



2021 South Dakota Legislature

Senate Bill 104

Introduced by: **Senator Heinert**

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.**

5 ~~There~~ Subject to the provisions of § 10-45-2.10, there is hereby imposed a tax
6 upon the privilege of engaging in business as a retailer, a tax of four and one-half percent
7 upon the gross receipts of all sales of tangible personal property consisting of goods,
8 wares, or merchandise, except as otherwise provided in this chapter, sold at retail in the
9 State of South Dakota to consumers or users.

10 **Section 2.** That a NEW SECTION be added:

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

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

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

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

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

20 Beginning on July 1, 2025, the tax imposed under § 10-45-2 on gross receipts from
21 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 (1) "Agricultural purposes," the producing, raising, growing, or harvesting of food or
 2 fiber upon agricultural land, including dairy products, livestock, and crops. The
 3 services of custom harvesters, chemical applicators, fertilizer spreaders, hay
 4 grinders, and cultivators are considered agricultural purposes. The harvesting of
 5 timber on land within the state is considered an agricultural purpose;
- 6 (2) "Bakery item," any bread, roll, bun, biscuit, bagel, croissant, pastry, donut, danish,
 7 cake, torte, pie, tart, muffin, cookie, and tortilla;
- 8 (3) "Business," any activity engaged in by any person or caused to be engaged in by
 9 such person with the object of gain, benefit, or advantage, either direct or indirect;
- 10 ~~(3)~~(4) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners
 11 in combination with chocolate, fruits, nuts or other ingredients or flavorings in the
 12 form of bars, drops, or pieces. The term, candy, does not include any preparation
 13 containing flour and does not require refrigeration;
- 14 ~~(4)~~(5) "Delivery charges," charges by the retailer for preparation and delivery to a location
 15 designated by the purchaser of tangible personal property, any product transferred
 16 electronically, or services including transportation, shipping, postage, handling,
 17 crating, and packing. The term does not include postage for direct mail;
- 18 ~~(5)~~(6) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,
 19 frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans
 20 and is consumed for its taste or nutritional value. The term, ~~food,~~ includes any
 21 bakery item, but does not include any alcoholic beverages beverage, tobacco, soft
 22 drink, candy, dietary supplement, or prepared food;
- 23 ~~(6) — Repealed by SL 2007, ch 56, § 1.~~
- 24 (7) "Person," any individual, firm, copartnership, joint adventure, association, limited
 25 liability company, corporation, municipal corporation, estate, trust, business trust,
 26 receiver, the State of South Dakota and its political subdivisions, or any group or
 27 combination acting as a unit;
- 28 (8) "Prepared food," any food sold in a heated state or heated by the seller; two or
 29 more food ingredients mixed or combined by the seller for sale as a single item; or
 30 food sold with eating utensils provided by the seller, including plates, knives, forks,
 31 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
 32 packaging used to transport the food.
 33 Prepared food does not include food that is only cut, repackaged, or pasteurized by
 34 the seller, and eggs, fish, meat, poultry, and foods containing these raw animal
 35 foods requiring cooking by the consumer as recommended by the Food and Drug

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 communication service, and tickets or admissions to places of amusement and
14 athletic events as provided in this chapter, and the sale at retail of products
15 transferred electronically. The term also includes any person subject to the tax
16 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 constitute such person a retailer;

21 ~~(12)~~(13) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any
22 manner or by any means whatsoever, for a consideration;

23 ~~(13)~~(14) "Soft drinks," any nonalcoholic beverages that contain natural or artificial
24 sweeteners. The term, soft drinks, does not include any beverage that contains milk
25 or milk products, soy, rice or 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 measured, felt, or touched, or that is in any other manner perceptible to the senses.
29 The term includes electricity, water, gas, steam, and prewritten computer software.