

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

861J0100

## HOUSE BILL NO. 1215

Introduced by: Representative Cutler and Senator Dempster

1 FOR AN ACT ENTITLED, An Act to reduce the sales and use tax on food and then exempt the  
2 purchase of food from sales and use tax when the revenue from the streamlined sales tax  
3 project reaches certain levels.

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

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

7 The tax reduction provided in sections 2 and 3 of this Act is effective on January first  
8 following the first fiscal year that the sales and use tax revenue increases by more than ten  
9 percent from the previous fiscal year. The tax exemption provided in sections 4 and 5 of this Act  
10 is effective on January first following the first fiscal year that the sales and use tax revenue  
11 increases by more than fifteen percent from the previous fiscal year or more than twenty-five  
12 percent over a three-year period.

13 Section 2. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 There is hereby imposed a tax of two percent on the gross receipts from the sale of food.

16 Section 3. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as



1 follows:

2 There is hereby imposed a tax of two percent on the gross receipts from the consumptive use  
3 of food.

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

6 There are exempted from the provisions of this chapter and the computation of the tax  
7 imposed by it, the gross receipts from the sale of food.

8 Section 5. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 There are exempted from the provisions of this chapter and the computation of the tax  
11 imposed by it, the gross receipts from the consumptive use of food.

12 Section 6. 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  
17 drinks, candy, or prepared food;

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

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

1 "Prepared food," any:

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

3 (b) Two or more food ingredients mixed or combined by the seller for sale as a  
4 single item. The term, prepared food, in this subdivision does not include food  
5 that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,  
6 poultry, and foods containing these raw animal foods requiring cooking by the  
7 consumer as recommended by the Food and Drug Administration in chapter  
8 3, part 401.11 of its Food Code as of January 1, 2004, so as to prevent food  
9 borne illnesses; or

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

13 Section 7. That § 10-46-1 be amended by adding thereto NEW SUBDIVISIONS to read as  
14 follows:

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

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