

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

168J0086

HOUSE BILL NO. 1021

Introduced by: Representative Williamson and Senator Kelly

1 FOR AN ACT ENTITLED, An Act to reduce the sales and use tax on food over a period of
2 time and to then exempt the purchase of food from sales and use taxes.

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

4 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 There is hereby imposed a tax of three percent on the gross receipts from the sale of food.
7 Beginning on July 1, 2005, there is hereby imposed a tax of two percent on the gross receipts
8 from the sale of food. Beginning on July 1, 2006, there is hereby imposed a tax of one percent
9 on the gross receipts from the sale of food. Beginning on July 1, 2007, there are exempted from
10 the provisions of this chapter and the computation of the tax imposed by it, the gross receipts
11 from the sale of food.

12 Section 2. That § 10-45-1 be amended by adding thereto NEW SUBDIVISIONS to read as
13 follows:

14 "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen,
15 dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for
16 its taste or nutritional value. The term, food, does not include alcoholic beverages, tobacco, soft



1 drinks, candy, or prepared food;

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

5 "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in
6 combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars,
7 drops, or pieces. The term, candy, does not include any item that contains flour or requires
8 refrigeration.

9 "Prepared food," any:

10 (a) Food sold in a heated state or heated by the seller;

11 (b) Two or more food ingredients mixed or combined by the seller for sale as a
12 single item. The term, prepared food, in this subdivision does not include food
13 that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,
14 poultry, and foods containing these raw animal foods requiring cooking by the
15 consumer as recommended by the Food and Drug Administration in chapter
16 3, part 401.11 of its Food Code as of January 1, 2004, so as to prevent food
17 borne illnesses; or

18 (c) Food sold with eating utensils provided by the seller, including plates, knives,
19 forks, spoons, glasses, cups, napkins, or straws. A plate does not include a
20 container or packaging used to transport the food.

21 Section 3. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 There is hereby imposed a tax of three percent on the gross receipts from the consumptive
24 use of food. Beginning on July 1, 2005, there is hereby imposed a tax of two percent on the

1 gross receipts from the consumptive use of food. Beginning on July 1, 2006, there is hereby
2 imposed a tax of one percent on the gross receipts from the consumptive use of food. Beginning
3 on July 1, 2007, there are exempted from the provisions of this chapter and the computation of
4 the tax imposed by it, the gross receipts from the consumptive use of food.

5 Section 4. That § 10-46-1 be amended by adding thereto NEW SUBDIVISIONS to read as
6 follows:

7 "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen,
8 dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for
9 its taste or nutritional value. The term, food, does not include alcoholic beverages, tobacco, soft
10 drinks, candy, or prepared food;

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

14 "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in
15 combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars,
16 drops, or pieces. The term, candy, does not include any item that contains flour or requires
17 refrigeration;

18 "Prepared food," any:

19 (a) Food sold in a heated state or heated by the seller;

20 (b) Two or more food ingredients mixed or combined by the seller for sale as a
21 single item. The term, prepared food, in this subdivision does not include food
22 that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,
23 poultry, and foods containing these raw animal foods requiring cooking by the
24 consumer as recommended by the Food and Drug Administration in chapter

1 3, part 401.11 of its Food Code as of January 1, 2004, so as to prevent food
2 borne illnesses; or

3 (c) Food sold with eating utensils provided by the seller, including plates, knives,
4 forks, spoons, glasses, cups, napkins, or straws. A plate does not include a
5 container or packaging used to transport the food.