requires such determinations, the burdens of administering the sales and use tax increase substantially. Taxpayers' compliance costs increase. As such, granting exemptions for goods or services that are used for the production of goods to avoid the above consequences must be balanced against the administrative burden and compliance costs that would result from granting such exemptions.



Fundamental Principle 2: The Sales and Use Tax Should Raise Revenue Efficiently by Minimizing Compliance Costs for Taxpayers and be Simple to Administer

When a tax system is complex, it becomes difficult and expensive for taxpayers to understand and comply with their obligations. The taxing jurisdiction needs to devote more resources to ensure compliance. The exemptions that are aimed at reducing complexity with the sales and use tax system of this state have been color coded dark green. A number of these exemptions relate to the Streamlined Sales and Use Tax Agreement ("**SSUTA**").

The SSUTA is an agreement among 24 states that aims to create uniformity among the sales tax systems within those states. Uniformity is accomplished by requiring each state that is part of the agreement to adopt certain uniform provisions. For example, the SSUTA requires all states to exclude from its sales tax base the discounts that were provided by retailers that were not reimbursed by third parties. The SSUTA also requires the adoption of uniform definitions. The adoption of the SSUTA makes it easier for taxpayers to comply with the sales and use tax laws of the states that joined the agreement. Uniform definitions contributed to the Supreme Court ruling in South Dakota's favor in South Dakota v. Wayfair on the question of whether a South Dakota law that required certain retailers without a physical presence in South Dakota to comply with South Dakota's sales tax laws violated the federal Constitution.

The exemptions that have been color coded dark green that do not relate to the SSUTA are those transactions where the state's cost of administration would likely exceed the amount of sales tax that could be collected by removing the exemptions. For example, library copying charges are exempt because the state's costs of administration proved to be too high in relation to the small amount of tax that was collected from these sales. Occasional sales are exempt because, in the absence of this exemption, sales tax registrations and sales tax returns would increase substantially as anyone selling household items at a garage sale, for example, would be required to register and file a return. The costs of administration associated with this burden would likely outweigh the revenue that could be expected if these transactions were not exempt.

Fundamental Principle 3: The Best Sales and Use Tax is The One with The Broadest Base

A general goal of a sales and use tax system is to achieve the closest possible relationship between the tax base and consumer spending, consistent with administrative feasibility. Such a relationship could only be achieved if no exemptions were granted outside of those that are supported by the above fundamentals. The laws that implemented the sales and use tax system in this state were designed to achieve this fundamental by subjecting all sales and uses of tangible personal property, services, and products transferred electronically to tax except those that have been specifically exempt by statute.

A broader base is desirable for a number of reasons. First, a broader base allows a desired revenue goal to be accomplished with a lower rate. In other words, the revenue target is achieved by everyone paying a relatively small amount of tax. When exemptions are granted, the tax burden of those who benefit from the exemptions are lessened or completely eliminated, which may lead to an overall loss in revenue. If such a loss of revenue is balanced with an increased tax rate, then those who do not benefit from the exemptions will pay a greater share of sales and use tax. Any inequalities that existed for those burdened by the rate increase prior to the increase will be magnified, which may lead to additional demand for exemptions and the cycle will continue. If this cycle causes the tax rate to become substantially higher than the rate of tax charged by a neighboring state, the risk of retail sales shifting to a neighboring state increases, which leads to a loss of revenue.

A broader base is also desirable because it is the simplest to administer by avoiding the necessity of vendors and the state having to distinguish between taxable and non-taxable goods and services. Difficulty in administration caused by exemptions can result in further exemptions being granted. For example, prescription one-time use medical devices were exempt from sales and use tax in 2003 for this reason.



Finally, a broader base is desirable because it is the most responsive to economic growth and raises revenue in a reliable manner. Because sales of food for home consumption do not substantially decrease during an economic recession, the tax collected from these sales have been a steady and reliable source of revenue for this state. All efforts to exempt these sales from the sales and use tax base have been defeated for this reason.

Justifications for Deviating from Fundamental Principle 3

Two facets of fairness are frequently used as justifications for deviating from Fundamental Principle 3, namely:

- (1) To alleviate the inequitable burden the sales and use tax places on households with low income; and
- (2) To prevent harming businesses.

The premise of the first facet is that sales and use tax is a regressive tax system by placing an inequitable burden on those individuals who spend a larger percentage of their take-home pay, which is usually low-income individuals. For example, in a jurisdiction with a four percent sales and use tax rate without any exemptions in which the monthly pre-tax purchases for two individuals amounts to \$2,000, but one of the individual's monthly tax-home pay is \$2,100, while the monthly tax-home pay of the other individual is \$6,000, the effective tax rate for the individual with the lower income in relation to take home-pay would be 3.8% ($\$80$ of $\$2,100 = 3.8\%$), while the other individual's effective tax rate in relation to take-home pay would be 1.3% ($\$80$ of $\$6,000 = 1.3\%$). To somewhat alleviate this inequality, certain purchases that are considered essential goods and services have been exempt. The exemptions falling into this category have been color-coded pink.

The premise of the second facet is that the South Dakota sales and use tax system is unfair to the extent it is harmful to businesses in this state by either placing them at a competitive disadvantage or by making them unprofitable or inoperable. Businesses harmed by South Dakota's sales and use tax system would be prompted to move out of state or to not expand into or within South Dakota, which leads to a loss of jobs, lost opportunities, or a loss of revenue from the taxes that would otherwise be paid or collected from these businesses. The exemptions falling into this category have been color-coded light blue.

South Dakota has also deviated from Fundamental Principle 3 to increase taxable sales. For example, sleeping accommodations and camp sites that are rented for ten days or less in a calendar year are exempt based on the belief that this exemption would allow a larger group of people to attend the Sturgis Motorcycle Rally, thereby increasing the volume of taxable sales and generate revenue that exceeds the cost of the exemption. The exemptions falling into this category have been color-coded light green.

A final reason South Dakota has deviated from Fundamental Principle 3 is to exempt the transactions that are covered by a special tax. For example, motor vehicles are exempt from sales and use tax because they are subject to an excise tax pursuant to § 32-5B-1. In the absence of this exemption, motor vehicles would be subject to both the excise tax and the sales and use tax.



Conclusion

South Dakota imposes a sales and use tax on all tangible personal property in South Dakota, all services, and all products transferred electronically except for those that are specifically exempted. Purchases made for resale are excluded. The exemptions are largely tied to three fundamental principles of sales and use tax systems, but certain deviations have been justified. The attached chart, among other things, provides the actual or presumed rationale for each exemption.

DRAFT

This issue memorandum was written by Michael Loesevitz, Senior Legislative Attorney, on November 16, 2020 for the Legislative Research Council. It is designed to provide background information on the subject and is not a policy statement made by the Legislative Research Council.



EXEMPTION DESCRIPTION	STATUTE	HISTORY	RATIONALE
Sales made for resale, sublease or subrent	10-45-1(10)	Required by SSUTA	Required under SSUTA
Gratuitous transfers	10-45-1(12)	Required by SSUTA	Required under SSUTA
Isolated or occasional sale of tangible personal property	10-45-1(11)	Always exempt	Reduce administrative burden
Fees or interest imposed by retailer for late charges on overdue accounts, no account, or nonsufficient funds checks	10-45-1.1	Required by SSUTA	Reduce administrative burden
Property returned by customers for refund or store credit	10-45-1.2	Required by SSUTA	Reduce administrative burden
To the extent an otherwise taxable sale is paid with a trade-in credit provided by retailer	10-45-1.3	Always exempt	Presumed: Reduce administrative burden
Gross receipts received by retailer from written contract with manufacturer requiring display of signage or product in certain manner	10-45-1.6	Exempt in 2003	The timing of these gross receipts makes it impossible to pass on the associated tax to customers
Discount or deferred payment received by retailer for purchasing products for sale at retail	10-45-1.6	Exempt in 2003	The timing of receiving the discount or deferred payment makes it impossible to pass on the associated tax to customers
Payments from a manufacturer to a retailer for making certain discounted retail sales	10-45-1.15(4)(c)	Required by SSUTA	Reduce administrative burden
Discounts provided by a retailer to the purchaser that are not reimbursed by a third party	10-45-1.16(1)	Required by SSUTA	Reduce administrative burden
Interest, financing, and carrying charges from credit extended if separately stated on invoice	10-45-1.16(2)	Required by SSUTA	Reduce administrative burden
Taxes legally imposed directly on consumer that are separately stated on invoice (i.e., no tax on tax collected from consumer)	10-45-1.16(3)	Required by SSUTA	Reduce administrative burden
Taxes legally imposed on retailers that are passed on directly to consumer that are separately stated on invoice (i.e., no tax on tax collected from consumer)	10-45-1.19	Required by SSUTA	Reduce administrative burden
Parts, repair services, maintenance items, and maintenance services on farm machinery, attachment units, and irrigation equipment	10-45-3.4	Exempt in 2002	Tradeoff for increasing tax on farm machinery
Sales and leases of farm machinery, attachment units, and irrigation equipment used exclusively for agricultural purposes	10-45-3.5	Exempt in 2006 when these items became subject to excise tax in lieu of sales tax	Excise tax imposed under Ch. 10-46E in lieu of sales tax
Services performed by employees	10-45-4.1	Always exempt	Presumed: Services used to produce taxable goods and services
Coin operated washers and dryers	10-45-5.1	Exempt in 1969	Annual license fee is charged in lieu of any sales or gross receipts tax
Chemicals purchased for use by lawn and garden services	10-45-5.5	Exempt in 1989	Goods used to produce taxable services
Rental of a sleeping accommodation or camping site for ten or less days in a calendar year	10-45-7	Exempt in 1997	Increases taxable sales by bringing more people into the state for the Sturgis Motorcycle Rally
Membership fees paid to any lodging house and hotel membership organization operated for the benefit of its members	10-45-7.1	Exempt in 2001	Keeps the playing field level for hotels that pay membership fees to be part of a hotel chain rather than a franchise fee

EXEMPTION DESCRIPTION	STATUTE	HISTORY	RATIONALE
Property purchased that is leased to persons in South Dakota	10-45-9.1	Exempt in 1983	Unfair for property owners to pay tax on purchase and then pay tax again upon receipt of lease payments
Sales to the federal government	10-45-10	Always exempt	Required by federal law
Sales to any state or DC and their municipal or public corporations that grant South Dakota a reciprocal exemption	10-45-10	Exempt in 1983	Presumed: Reciprocal courtesy extended by other governmental entities
Sales to South Dakota and its public or municipal corporations	10-45-10	Always exempt	Reduce government expenses
Sales to Indian Tribes	10-45-10	Exempt in 1974	Courtesy that was warranted under the state's intergovernmental agreements with tribes
Nonprofit charitable organizations in South Dakota providing relief of the poor, distressed, or underprivileged	10-45-10	Always exempt	Presumed: These organizations satisfy needs that the government would otherwise be asked to satisfy
Allows ownership of goods bound for a foreign country to be transferred in South Dakota without sales tax being imposed	10-45-10.3	Exempt in 2004 after Iowa enacted a similar statute	Simplifies the process of selling goods to someone in a foreign country
Exempts handling fee paid by religious 501(c)(3) organizations to an approved relief 501(c)(3) organization for distributing food	10-45-10.4	Exempt in 2012 after the DOR determined that this constitutes a taxable sale	Helps satisfy a need that the government would otherwise be asked to satisfy
Exempts sales of gasoline, motor fuel, and special fuel subject to tax under chapter 10-47B	10-45-11	Always exempt	Fuel tax is charged in lieu of sales tax
Fulfillment of warranty obligations to the extent the purchaser (or purchaser's successor-in-interest) does not get charged	10-45-11.1	Exempt in 1971	Presumed: Unfair for tax of warranty work to be passed on to customers or to be borne by warranty service providers
Exempts motor vehicles from sales tax because they are subject to excise tax under section 32-5B-1	10-45-11.2	Exempt in 1985	Motor vehicle excise tax is charged in lieu of sales tax
Exempts motor vehicles from sales tax even if exempted from excise tax, except farm vehicles of non-ag producers	10-45-11.2	Exempt in 1987	The same rationales for exempting certain motor vehicles from excise tax are applicable
Health services	10-45-12.1	Always exempt	Presumed: Make tax less regressive
Educational services except schools and educational services not classified in Standard Industrial Classification Manual	10-45-12.1	Always exempt	Presumed: These organizations satisfy needs that the government would otherwise be asked to satisfy
Social services (includes individual and family social services, job training and vocational rehabilitation, child day care services, residential care)	10-45-12.1	Always exempt	Presumed rationale: Make tax less regressive
Agricultural services (soil preparation services, crop services, farm labor and management services, and landscape and horticultural services)	10-45-12.1	Always exempt	Presumed: Services used to produce taxable goods
Forestry services	10-45-12.1	Always exempt	Remove competitive disadvantage for South Dakota businesses

EXEMPTION DESCRIPTION	STATUTE	HISTORY	RATIONALE
Services of brokers and dealers licensed under Title 47	10-45-12.1	Always exempt	Remove competitive disadvantage for South Dakota businesses
Financial services of institutions subject to tax under chapter 10-43	10-45-12.1	Always exempt	Banks and financial corporations are subject to income tax
Commissions earned or services paid by an insurance company to an agent or representative for the sale of a policy	10-45-12.1	Always exempt	These items are subject to tax under chapter 10-44
Security brokers, dealers, and flotation companies	10-45-12.1	Always exempt	Remove competitive disadvantage for South Dakota businesses
Commodity contracts brokers and dealers	10-45-12.1	Always exempt	Remove competitive disadvantage for South Dakota businesses
Sale of trading stamps	10-45-12.1	Always exempt	Exemption is obsolete
Water supply, except irrigation	10-45-12.1	Always exempt	Presumed: Make tax less regressive
Sewerage systems	10-45-12.1	Always exempt	Presumed: Make tax less regressive
Construction services (division C of SIC Manual), except industry 1752 (floor work), locksmiths, and locksmith shops	10-45-12.1	Always exempt	These services are subject to the excise taxes imposed under chapter 10-46A or 10-46B
Travel agent services (now grouped under arrangement of passenger transportation)	10-45-12.1	Always exempt	Remove competitive disadvantage for South Dakota businesses
Railroad transportation	10-45-12.1	Always exempt	Required by federal law
Local and suburban passenger transportation, except limousine services	10-45-12.1	Always exempt	Presumed: Make tax less regressive
School buses	10-45-12.1	Always exempt	Presumed: Reduce government expenses
Trucking and courier services, except air travel and collection and disposal of solid waste	10-45-12.1	Exempt when tax enacted, but exemption was removed for brief period of time	Services used in production of taxable goods (removing exemption harmed businesses in South Dakota)
Establishments primarily engaged in transportation (of freight) on rivers and canals	10-45-12.1	Always exempt	Services used in production of taxable goods
Establishments primarily engaged in air transportation, certified carriers	10-45-12.1	Always exempt	Required by federal law
Arrangement of passenger transportation (SIC group no. 472)	10-45-12.1	Always exempt	Remove competitive disadvantage for South Dakota businesses
Arrangement of transportation of freight and cargo	10-45-12.1	Always exempt	Presumed: Services used to produce taxable goods
Rental of railroad cars	10-45-12.1	Always exempt	Presumed: Services used to produce taxable goods
Rentals of motor vehicles as defined by section 32-5-1 leased under a single contract for more than 28 days	10-45-12.1	Always exempt	Taxed under chapter 32-5B

EXEMPTION DESCRIPTION	STATUTE	HISTORY	RATIONALE
Advertising services	10-45-12.1	Always exempt	Leads to an increase in taxable sales; Removes competitive disadvantage for South Dakota businesses; Taxing service would arguably violate First Amendment
Services provided by any corporation to another corporation which is centrally assessed having identical ownership and services provided by any corporation to a wholly owned subsidiary which is centrally assessed	10-45-12.1	Always exempt	Presumed: Removes competitive disadvantage for businesses operating under this structure
Motion picture rentals to a commercially operated theater primarily engaged in the exhibition of motion pictures	10-45-12.1	Always exempt	Goods used in production of taxable service
Radio and television broadcasting	10-45-12.1	Never taxed (formally recognized exemption in 1981)	Reduce administrative burden
Farm product warehousing and storage	10-45-12.1	Exempt in 1981	Service used in production of taxable goods
Consumer credit reporting agencies, mercantile reporting agencies	10-45-12.1	Exempt in 1986	Presumed: Makes loaning money less expensive
Adjustment and collection agencies (group no. 732), if the debt was incurred out-of-state and the client does not reside within the state	10-45-12.1	Exempt in 1986	Removes competitive disadvantage for South Dakota businesses
Credit counseling services provided by individual and family social services	10-45-12.1	Exempt in 1988	Presumed: Make credit counseling less expensive
Continuing education programs	10-45-12.1	Always exempt (formally recognized in 1988)	Presumed: Make it less expensive to offer continuing education in South Dakota
Tutoring	10-45-12.1	Always exempt (formally recognized in 1988)	Presumed: Makes tutoring services less expensive
Vocational counseling, except rehabilitation counseling	10-45-12.1	Always exempt (formally recognized in 1988)	Presumed: Makes this service less expensive
Pipelines, except natural gas	10-45-12.1	Specifically exempt in 1981	Presumed: Services used in production of taxable goods
Engineering, architectural, and surveying services for an out-of-state project	10-45-12.2	Exempt in 1982	Remove competitive disadvantage for South Dakota businesses
Management, billing, bookkeeping, administrative, and related services provided to a rural water system by any cooperative or nonprofit corporation that is wholly owned by the water systems receiving such services	10-45-12.4	Exempt in 1986	Presumed: Same rationale for exempting water (make tax less regressive)
Commissions received for rendering a service that provides for the sale of tangible personal property	10-45-12.5	Exempt in 1988	Presumed: Leads to taxable sales
Credit bureau services purchased by financial institutions	10-45-12.6	Exempt in 1991	Presumed: Financial institutions are subject to income tax

EXEMPTION DESCRIPTION	STATUTE	HISTORY	RATIONALE
Gross receipts of any person officiating an amateur sporting event, except one sponsored and operated by an elementary, secondary, or postsecondary school	10-45-12.7	Exempt in 2005	Make it easier to find persons to officiate amateur sports
Sales of tickets or admissions to the grounds of state, county, district, regional, and local fairs	10-45-13(1)	Exempt in 1939	Presumed: Leads to taxable sales
Sales of tickets or admissions to grandstand attractions of state, county, district, regional, and local fairs	10-45-13(1)	Exempt in 1978	Presumed: Leads to taxable sales
Admissions to nonprofit historic sites and repertory theater performances operated by nonprofit organizations	10-45-13(2)	Exempt in 1978	Presumed: Make consumption of this service less expensive
Admissions to community operated celebrations and shows sponsored by a chamber of commerce	10-45-13(3)	Exempt in 1961	Presumed: Leads to taxable sales
Admissions to events or receipts from activities sponsored and operated by colleges or vocational schools or elementary or high schools or related clubs or supporting organizations	10-45-13(4)	Exempt in 1968 (clarified in 1983)	Presumed: Reduce government expenses
Religious, benevolent, fraternal, youth associations, or charitable activities conducted at county fairs where the entire amount of such receipts after deducting all costs directly related to the conduct of such activities is expended for religious, benevolent, fraternal, youth association, or charitable purposes	10-45-13(5)	Always exempt (clarified in 2012)	Presumed: These organizations satisfy needs that the government would otherwise be asked to satisfy
Sales of tangible personal property or any product transferred electronically when the net receipts therefrom are used primarily for the restoration or maintenance of the Governor's mansion and capitol grounds	10-45-13(6)	Exempt in 1988	Presumed: Reduce government expenses
Any charge or entry fee made to persons for engaging in participatory events limited to tournaments, contests, and league activities	10-45-13(7)	Exempt in 1989	Presumed: These events lead to taxable sales
Admissions to events or receipts from activities sponsored and operated by county or municipal historical societies or centennial committees when the entire net proceeds are spent for centennial celebration purposes	10-45-13(8)	Exempt in 1989	Presumed: Reduce government expenses
Receipts from religious, benevolent, fraternal, youth association, or charitable activities conducted at county fairs	10-45-13(9)	Exempt in 1990	Presumed: Provide funding for organizations that satisfy needs that the government would otherwise be asked to satisfy
Admissions to circus performances sponsored or operated by religious, benevolent, fraternal, or youth associations	10-45-13(10)	Exempt in 1991	Presumed: Provide funding for organizations that satisfy needs that the government would otherwise be asked to satisfy
Admissions to events or receipts from activities sponsored and operated by religious, benevolent, or charitable organizations for a period not to exceed thirty days in any calendar year	10-45-13(11)	Exempt in 2000	To allow "Christmas at the Cathedral" in Sioux Falls to be operated free of sales tax to leave more money to help those who are homeless
Sales of services and membership fees of membership organizations	10-45-13.1	Exempt in 1981	To make it easier to find volunteers for these organizations

EXEMPTION DESCRIPTION	STATUTE	HISTORY	RATIONALE
Exemption of fair market value of personal property or service given without charge to exempt organization	10-45-13.2	Exempt in 1987	Presumed: Provide funding for organizations that satisfy needs that the government would otherwise be asked to satisfy
Lottery tickets of lottery operated by the state	10-45-13.3	Exempt in 1987	Presumed: Reduce government expenses
Library copying charges	10-45-13.4	Exempt in 1990	Difficult to administer and would only generate a small amount of revenue
Management services provided by state or political subdivision to a revolving loan fund operated by a nonprofit entity	10-45-13.5	Exempt in 2005	Reduce the operating costs of the South Eastern Council of Governments
Sales to religious 501(c)(3) educational institutions with physical campus in SD	10-45-14	Exempt in 1951	Presumed: Reduce the costs of organizations that satisfy needs that the government would otherwise be asked to satisfy
Sales to private 501(c)(3) educational institutions with a physical campus in SD	10-45-14	Exempt in 1983	Presumed: Reduce the costs of organizations that satisfy needs that the government would otherwise be asked to satisfy
Sales to nonprofit charitable hospitals	10-45-14	Exempt in 1951	Presumed: Reduce the costs of organizations that satisfy needs that the government would otherwise be asked to satisfy
Ink and newsprint when used in production of shoppers' guides distributed free of charge to general public	10-45-14.2	Exempt in 1977	Presumed: Leads to taxable sales
Containers, labels, cartons, packing cases, wrapping paper, twine, glue, bags, bottles, shipping cases, wrapping film, strapping, rope, tape, cans, lids, boxes, pads, dividers, stockinettes, casings, and similar articles and receptacles used or consumed by manufacturers, processors, or fabricators	10-45-14.4	Exempt in 1982	Goods purchased to produce taxable goods
Paper and plastic bags, wrapping paper, twine, tape, and similar articles purchased by retailers	10-45-14.5	Exempt in 1984	Goods purchased to produce taxable goods
Hospital meals paid by government	10-45-14.6	Exempt in 1985	Presumed: Reduce government expenses
Purchases made with food stamps	10-45-14.7	Exempt in 1987	Required by federal law
Purchases of food made under Section 17(c) of the Child Nutrition Act of 1966	10-45-14.8	Exempt in 1987	Required by federal law
Purchases of non-prescription insulin used by humans	10-45-14.9	Exempt in 1989	Presumed: Make sales tax less regressive
Prescription drugs used by humans	10-45-14.10	Exempt in 1974	Presumed: Make sales tax less regressive
Prescription durable medical equipment, mobility enhancing equipment, and prosthetic devices used by humans	10-45-14.11	Exempt in 1984	Presumed: Make sales tax less regressive
Prescription one-time use medical devices	10-45-14.12	Exempt in 2003	Reduce administrative burden

EXEMPTION DESCRIPTION	STATUTE	HISTORY	RATIONALE
Sale of seed legumes, seed grasses, and seed grains, when twenty-five pounds or more are sold in a single sale to be used exclusively for agricultural purposes	10-45-15	Exempt in 1965	Goods purchased to produce taxable goods
Commercial fertilizers, when five hundred pounds or more are sold in a single sale to be used exclusively for agricultural purposes	10-45-16	Exempt in 1964	Goods purchased to produce taxable goods
Sale of pesticides used exclusively for agricultural purposes	10-45-16.1	Exempt in 1971	Goods purchased to produce taxable goods
Sale of any product or substance used in conjunction with the application or use of pesticides	10-45-16.1	Exempt in 2005	Goods purchased to produce taxable goods
Rental of devices primarily used to apply fertilizers and pesticides for agricultural purposes if tax was paid on the original purchase of device	10-45-16.2	Exempt in 1986	Presumed: So a device that is used to produce taxable goods would not be taxed twice
Rental of devices primarily used to apply fertilizers and pesticides for agricultural purposes if devices are owned by conservation district	10-45-16.3	Exempt in 1988	Presumed: Helps satisfy a government expense
Sales of livestock and live poultry if part of a series of transactions to produce finished product to be offered for a retail sale	10-45-18	Exempt in 1951	Goods purchased to produce taxable goods
Sales of ostriches, emus, or rheas if part of a series of transactions to produce finished product to be offered for a retail sale	10-45-18	Exempt in 1992	Goods purchased to produce taxable goods
Sale of live gamebirds sold by producer to nonprofits which release such birds or to commercial hunting operators who charge fees to hunt such birds	10-45-18.1	Exempt in 1989	Goods purchased to produce taxable goods
Sale of live cattle, buffalo, sheep, goats, swine, poultry, and domesticated fur-bearing animals defined in chapter 40-35, used or to be used as breeding or production stock, and horses and other animals within the family equidae	10-45-18.2	Exempt in 1989	Goods purchased to produce taxable goods
Sale of ostriches, emus, and rheas used or to be used as breeding or production stock	10-45-18.2	Exempt in 1992	Goods purchased to produce taxable goods
Sale of feed for cattle, buffalo, sheep, goats, swine, poultry, and domesticated fur-bearing animals	10-45-18.3	Exempt in 1989	Goods purchased to produce taxable goods
Sale of feed for ostriches, emus, and rheas	10-45-18.3	Exempt in 1992	Goods purchased to produce taxable goods
Sale of feed for pheasants, partridges, and quail	10-45-18.3	Exempt in 2006	Goods purchased to produce taxable goods; Removed competitive disadvantage for South Dakota agricultural producers
Sale of bedding for cattle, buffalo, sheep, goats, swine, pheasants, partridges, quail, poultry, ostriches, emus, rheas, and domesticated fur-bearing animals	10-45-18.3	Exempt in 2012	Goods purchased to produce taxable goods
Sale of live nondomestic animals regulated by Animal Industry Board if used by a farmer or rancher who is regularly engaged in the breeding and raising of such animals	10-45-18.4	Exempt in 1993	Goods purchased to produce taxable goods
Sale of feed for nondomestic animals regulated by Animal Industry Board if feed is used by a farmer or rancher regularly engaged in the breeding and raising of such animals	10-45-18.5	Exempt in 1993	Goods purchased to produce taxable goods

EXEMPTION DESCRIPTION	STATUTE	HISTORY	RATIONALE
Sale of swine semen and cattle semen used for agricultural purposes	10-45-18.6	Exempt in 2006	Goods purchased to produce taxable goods; Removed competitive disadvantage for South Dakota agricultural producers
Motor fuel, including kerosene, tractor fuel, and distillate when used for agricultural purposes	10-45-19	Exempt in 1945	Goods purchased to produce taxable goods
Liquified petroleum gas when used for agricultural purposes	10-45-19	Exempt in 1959	Goods purchased to produce taxable goods
Motor fuel, including kerosene, tractor fuel, liquified petroleum gas, and distillate when used for railroad purposes in this state	10-45-19	Exempt in 1974	Railroad industry was distressed in 1974 and this industry was essential for agriculture due to energy crisis
Diesel, natural gas, and artificial gas when used for agricultural or railroad purposes	10-45-19	Exempt in 1985	Goods purchased to produce taxable goods
Sale of electricity used to power irrigation pumps and the gross receipts from the horsepower charge on electric motors powering irrigation pumps whenever the purchaser has made the purchase exclusively for agricultural purposes	10-45-19.1	Exempt in 1979 when sales tax was expanded to include more services	Goods purchased to produce taxable goods
Sales of bulk water delivered for domestic use	10-45-19.3	Exempt in 1983	Presumed: Make sales tax less regressive
Payments made by one member of the controlled group to another member of a controlled group which represent an allocation, reimbursement, or charge for services provided by or rendered by the members of the controlled group	10-45-20.1	Exempt in 1983	Presumed: Removes competitive disadvantage for businesses that are operated in this manner
Payments made by one member of a controlled group to another member of a controlled group which represent an allocation, reimbursement or charge for third-party services rendered to the controlled group and upon which a sales or use tax has been paid	10-45-20.2	Exempt in 1983	Presumed: Removes competitive disadvantage for businesses operating in this manner
Transactions between related financial institutions	10-45-20.5	Exempt in 1986	Presumed: Removes competitive disadvantage for businesses that are operated in this manner
Sale of replacement parts sold to retailers that will be installed in tangible personal property that will ultimately be for sale	10-45-20.6	Exempt in 1989	Goods purchased to produce taxable goods
Reimbursable expenses paid by attorneys and accountants for their clients if not treated as sale for resale	10-45-29.1	Exempt in 1983	To enable these professionals to make these types of arrangements tax free
Carpet, floor covering, tacks, glue, and other materials purchased by those engaged in the business classified as industry no. 1752 in SIC Manual	10-45-58	Exempt in 1991	Goods purchased to produce taxable goods
Large boat subject to tax imposed by section 32-3A-50	10-45-62	Exempt in 1993	Taxed under different chapter
Gaming allowed by chapter 42-7B	10-45-64	Exempt in 1994	Taxed under chapter 42-7B
Natural gas transportation services by pipeline	10-45-67	Exempt in 1994	Services purchased to produce taxable goods

EXEMPTION DESCRIPTION	STATUTE	HISTORY	RATIONALE
Sale of credit card processing services to retailers	10-45-68	Exempt in 1994	Exemption was advocated by multiple lobbyists (SD Petroleum Assn., SD Assn. of Cooperatives, SD Retailers Assn., Retail Farm Equipment Dealers, Citibank); DOR represented that it had not been treating these transactions as taxable transactions.
Charge of interest except pawnbrokers	10-45-82 & 10-45-83	Exempt in 1996	Remove administrative burden
Fee or commission received by a retailer for arranging or assisting in the arrangement of a loan for a customer for taxable sale	10-45-84	Exempt in 1996	Remove administrative burden
Services performed for rodeos by promoters, stock contractors, stock handlers, announcers, judges, and clowns	10-45-90	Exempt in 1996	Services purchased to produce taxable services
Reimbursable expenses for auctions	10-45-92	Exempt in 1996	To allow auction companies to advance expenses tax free
Sale of agricultural and industrial production equipment in international commerce if physical delivery of goods takes place in South Dakota	10-45-93	Exempt in 1996	To remove competitive disadvantage of South Dakota businesses in the international market
Cost of direct mail service for the cost of postage if the cost of postage, including reasonable and customary markup, is billed to customer	10-45-94	Exempt in 2010	Same reason advertising is exempt (leads to taxable sales); The markup in postage is exempt because SSUTA requires uniformity
Locks, lock parts, and other materials purchased for use by locksmiths	10-45-95	Exempt in 1998	Goods purchased to produce taxable services
Actual disbursements, including appropriate reserves, for wages, salaries, payroll taxes, and various employee benefits and payroll expenses of professional employer organization other than temp employment agencies	10-45-96	Exempt in 1999	To enable these businesses to operate in South Dakota
Sales of coins, currency, or bullion	10-45-110	Exempt in 2007	Business has low profit margin; Exemption removes competitive disadvantage
Sales to any nonprofit corporation created for the purpose of fire protection that is controlled by any political subdivision of this state	10-45-112	Exempt in 2016	To keep exemption in place for fire departments that reorganize as a nonprofit organization
Sales by minors with gross receipts totaling less than \$1,000 per calendar year	10-45-113	Exempt in 2019	Encourage young people to engage in entrepreneurial activities such as operating a lemonade stand