



2022 South Dakota Legislature

Senate Bill 166

Introduced by: **Senator Nesiba**

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

9 **Section 2. That chapter 10-45 be amended with a NEW SECTION:**

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

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

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

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

18 Beginning on July 1, 2026, the tax imposed under § 10-45-2 on gross receipts from
 19 the sale of SNAP items is zero percent.

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

21 **10-45-1.** Terms used in this chapter mean:

22 (1) "Agricultural purposes," the producing, raising, growing, or harvesting of food or
 23 fiber upon agricultural land, including dairy products, livestock, and crops. The
 24 services of custom harvesters, chemical applicators, fertilizer spreaders, hay

- 1 grinders, and cultivators are considered agricultural purposes. The harvesting of
2 timber on land within the state is considered an agricultural purpose;
- 3 (2) "Business," any activity engaged in by any person or caused to be engaged in by
4 such person with the object of gain, benefit, or advantage, either direct or indirect;
- 5 (3) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners
6 in combination with chocolate, fruits, nuts or other ingredients or flavorings in the
7 form of bars, drops, or pieces. The term, candy, does not include any preparation
8 containing flour and does not require refrigeration;
- 9 (4) "Delivery charges," charges by the retailer for preparation and delivery to a location
10 designated by the purchaser of tangible personal property, any product transferred
11 electronically, or services including transportation, shipping, postage, handling,
12 crating, and packing. The term does not include postage for direct mail;
- 13 (5) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,
14 frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans
15 and is consumed for its taste or nutritional value. The term, food, does not include
16 alcoholic beverages, tobacco, or prepared food;
- 17 (6) Repealed by SL 2007, ch 56, § 1.
- 18 (7) "Person," any individual, firm, copartnership, joint adventure, association, limited
19 liability company, corporation, municipal corporation, estate, trust, business trust,
20 receiver, the State of South Dakota and its political subdivisions, or any group or
21 combination acting as a unit;
- 22 (8) "Prepared food," any food sold in a heated state or heated by the seller; two or
23 more food ingredients mixed or combined by the seller for sale as a single item; or
24 food sold with eating utensils provided by the seller, including plates, knives, forks,
25 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
26 packaging used to transport the food.
27 Prepared food does not include food that is only cut, repackaged, or pasteurized
28 by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal
29 foods requiring cooking by the consumer as recommended by the Food and Drug
30 Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003,
31 so as to prevent food borne illnesses;
- 32 (8A) "Product transferred electronically," any product obtained by the purchaser by
33 means other than tangible storage media. A product transferred electronically does
34 not include any intangible such as a patent, stock, bond, goodwill, trademark,
35 franchise, or copyright.

- 1 (9) "Relief agency," the state, and county, municipality or district thereof, or any
2 agency engaged in actual relief work;
- 3 (10) "Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other than
4 for resale, sublease, or subrent;
- 5 (11) "Retailer," any person engaged in the business of selling tangible goods, wares, or
6 merchandise at retail, or the furnishing of gas, electricity, water, and
7 communication service, and tickets or admissions to places of amusement and
8 athletic events as provided in this chapter, and the sale at retail of products
9 transferred electronically. The term also includes any person subject to the tax
10 imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale of tangible
11 personal property or any product transferred electronically at retail by a person
12 who does not hold himself or herself out as engaging in the business of selling such
13 tangible personal property or products transferred electronically at retail does not
14 constitute such person a retailer;
- 15 (12) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner
16 or by any means whatsoever, for a consideration;
- 17 (13) "SNAP item," any item eligible for purchase using an electronic benefit transfer
18 card issued pursuant to 7 U.S.C § 2016 (2018).
- 19 ~~(13)~~(14) "Soft drinks," any nonalcoholic beverages that contain natural or artificial
20 sweeteners. The term, soft drinks, does not include any beverage that contains
21 milk or milk products, soy, rice or similar milk substitutes, or greater than fifty
22 percent of vegetable or fruit juice by volume;
- 23 ~~(14)~~(15) "Tangible personal property," personal property that can be seen, weighed,
24 measured, felt, or touched, or that is in any other manner perceptible to the
25 senses. The term includes electricity, water, gas, steam, and prewritten computer
26 software.