

AN ACT

ENTITLED, An Act to revise the definition of bundling for sales and use tax purposes.

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

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

Except for the provisions of § 10-45-1.7, the tax imposed by this chapter applies to the entire gross receipts resulting from the sale of bundled transactions.

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

For the purposes of this chapter, the term, bundled transaction, means the retail sale of two or more distinct and identifiable products sold for one nonitemized price.

Section 3. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the phrase, distinct and identifiable products, does not include:

- (1) Packaging, including containers, boxes, sacks, bags, bottles, wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale;
- (2) A product provided free of charge with the required purchase of another product, if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or
- (3) Items included in gross receipts.

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

For the purposes of this chapter, the phrase, one nonitemized price, does not include a price that

is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

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

For the purposes of this chapter, the term, bundled transaction, does not include:

- (1) A transaction that includes the retail sale of real property or services to real property;
- (2) A transaction that includes the retail sale of any products in which the gross receipts varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction;
- (3) A transaction that includes the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;
- (4) A transaction that includes the retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;
- (5) A transaction that includes the retail sale of taxable products and nontaxable products and the purchase price or gross receipts of the taxable products is de minimis; or
- (6) A transaction that includes the retail sale of exempt tangible personal property and taxable tangible personal property where:
  - (a) The transaction includes food and food ingredients, drugs, durable medical

equipment, mobility enhancing equipment, or prosthetic devices all as defined in chapter 10-45, or over-the-counter drugs or medical supplies; and

- (b) The retailer's purchase price or gross receipts of the taxable tangible personal property is fifty percent or less of the total purchase price or gross receipts of the bundled tangible personal property. No retailer may use a combination of the purchase price and gross receipts of the tangible personal property when making the fifty percent determination for a transaction.

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

For the purposes of section 5 of this Act, the term, de minimis, means the retailer's purchase price or gross receipts of the taxable products is ten percent or less of the total purchase price or gross receipts of the bundled products. A retailer shall use either the purchase price or the gross receipts of the products to determine if the taxable products are de minimis. No retailer may use a combination of the purchase price and gross receipts of the products to determine if the taxable products are de minimis. A retailer shall use the full term of a service contract to determine if the taxable products are de minimis.

An Act to revise the definition of bundling for sales and use tax purposes.

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I certify that the attached Act
originated in the
HOUSE as Bill No. 1042

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1042  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office
this \_\_\_\_ day of \_\_\_\_\_,
20\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby
approved this \_\_\_\_\_ day of
\_\_\_\_\_, A.D., 20\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State