

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

708J0651

SENATE BILL NO. 119

Introduced by: Senator Moore and Representatives Olson (Mel) and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions of the streamlined sales tax
2 project and to 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 sections 17, 18, 19, 20, 21, and 22 of chapter 61 of the 2003 Session Laws
5 be repealed.

6 Section 2. That sections 18, 19, 20, 21, 30, 32, 33, 34, 35, 36, 41, 42, 44, 47, and 48 of
7 chapter 64 of the 2002 Session Laws be repealed.

8 Section 3. That chapter 10-45 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 sale of food.

12 Section 4. 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 5. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
22 follows:

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

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

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

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

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

14 "Prepared food," any:

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

16 (b) Two or more food ingredients mixed or combined by the seller for sale as a
17 single item. The term, prepared food, in this subdivision does not include food
18 that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,
19 poultry, and foods containing these raw animal foods requiring cooking by the
20 consumer as recommended by the Food and Drug Administration in chapter
21 3, part 401.11 of its Food Code as of January 1, 2004, so as to prevent food
22 borne illnesses; or

23 (c) Food sold with eating utensils provided by the seller, including plates, knives,
24 forks, spoons, glasses, cups, napkins, or straws. A plate does not include a

1 container or packaging used to transport the food.