



2023 South Dakota Legislature

House Bill 1159

Introduced by: **Representative Healy**

1 **An Act to exempt feminine hygiene products from the state sales tax.**

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

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

4 **10-45-1.** Terms used in this chapter mean:

- 5 (1) "Agricultural purposes," the producing, raising, growing, or harvesting of food or
6 fiber upon agricultural land, including dairy products, livestock, and crops. The
7 services of custom harvesters, chemical applicators, fertilizer spreaders, hay
8 grinders, and cultivators are considered agricultural purposes. The harvesting of
9 timber on land within the state is considered an agricultural purpose;
- 10 (2) "Business," any activity engaged in by any person or caused to be engaged in by
11 such person with the object of gain, benefit, or advantage, either direct or indirect;
- 12 (3) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners
13 in combination with chocolate, fruits, nuts or other ingredients or flavorings in the
14 form of bars, drops, or pieces. The term, candy, does not include any preparation
15 containing flour and does not require refrigeration;
- 16 (4) "Delivery charges," charges by the retailer for preparation and delivery to a location
17 designated by the purchaser of tangible personal property, any product transferred
18 electronically, or services including transportation, shipping, postage, handling,
19 crating, and packing. The term does not include postage for direct mail;
- 20 (5) "Feminine hygiene products," tampons, panty liners, menstrual cups, sanitary
21 napkins, and other similar tangible personal property designed for feminine
22 hygiene in connection with the human menstrual cycle, but does not include soaps
23 and cleaning solutions, shampoos, toothpastes, mouthwash, antiperspirants, and
24 suntan lotions and screens;
- 25 ~~(5)~~(6) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,
26 frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans

1 and is consumed for its taste or nutritional value. The term, food, does not include
2 alcoholic beverages, tobacco, or prepared food;

3 ~~(6)~~(7) Repealed by SL 2007, ch 56, § 1.

4 ~~(7)~~(8) "Person," any individual, firm, copartnership, joint adventure, association, limited
5 liability company, corporation, municipal corporation, estate, trust, business trust,
6 receiver, the State of South Dakota and its political subdivisions, or any group or
7 combination acting as a unit;

8 ~~(8)~~(9) "Prepared food," any food sold in a heated state or heated by the seller; two or
9 more food ingredients mixed or combined by the seller for sale as a single item; or
10 food sold with eating utensils provided by the seller, including plates, knives, forks,
11 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
12 packaging used to transport the food.

13 Prepared food does not include food that is only cut, repackaged, or pasteurized
14 by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal
15 foods requiring cooking by the consumer as recommended by the Food and Drug
16 Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003,
17 so as to prevent food borne illnesses;

18 ~~(8A)~~(10) "Product transferred electronically," any product obtained by the purchaser by
19 means other than tangible storage media. A product transferred electronically does
20 not include any intangible such as a patent, stock, bond, goodwill, trademark,
21 franchise, or copyright.

22 ~~(9)~~(11) "Relief agency," the state, and county, municipality or district thereof, or any
23 agency engaged in actual relief work;

24 ~~(10)~~(12) "Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other
25 than for resale, sublease, or subrent;

26 ~~(11)~~(13) "Retailer," any person engaged in the business of selling tangible goods, wares,
27 or merchandise at retail, or the furnishing of gas, electricity, water, and
28 communication service, and tickets or admissions to places of amusement and
29 athletic events as provided in this chapter, and the sale at retail of products
30 transferred electronically. The term also includes any person subject to the tax
31 imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale of tangible
32 personal property or any product transferred electronically at retail by a person
33 who does not hold himself or herself out as engaging in the business of selling such
34 tangible personal property or products transferred electronically at retail does not
35 constitute such person a retailer;

1 ~~(12)~~(14) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any
2 manner or by any means whatsoever, for a consideration;

3 ~~(13)~~(15) "Soft drinks," any nonalcoholic beverages that contain natural or artificial
4 sweeteners. The term, soft drinks, does not include any beverage that contains
5 milk or milk products, soy, rice or similar milk substitutes, or greater than fifty
6 percent of vegetable or fruit juice by volume;

7 ~~(14)~~(16) "Tangible personal property," personal property that can be seen, weighed,
8 measured, felt, or touched, or that is in any other manner perceptible to the
9 senses. The term includes electricity, water, gas, steam, and prewritten computer
10 software.

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

12 There are exempted from this chapter and from the tax imposed by it, gross
13 receipts from the sale of feminine hygiene products.