

2022 South Dakota Legislature

House Bill 1327**AMENDMENT 1327B FOR THE INTRODUCED BILL**

1 **An Act to reduce certain gross receipts tax rates and a use tax rate, and to repeal a**
2 **conditional reduction of certain gross receipts tax rates.**

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

4 **Section 1. That § 10-45-2 be AMENDED:**

5 **10-45-2.** ~~There~~Subject to the provisions of § 10-45-2.10 is hereby imposed a tax
6 upon the privilege of engaging in business as a retailer, a tax of four ~~and one-half~~ and
7 one-half percent upon the gross receipts of all sales of tangible personal property
8 consisting of goods, wares, or merchandise, except as otherwise provided in this chapter,
9 sold at retail in the State of South Dakota to consumers or users.

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

11 Beginning on July 1, 2022, the tax imposed under 10-45-2 on gross receipts from
12 the sale of food and food ingredients is zero percent.

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

14 **10-45-1.** Terms used in this chapter mean:

- 15 (1) "Agricultural purposes," the producing, raising, growing, or harvesting of food or
16 fiber upon agricultural land, including dairy products, livestock, and crops. The
17 services of custom harvesters, chemical applicators, fertilizer spreaders, hay
18 grinders, and cultivators are considered agricultural purposes. The harvesting of
19 timber on land within the state is considered an agricultural purpose;
- 20 (2) "Business," any activity engaged in by any person or caused to be engaged in by
21 such person with the object of gain, benefit, or advantage, either direct or indirect;
- 22 (3) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners
23 in combination with chocolate, fruits, nuts or other ingredients or flavorings in the

- 1 form of bars, drops, or pieces. The term, candy, does not include any preparation
2 containing flour and does not require refrigeration;
- 3 (4) "Delivery charges," charges by the retailer for preparation and delivery to a location
4 designated by the purchaser of tangible personal property, any product transferred
5 electronically, or services including transportation, shipping, postage, handling,
6 crating, and packing. The term does not include postage for direct mail;
- 7 (5) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,
8 frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans
9 and is consumed for its taste or nutritional value. The term, food, does not include
10 alcoholic beverages, tobacco, candy, soft drinks, or prepared food;
- 11 (6) Repealed by SL 2007, ch 56, § 1.
- 12 (7) "Person," any individual, firm, copartnership, joint adventure, association, limited
13 liability company, corporation, municipal corporation, estate, trust, business trust,
14 receiver, the State of South Dakota and its political subdivisions, or any group or
15 combination acting as a unit;
- 16 (8) "Prepared food," any food sold in a heated state or heated by the seller; two or
17 more food ingredients mixed or combined by the seller for sale as a single item; or
18 food sold with eating utensils provided by the seller, including plates, knives, forks,
19 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
20 packaging used to transport the food.
- 21 Prepared food does not include food that is only cut, repackaged, or pasteurized by the
22 seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods
23 requiring cooking by the consumer as recommended by the Food and Drug
24 Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003,
25 so as to prevent food borne illnesses;
- 26 (8A) "Product transferred electronically," any product obtained by the purchaser by
27 means other than tangible storage media. A product transferred electronically does
28 not include any intangible such as a patent, stock, bond, goodwill, trademark,
29 franchise, or copyright.
- 30 (9) "Relief agency," the state, and county, municipality or district thereof, or any
31 agency engaged in actual relief work;
- 32 (10) "Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other than
33 for resale, sublease, or subrent;
- 34 (11) "Retailer," any person engaged in the business of selling tangible goods, wares, or
35 merchandise at retail, or the furnishing of gas, electricity, water, and

1 communication service, and tickets or admissions to places of amusement and
2 athletic events as provided in this chapter, and the sale at retail of products
3 transferred electronically. The term also includes any person subject to the tax
4 imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale of tangible
5 personal property or any product transferred electronically at retail by a person
6 who does not hold himself or herself out as engaging in the business of selling such
7 tangible personal property or products transferred electronically at retail does not
8 constitute such person a retailer;

9 (12) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner
10 or by any means whatsoever, for a consideration;

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

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

19 **Section 4. That § 10-45-5 be AMENDED:**

20 **10-45-5.** There is imposed a tax at the rate of four ~~and one-half~~ and one-half
21 percent upon the gross receipts of any person from engaging or continuing in any of the
22 following businesses or services in this state: abstracters; accountants; ancillary services;
23 architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing;
24 dry cleaning; dyeing; exterminators; garage and service stations; garment alteration;
25 cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen
26 and towel supply; membership or entrance fees for the use of a facility or for the right to
27 purchase tangible personal property, any product transferred electronically, or services;
28 photography; photo developing and enlarging; tire recapping; welding and all repair
29 services, except repair services for farm machinery, attachment units, and irrigation
30 equipment used exclusively for agricultural purposes; cable television; and rentals of
31 tangible personal property except leases of tangible personal property between one
32 telephone company and another telephone company, motor vehicles as defined pursuant
33 to § 32-5-1 leased under a single contract for more than twenty-eight days and mobile

1 homes. However, the specific enumeration of businesses and professions made in this
2 section does not, in any way, limit the scope and effect of the provisions of § 10-45-4.

3 **Section 5. That § 10-45-5.3 be AMENDED:**

4 **10-45-5.3.** There is imposed, at the rate of four ~~and one-half~~ and one-half percent,
5 an excise tax on the gross receipts of any person engaging in oil and gas field services
6 (group no. 138) as enumerated in the Standard Industrial Classification Manual, 1987, as
7 prepared by the Statistical Policy Division of the Office of Management and Budget, Office
8 of the President.

9 **Section 6. That § 10-45-6 be AMENDED:**

10 **10-45-6.** There is hereby imposed a tax of four ~~and one-half~~ and one-half percent
11 upon the gross receipts from sales, furnishing, or service of gas, electricity, and water,
12 including the gross receipts from such sales by any municipal corporation furnishing gas,
13 and electricity, to the public in its proprietary capacity, except as otherwise provided in
14 this chapter, when sold at retail in the State of South Dakota to consumers or users.

15 **Section 7. That § 10-45-6.1 be AMENDED:**

16 **10-45-6.1.** Except as provided in § 10-45-6.2, there is hereby imposed a tax of
17 four ~~and one-half~~ and one-half percent upon the gross receipts from providing any
18 intrastate, interstate, or international telecommunications service that originates or
19 terminates in this state and that is billed or charged to a service address in this state, or
20 that both originates and terminates in this state. However, the tax imposed by this section
21 does not apply to:

- 22 (1) Any eight hundred or eight hundred type service unless the service both originates
23 and terminates in this state;
- 24 (2) Any sale of a telecommunication service to a provider of telecommunication
25 services, including access service, for use in providing any telecommunication
26 service; or
- 27 (3) Any sale of interstate telecommunication service provided to a call center that has
28 been certified by the secretary of revenue to meet the criterion established in § 10-
29 45-6.3 and the call center has provided to the telecommunications service provider
30 an exemption certificate issued by the secretary indicating that it meets the
31 criterion.

1 If a call center uses an exemption certificate to purchase services not meeting the
2 criterion established in § 10-45-6.3, the call center is liable for the applicable tax, penalty,
3 and interest.

4 **Section 8. That § 10-45-6.2 be AMENDED:**

5 **10-45-6.2.** There is hereby imposed a tax of four ~~and one-half~~ and one-half
6 percent upon the gross receipts of mobile telecommunications services, as defined in 4
7 U.S.C. § 124(7) as of January 1, 2002, that originate and terminate in the same state and
8 are billed to a customer with a place of primary use in this state or are deemed to have
9 originated or been received in this state and to be billed or charged to a service address
10 in this state if the customer's place of primary use is located in this state regardless of
11 where the service actually originates or terminates. Notwithstanding any other provision
12 of this chapter and for purposes of the tax imposed by this section, the tax imposed upon
13 mobile telecommunication services shall be administered in accordance with 4 U.S.C.
14 §§ 116-126 as in effect on July 28, 2000.

15 **Section 9. That § 10-45-8 be AMENDED:**

16 **10-45-8.** There is imposed a tax of four ~~and one-half~~ and one-half percent upon
17 the gross receipts from all sales of tickets or admissions to places of amusement and
18 athletic contests or events, except as otherwise provided in this chapter.

19 **Section 10. That § 10-45-71 be AMENDED:**

20 **10-45-71.** There is imposed a tax of four ~~and one-half~~ and one-half percent on
21 the gross receipts from the transportation of passengers. The tax imposed by this section
22 shall apply to any transportation of passengers if the passenger boards and exits the mode
23 of transportation within this state.

24 **Section 11. That § 10-64-9 be REPEALED:**

25 ~~If the state is able to enforce the obligation to collect and remit sales tax on remote~~
26 ~~sellers who deliver tangible personal property, products transferred electronically, or~~
27 ~~services directly to the citizens of South Dakota, the additional net revenue from such~~
28 ~~obligation shall be used to reduce the rate of certain taxes. The rate of tax imposed by~~
29 ~~§§ 10-45-2, 10-45-5, 10-45-5.3, 10-45-6, 10-45-6.1, 10-45-6.2, 10-45-8, 10-45-71, 10-~~
30 ~~46-2.1, 10-46-2.2, 10-46-58, 10-46-69, 10-46-69.1, 10-46-69.2, 10-46E-1, and 10-58-~~

1 ~~1 shall be reduced by one-tenth percent on July first following the calendar year for which~~
2 ~~each additional twenty million dollar increment of net revenue is collected and remitted~~
3 ~~by such remote sellers. However, the rate of tax imposed by §§ 10-45-2, 10-45-5, 10-~~
4 ~~45-5.3, 10-45-6, 10-45-6.1, 10-45-6.2, 10-45-8, 10-45-71, 10-46-2.1, 10-46-2.2, 10-~~
5 ~~46-58, 10-46-69, 10-46-69.1, 10-46-69.2, 10-46E-1, and 10-58-1 may not be reduced~~
6 ~~below four percent pursuant to the provisions of this section.~~

AMENDED