



2024 South Dakota Legislature

Senate Bill 164

Introduced by: **Senator Nesiba**

1 **An Act to lower the state sales tax rate and the state use tax rate on food to zero**
 2 **percent, and to increase certain gross receipts tax rates, excise tax rates, and**
 3 **use tax rates.**

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

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

6 **10-45-1.** Terms used in this chapter mean:

- 7 (1) "Agricultural purposes," the producing, raising, growing, or harvesting of food or
 8 fiber upon agricultural land, including dairy products, livestock, and crops. The
 9 services of custom harvesters, chemical applicators, fertilizer spreaders, hay
 10 grinders, and cultivators are considered agricultural purposes. The harvesting of
 11 timber on land within the state is considered an agricultural purpose;
- 12 (2) "Business," any activity engaged in by any person or caused to be engaged in by
 13 such person with the object of gain, benefit, or advantage, either direct or indirect;
- 14 (3) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners
 15 in combination with chocolate, fruits, nuts or other ingredients or flavorings in the
 16 form of bars, drops, or pieces. The term, candy, does not include any preparation
 17 containing flour and does not require refrigeration;
- 18 (4) "Delivery charges," charges by the retailer for preparation and delivery to a location
 19 designated by the purchaser of tangible personal property, any product transferred
 20 electronically, or services including transportation, shipping, postage, handling,
 21 crating, and packing. The term does not include postage for direct mail;
- 22 (5) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,
 23 frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans
 24 and is consumed for its taste or nutritional value. The term, food, does not include
 25 any:
- 26 (a) alcoholic beverages, Alcoholic beverage as defined by § 35-1-1;

1 ~~(b) tobacco,~~ Tobacco product as defined by § 10-50-1;

2 (c) Cigarette as defined by § 10-50B-4;

3 (d) Cannabis or cannabis product as defined by § 34-20G-1; or

4 ~~(e) prepared~~ Prepared food;

5 (6) Repealed by SL 2007, ch 56, § 1.

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

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

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

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

24 (9) "Relief agency," the state, and county, municipality or district thereof, or any
25 agency engaged in actual relief work;

26 (10) "Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other than
27 for resale, sublease, or subrent;

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

- 1 tangible personal property or products transferred electronically at retail does not
 2 constitute such person a retailer;
- 3 (12) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner
 4 or by any means whatsoever, for a consideration;
- 5 (13) "Soft drinks," any nonalcoholic beverages that contain natural or artificial
 6 sweeteners. The term, soft drinks, does not include any beverage that contains
 7 milk or milk products, soy, rice or similar milk substitutes, or greater than fifty
 8 percent of vegetable or fruit juice by volume;
- 9 (14) "Tangible personal property," personal property that can be seen, weighed,
 10 measured, felt, or touched, or that is in any other manner perceptible to the
 11 senses. The term includes electricity, water, gas, steam, and prewritten computer
 12 software.

13 **Section 2. That a NEW SECTION be added to chapter 10-45:**

14 The rate of tax imposed by this chapter on retailers upon the gross receipts of all
 15 sales of food and food ingredients as defined by § 10-45-1 is zero percent.

16 **Section 3. That § 10-46-1 be AMENDED:**

17 **10-46-1.** Terms, as used in this chapter mean:

- 18 (1) "Business," any activity engaged in by any person or caused to be engaged in by
 19 such person with the object of gain, benefit or advantage either direct or indirect;
- 20 (2) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners
 21 in combination with chocolate, fruits, nuts or other ingredients or flavorings in the
 22 form of bars, drops, or pieces. The term, candy, does not include any preparation
 23 containing flour and does not require refrigeration;
- 24 (3) "Delivery charges," charges by the retailer for preparation and delivery to a location
 25 designated by the purchaser of tangible personal property, any product transferred
 26 electronically, or services including transportation, shipping, postage, handling,
 27 crating, and packing. The term does not include postage for direct mail;
- 28 (4) "Fair market value," the price at which a willing seller and willing buyer will trade.
 29 Fair market value shall be determined at the time of purchase. If a public
 30 corporation is supplying tangible personal property or any product transferred
 31 electronically that will be used in the performance of a contract, fair market value
 32 shall be determined pursuant to § 5-18B-7. This definition also applies to chapter
 33 10-45;

- 1 (5) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,
 2 frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans
 3 and is consumed for its taste or nutritional value. The term, food, does not include
 4 any:
- 5 (a) ~~alcoholic beverages,~~ Alcoholic beverage as defined by § 35-1-1;
 6 (b) ~~tobacco,~~ Tobacco product as defined by § 10-50-1;
 7 (c) Cigarette as defined by § 10-50B-4;
 8 (d) Cannabis or cannabis product as defined by § 34-20G-1; or
 9 (e) ~~prepared~~ Prepared food;
- 10 (6) "Included in the measure of tax," the tangible personal property, any product
 11 transferred electronically, or the service was purchased from a retailer licensed
 12 under chapter 10-45 and that retailer has included the tax in the amount received
 13 from the sale;
- 14 (7) "In this state" or "in the state," within the exterior limits of the State of South
 15 Dakota and includes all territory within such limits owned by or ceded to the United
 16 States of America;
- 17 (8) "Prepared food," any food sold in a heated state or heated by the seller; two or
 18 more food ingredients mixed or combined by the seller for sale as a single item; or
 19 food sold with eating utensils provided by the seller, including plates, knives, forks,
 20 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
 21 packaging used to transport the food.
- 22 Prepared food does not include food that is only cut, repackaged, or pasteurized by the
 23 seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods
 24 requiring cooking by the consumer as recommended by the Food and Drug
 25 Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003,
 26 so as to prevent food borne illnesses;
- 27 (8A) "Product transferred electronically," any product obtained by the purchaser by
 28 means other than tangible storage media. A product transferred electronically does
 29 not include any intangible such as a patent, stock, bond, goodwill, trademark,
 30 franchise, or copyright.
- 31 (9) "Purchase," any transfer, exchange, or barter, conditional or otherwise, in any
 32 manner or by any means whatsoever, for a consideration. A transaction, whereby
 33 the possession of property is transferred but the seller retains the title as security
 34 for the payment of the price, is a purchase;

- 1 (10) "Purchase price," shall have the same meaning as gross receipts defined in chapter
2 10-45;
- 3 (11) "Retailer," any person performing services in this state or engaged in the business
4 of selling tangible personal property or products transferred electronically for use,
5 storage or other consumption within the meaning of this chapter. However, if in
6 the opinion of the secretary of revenue, it is necessary for the efficient
7 administration of this chapter to regard any salesmen, representatives, truckers,
8 peddlers, or canvassers as agents of the dealers, distributors, supervisors,
9 employers, or persons under whom they operate or from whom they obtain the
10 tangible personal property or any product transferred electronically sold by them
11 irrespective of whether they are making sales on their own behalf or on behalf of
12 such dealers, distributors, supervisors, employers, or persons, the secretary of
13 revenue may so regard them and may regard the dealers, distributors, supervisors,
14 employers, or persons as retailers for purposes of this chapter;
- 15 (12) "Retailer maintaining a place of business in the state," any retailer having or
16 maintaining within this state, directly or by a subsidiary, an office, distribution
17 house, sales house, warehouse, or other place of business, or any agents operating
18 within the state under the authority of the retailer or its subsidiary, irrespective of
19 whether such place of business or agent is located here permanently or temporarily
20 or whether such retailer or subsidiary is admitted to do business within this state
21 pursuant to the laws of the State of South Dakota granting the rights of foreign
22 corporations to do business in this state;
- 23 (13) "Secretary," the secretary of the Department of Revenue or any duly authorized
24 and appointed assistant, deputies, or agents of the secretary charged with the
25 administration or enforcement of this chapter;
- 26 (14) "Soft drinks," any nonalcoholic beverages that contain natural or artificial
27 sweeteners. The term, soft drinks, does not include any beverage that contains
28 milk or milk products, soy, rice or similar milk substitutes, or greater than fifty
29 percent of vegetable or fruit juice by volume;
- 30 (15) "Storage," any keeping or retention in this state for use or other consumption in
31 the State of South Dakota for any purpose except sale in the regular course of
32 business;
- 33 (16) "Tangible personal property," personal property that can be seen, weighed,
34 measured, felt, or touched, or that is in any other manner perceptible to the senses

1 if furnished or delivered to consumers or users within this state. The term includes
2 electricity, water, gas, steam, and prewritten computer software;
3 (17) "Use," the exercise of right or power over tangible personal property or any product
4 transferred electronically incidental to the ownership of that property, except that
5 it does not include the sale of that property in the regular course of business. Use
6 also includes the use of the types of services, the gross receipts from the sale of
7 which are to be included in the measure of the tax imposed by chapter 10-45, and
8 the delivery or causing delivery into this state of tangible personal property or any
9 product transferred electronically intended to advertise any product or service or
10 promote or facilitate any sale to South Dakota residents.

11 **Section 4. That a NEW SECTION be added to chapter 10-46:**

12 The rate of tax imposed by this chapter on the use, storage, or consumption in this
13 state of food and food ingredients as defined by § 10-46-1 is zero percent.

14 **Section 5. That § 10-45-2 be AMENDED:**

15 **10-45-2.** There is hereby imposed a tax upon the privilege of engaging in business
16 as a retailer, a tax of four and ~~two-tenths~~ one-half percent upon the gross receipts of all
17 sales of tangible personal property consisting of goods, wares, or merchandise, except as
18 otherwise provided in this chapter, sold at retail in the state to consumers or users.

19 **Section 6. That § 10-45-5 be AMENDED:**

20 **10-45-5.** There is imposed a tax at the rate of four and ~~two-tenths~~ 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

1 telephone company and another telephone company, motor vehicles as defined pursuant
2 to § 32-5-1 leased under a single contract for more than twenty-eight days, and mobile
3 homes. However, the specific enumeration of businesses and professions made in this
4 section does not, in any way, limit the scope and effect of the provisions of § 10-45-4.

5 **Section 7. That § 10-45-5.3 be AMENDED:**

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

11 **Section 8. That § 10-45-6 be AMENDED:**

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

17 **Section 9. That § 10-45-6.1 be AMENDED:**

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

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

1 an exemption certificate issued by the secretary indicating that it meets the
2 criterion.

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

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

7 **10-45-6.2.** There is hereby imposed a tax of four and ~~two-tenths~~ one-half percent
8 upon the gross receipts of mobile telecommunications services, as defined in 4 U.S.C.
9 § 124(7) as of January 1, 2002, that originate and terminate in the same state and are
10 billed to a customer with a place of primary use in this state or are deemed to have
11 originated or been received in this state and to be billed or charged to a service address
12 in this state if the customer's place of primary use is located in this state regardless of
13 where the service actually originates or terminates. Notwithstanding any other provision
14 of this chapter and for purposes of the tax imposed by this section, the tax imposed upon
15 mobile telecommunication services must be administered in accordance with 4 U.S.C.
16 §§ 116-126, as in effect on July 28, 2000.

17 **Section 11. That § 10-45-8 be AMENDED:**

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

21 **Section 12. That § 10-45-71 be AMENDED:**

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

26 **Section 13. That § 10-46-2.1 be AMENDED:**

27 **10-46-2.1.** For the privilege of using services in South Dakota, except those types
28 of services exempted by § 10-46-17.3, there is imposed on the person using the service
29 an excise tax equal to four and ~~two-tenths~~ one-half percent of the value of the services at
30 the time they are rendered. However, this tax may not be imposed on any service

1 rendered by a related corporation, as defined in subdivision 10-43-1(11), for use by a
2 financial institution, as defined in subdivision 10-43-1(4); or on any service rendered by
3 a financial institution, as defined in subdivision 10-43-1(4), for use by a related
4 corporation as defined in subdivision 10-43-1(11). For the purposes of this section, the
5 term, related corporation, includes a corporation, which together with the financial
6 institution, is part of a controlled group of corporations, as defined in 26 U.S.C. § 1563 as
7 in effect on January 1, 1989, except that the eighty percent ownership requirements set
8 forth in 26 U.S.C. § 563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-
9 one percent. For the purpose of this chapter, services rendered by an employee for the
10 use of the employer are not taxable.

11 **Section 14. That § 10-46-2.2 be AMENDED:**

12 **10-46-2.2.** An excise tax is imposed upon the privilege of the use of rented
13 tangible personal property and any product transferred electronically in this state at the
14 rate of four and ~~two-tenths~~ one-half percent of the rental payments upon the property.

15 **Section 15. That § 10-46-58 be AMENDED:**

16 **10-46-58.** There is imposed a tax of four and ~~two-tenths~~ one-half percent on the
17 privilege of the use of any transportation of passengers. The tax imposed by this section
18 applies to any transportation of passengers if the passenger boards and exits the mode of
19 transportation within this state.

20 **Section 16. That § 10-46-69 be AMENDED:**

21 **10-46-69.** There is hereby imposed a tax of four and ~~two-tenths~~ one-half percent
22 upon the privilege of the use of mobile telecommunications services, as defined in 4 U.S.C.
23 § 124(7) as of January 1, 2002, that originate and terminate in the same state and are
24 billed to a customer with a place of primary use in this state. Notwithstanding any other
25 provision of this chapter and for purposes of the tax imposed by this section, the tax
26 imposed upon mobile telecommunication services must be administered in accordance
27 with 4 U.S.C. §§ 116-126, as in effect on July 28, 2000.

28 **Section 17. That § 10-46-69.1 be AMENDED:**

29 **10-46-69.1.** Except as provided in § 10-46-69, there is hereby imposed a tax of
30 four and ~~two-tenths~~ one-half percent upon the privilege of the use of any intrastate,

1 interstate, or international telecommunications service that originates or terminates in this
2 state and that is billed or charged to a service address in this state, or that both originates
3 and terminates in this state. However, the tax imposed by this section does not apply to:

- 4 (1) Any eight hundred or eight hundred type service unless the service both originates
5 and terminates in this state;
- 6 (2) Any sale of a telecommunication service to a provider of telecommunication
7 services, including access service, for use in providing any telecommunication
8 service; or
- 9 (3) Any sale of interstate telecommunication service provided to a call center that has
10 been certified by the secretary of revenue to meet the criterion established in § 10-
11 45-6.3 and the call center has provided to the telecommunications service provider
12 an exemption certificate issued by the secretary indicating that it meets the
13 criterion.

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

17 **Section 18. That § 10-46-69.2 be AMENDED:**

18 **10-46-69.2.** There is hereby imposed a tax of four and ~~two-tenths~~ one-half
19 percent upon the privilege of the use of any ancillary services.

20 **Section 19. That § 10-46E-1 be AMENDED:**

21 **10-46E-1.** There is hereby imposed an excise tax of four and ~~two-tenths~~ one-half
22 percent on the gross receipts from the sale, resale, or lease of farm machinery, attachment
23 units, and irrigation equipment used exclusively for agricultural purposes. However, if any
24 trade-in or exchange of used farm machinery, attachment units, and irrigation equipment
25 is involved in the transaction, the excise tax is only due and may only be collected on the
26 cash difference.

27 **Section 20. That § 10-58-1 be AMENDED:**

28 **10-58-1.** There is imposed upon owners and operators a special amusement
29 excise tax of four and ~~two-tenths~~ one-half percent of the gross receipts from the sale or
30 the operation of any mechanical or electronic amusement device. The tax imposed by this
31 section is in lieu of the tax imposed pursuant to chapter 10-45.

1 **Section 21. That § 32-5B-20 be AMENDED:**

2 **32-5B-20.** There is hereby imposed a tax of four and ~~two-tenths~~ one-half percent
3 upon the gross receipts of any person renting a rental vehicle as defined in § 32-5B-19.
4 This tax applies to all vehicles registered in accordance with § 32-5-6, 32-5-8.1, or 32-5-
5 9. Any rental vehicle not licensed in accordance with § 32-5-6, 32-5-8.1, or 32-5-9 is
6 subject to the motor vehicle excise tax in § 32-5B-1.

7 The tax imposed by this section is in addition to any tax levied pursuant to chapter
8 10-45 or 10-46 upon the rental of a rental vehicle. The provisions of chapter 10-45 apply
9 to the administration and enforcement of the tax imposed by this section. The tax imposed
10 by this section is in lieu of the tax levied by § 32-5B-1 on the sales of such motor vehicles.
11 A violation of this section is a Class 1 misdemeanor.

12 **Section 22. That 2023 Session Laws, chapter 32, § 19, be REPEALED:**

13 ~~**Section 19.** The amendments to the Code sections in sections 1 to 17, inclusive,~~
14 ~~of this Act are repealed on June 30, 2027, and those Code sections will revert in word and~~
15 ~~substance to that which existed immediately prior to the effective date of this Act.~~