

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0312

## HOUSE BILL NO. 1042

Introduced by: The Committee on Taxation at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise the definition of bundling for sales and use tax  
2 purposes.

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

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

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

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

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



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

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

10 For the purposes of this chapter, the phrase, one nonitemized price, does not include a price  
11 that is separately identified by product on binding sales or other supporting sales-related  
12 documentation made available to the customer in paper or electronic form including an invoice,  
13 bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and  
14 services, rate card, or price list.

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

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

- 18 (1) A transaction that includes the retail sale of real property or services to real property;
- 19 (2) A transaction that includes the retail sale of any products in which the gross receipts  
20 varies, or is negotiable, based on the selection by the purchaser of the products  
21 included in the transaction;
- 22 (3) A transaction that includes the retail sale of tangible personal property and a service  
23 where the tangible personal property is essential to the use of the service, and is  
24 provided exclusively in connection with the service, and the true object of the

1 transaction is the service;

2 (4) A transaction that includes the retail sale of services where one service is provided  
3 that is essential to the use or receipt of a second service and the first service is  
4 provided exclusively in connection with the second service and the true object of the  
5 transaction is the second service;

6 (5) A transaction that includes the retail sale of taxable products and nontaxable products  
7 and the purchase price or gross receipts of the taxable products is de minimis; or

8 (6) A transaction that includes the retail sale of exempt tangible personal property and  
9 taxable tangible personal property where:

10 (a) The transaction includes food and food ingredients, drugs, durable medical  
11 equipment, mobility enhancing equipment, or prosthetic devices all as defined  
12 in chapter 10-45, or over-the-counter drugs or medical supplies; and

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

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

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

- 1 the taxable products are de minimis. A retailer shall use the full term of a service contract to
- 2 determine if the taxable products are de minimis.