

2022 South Dakota Legislature

Senate Bill 166**AMENDMENT 166F FOR THE INTRODUCED BILL**

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~~ 2022, the tax imposed under § 10-45-2 on gross receipts
19 from the sale of ~~SNAP items~~ food and food ingredients 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

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- 18 (6) Repealed by SL 2007, ch 56, § 1.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

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