

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0776

HOUSE APPROPRIATIONS COMMITTEE ENGROSSED

NO. **HB 1308** - 02/10/2004

Introduced by: The Committee on Appropriations at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to establish the sales tax on food refund program and to  
2 make an appropriation therefor.

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

4 Section 1. There is established the sales tax on food refund program to be administered by  
5 the Department of Social Services. The purpose of the program is to provide sales tax refunds  
6 on food for purchases made in accordance with chapters 10-45 and 10-46 to South Dakota  
7 families who need it most.

8 Section 2. To be eligible for the sales tax on food refund program, a person shall:

- 9 (1) Be a South Dakota resident;
- 10 (2) Be the head of the household and certify the number of persons in the household;
- 11 (3) Have countable income at or below one hundred fifty percent of the federal poverty  
12 level, as updated annually by the United States Department of Health and Human  
13 Services and published in the Federal Register.

14 Section 3. The Department of Social Services shall promulgate rules, pursuant to chapter  
15 1-26, relating to:



- 1 (1) Eligibility criteria;
- 2 (2) Refund amounts or levels;
- 3 (3) Payment provisions;
- 4 (4) Household reporting requirements; and
- 5 (5) Recoveries.

6 Section 4. To receive sales tax on food refunds pursuant to this Act, a household shall:

- 7 (1) Apply for a quarterly refund on forms prescribed by the Department of Social  
8 Services using the prior three month periods's income;
- 9 (2) Certify that any refund received will only be used to purchase food as defined in  
10 sections 5 and 6 of this Act; and
- 11 (3) Report quarterly on forms prescribed by the Department of Social Services to  
12 continue eligibility for a refund.

13 Section 5. That § 10-45-1 be amended by adding thereto four NEW SUBDIVISIONS to read  
14 as 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, or  
18 prepared food;

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

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

1 not require refrigeration;

2 "Prepared food," any food sold in a heated state or heated by the seller. The term, prepared  
3 food, does not include:

4 (a) Two or more food ingredients mixed or combined by the seller for sale as a single  
5 item;

6 (b) Food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,  
7 poultry, and foods containing these raw animal foods requiring cooking by the  
8 consumer as recommended by the Food and Drug Administration in chapter 3, part  
9 401.11 of its Food Code as of January 1, 2003, so as to prevent food borne illnesses;  
10 or

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

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

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

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

23 "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in  
24 combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars,

1 drops, or pieces. The term, candy, does not include any preparation containing flour and does  
2 not require refrigeration;

3 "Prepared food," any food sold in a heated state or heated by the seller. The term, prepared  
4 food, does not include:

5 (a) Two or more food ingredients mixed or combined by the seller for sale as a single  
6 item;

7 (b) Food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,  
8 poultry, and foods containing these raw animal foods requiring cooking by the  
9 consumer as recommended by the Food and Drug Administration in chapter 3, part  
10 401.11 of its Food Code as of January 1, 2003, so as to prevent food borne illnesses;

11 or

12 (c) 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 Section 7. At the time in which a household has been accepted into the sales tax on food  
16 refund program, the household is entitled to a quarterly refund of the estimated amount of sales  
17 tax on food paid as determined in section 8 of this Act.

18 Section 8. The estimate of sales tax on food paid or refund awarded under this program shall  
19 be determined based on:

20 (1) The thrifty food plan as determined annually by the United States Department of  
21 Agriculture; and

22 (2) The number of individuals in the household.

23 A monthly allotment shall be determined based on the thrifty food plan's maximum  
24 allotment and the corresponding number of individuals in the household. Once the monthly

1 allotment is determined, it shall be annualized and multiplied by the average sales tax rate in  
2 South Dakota as determined by the Department of Revenue and Regulation. This shall be the  
3 annual level of refund eligible for the household. The annual refund shall be converted to a  
4 quarterly refund. This shall be the amount of eligible refund to the household.

5 Section 9. If a household is a participant in the food stamp program for any of the period in  
6 which a refund is computed under section 8 of this Act, those food stamp benefits shall be  
7 deducted from any refund received under the provisions of this Act.

8 Section 10. The method of payment utilized to make payments authorized by this Act shall  
9 be made by electronic debit card or by paper warrant.

10 Section 11. There is hereby appropriated from the state general fund the sum of five million  
11 dollars (\$5,000,000), or so much thereof as may be necessary, and two million two hundred fifty  
12 thousand dollars (\$2,250,000) of other fund expenditure authority, or so much thereof as may  
13 be necessary, to the Department of Social Services for payment of eligible expenses authorized  
14 by this Act .

15 Section 12. The secretary of the Department of Social Services shall approve vouchers and  
16 the state auditor shall draw warrants to pay expenditures authorized by this Act.