

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0244

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1080 - 01/23/2007

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 gross receipts for sales tax
2 purposes.

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

4 Section 1. That § 10-45-1 be amended to read as follows:

5 10-45-1. Terms used in this chapter mean:

- 6 (1) "Agricultural purposes," the producing, raising, growing, or harvesting of food or
7 fiber upon agricultural land, including dairy products, livestock, and crops. The
8 services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders,
9 and cultivators are considered agricultural purposes;
- 10 (2) "Business," any activity engaged in by any person or caused to be engaged in by such
11 person with the object of gain, benefit, or advantage, either direct or indirect;
- 12 (3) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in
13 combination with chocolate, fruits, nuts or other ingredients or flavorings in the form
14 of bars, drops, or pieces. The term, candy, does not include any preparation
15 containing flour and does not require refrigeration;



1 (4) "Delivery charges," charges by the retailer for preparation and delivery to a location
 2 designated by the purchaser of tangible personal property or services including
 3 transportation, shipping, postage, handling, crating, and packing;

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

8 (6) ~~"Gross receipts," the total amount or consideration, including cash, credit, property,
 9 and services, for which tangible personal property or services are sold, leased, or
 10 rented, valued in money, whether received in money or otherwise, without any
 11 deduction for the following:~~

12 ~~———— (a) The retailer's cost of the property or service sold;~~

13 ~~———— (b) The cost of materials used, labor or service cost, interest, losses, all costs of
 14 transportation to the retailer, all taxes imposed on the retailer, and any other
 15 expense of the retailer;~~

16 ~~———— (c) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for
 17 any services necessary to complete the sale whether or not separately stated,
 18 including delivery charges; and~~

19 ~~———— (d) The value of exempt tangible personal property whether or not separately
 20 stated on the invoice, billing, or similar document given to the purchaser
 21 where taxable and exempt tangible personal property have been bundled
 22 together and sold by the retailer as a single product or piece of merchandise;~~

23 ~~———— Gross receipts do not include:~~

24 ~~———— (a) Discounts, including cash, term, or coupons that are not reimbursed by a third~~

1 ~~party that are allowed by a retailer and taken by a purchaser on a sale;~~

2 ~~(b) Interest, financing, and carrying charges from credit extended on the sale of~~
3 ~~tangible personal property or services, if the amount is separately stated on the~~
4 ~~invoice, bill of sale or similar document given to the purchaser; and~~

5 ~~(c) Any taxes legally imposed directly on the consumer that are separately stated~~
6 ~~on the invoice, bill of sale, or similar document given to the purchaser;~~

7 (7) "Person," any individual, firm, copartnership, joint adventure, association, limited
8 liability company, corporation, municipal corporation, estate, trust, business trust,
9 receiver, the State of South Dakota and its political subdivisions, or any group or
10 combination acting as a unit;

11 (8) "Prepared food," any food sold in a heated state or heated by the seller; two or more
12 food ingredients mixed or combined by the seller for sale as a single item; or food
13 sold with eating utensils provided by the seller, including plates, knives, forks,
14 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
15 packaging used to transport the food.

16 Prepared food does not include food that is only cut, repackaged, or pasteurized by
17 the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods
18 requiring cooking by the consumer as recommended by the Food and Drug
19 Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003, so
20 as to prevent food borne illnesses;

21 (9) "Relief agency," the state, and county, municipality or district thereof, or any agency
22 engaged in actual relief work;

23 (10) "Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other than for
24 resale, sublease, or subrent;

1 (11) "Retailer," any person engaged in the business of selling tangible goods, wares, or
2 merchandise at retail, or the furnishing of gas, electricity, water, and communication
3 service, and tickets or admissions to places of amusement and athletic events as
4 provided in this chapter. The term also includes any person subject to the tax
5 imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale of tangible
6 personal property at retail by a person who does not hold himself or herself out as
7 engaging in the business of selling such tangible personal property at retail does not
8 constitute such person a retailer;

9 (12) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or
10 by any means whatsoever, for a consideration;

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

15 (14) "Tangible personal property," personal property that can be seen, weighed, measured,
16 felt, or touched, or that is in any other manner perceptible to the senses. The term
17 includes electricity, water, gas, steam, and prewritten computer software.

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

20 For the purposes of this chapter, the term, gross receipts, means the total amount or
21 consideration, including cash, credit, property, and services, for which tangible personal
22 property or services are sold, leased, or rented, valued in money, whether received in money or
23 otherwise, without any deduction for the following:

24 (1) The retailer's cost of the property or service sold;

- 1 (2) The cost of materials used, labor or service cost, interest, losses, all costs of
2 transportation to the retailer, all taxes imposed on the retailer, and any other expense
3 of the retailer; and
- 4 (3) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for any
5 services necessary to complete the sale whether or not separately stated, including
6 delivery charges.

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

9 Gross receipts, as defined in section 2 of this Act, include consideration received by the
10 retailer from third parties if:

- 11 (1) The retailer actually receives consideration from a party other than the purchaser and
12 the consideration is directly related to a price reduction or discount on the sale;
- 13 (2) The retailer has an obligation to pass the price reduction or discount through to the
14 purchaser;
- 15 (3) The amount of the consideration attributable to the sale is fixed and determined by
16 the retailer at the time of the sale of the item to the purchaser; and
- 17 (4) One of the following criteria is met:
 - 18 (a) The purchaser presents a coupon, certificate, or other documentation to the
19 retailer to claim a price reduction or discount where the coupon, certificate, or
20 documentation is authorized, distributed, or granted by a third party with the
21 understanding that the third party will reimburse any retailer to whom the
22 coupon, certificate, or documentation is presented;
 - 23 (b) The purchaser identifies himself or herself to the retailer as a member of a
24 group or organization entitled to a price reduction or discount (a preferred

1 customer card that is available to any patron does not constitute membership
2 in such a group); or

3 (c) The price reduction or discount is identified as a third party price reduction or
4 discount on the invoice received by the purchaser or on a coupon, certificate,
5 or other documentation presented by the purchaser.

6 For the purposes of this section, the purchaser is the end consumer.

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

9 Gross receipts, as defined in section 2 of this Act, do not include:

- 10 (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party
11 that are allowed by a retailer and taken by a purchaser on a sale;
- 12 (2) Interest, financing, and carrying charges from credit extended on the sale of tangible
13 personal property or services, if the amount is separately stated on the invoice, bill
14 of sale, or similar document given to the purchaser; and
- 15 (3) Any taxes legally imposed directly on the consumer that are separately stated on the
16 invoice, bill of sale, or similar document given to the purchaser.

17 Section 5. That § 10-52A-1 be amended to read as follows:

18 10-52A-1. Terms used in this chapter mean:

- 19 (1) "Department," the Department of Revenue and Regulation;
- 20 ~~(2) "Gross receipts," the total amount or consideration, including cash, credit, property,~~
21 ~~and services, for which tangible personal property or services are sold, leased, or~~
22 ~~rented, valued in money, whether received in money or otherwise, without any~~
23 ~~deduction for the following:~~

24 ~~(a) The retailer's cost of the property or service sold;~~

1 ~~———— (b) The cost of materials used, labor or service cost, interest, losses, all costs of~~
2 ~~transportation to the retailer, all taxes imposed on the retailer, and any other~~
3 ~~expense of the retailer;~~

4 ~~———— (c) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for~~
5 ~~any services necessary to complete the sale whether or not separately stated,~~
6 ~~including delivery charges; and~~

7 ~~———— (d) The value of exempt tangible personal property whether or not separately~~
8 ~~stated on the invoice, billing, or similar document given to the purchaser~~
9 ~~where taxable and exempt tangible personal property have been bundled~~
10 ~~together and sold by the retailer as a single product or piece of merchandise;~~

11 ~~———— Gross receipts do not include:~~

12 ~~———— (a) Discounts, including cash, term, or coupons that are not reimbursed by a third~~
13 ~~party that are allowed by a retailer and taken by a purchaser on a sale;~~

14 ~~———— (b) Interest, financing, and carrying charges from credit extended on the sale of~~
15 ~~tangible personal property or services, if the amount is separately stated on the~~
16 ~~invoice, bill of sale or similar document given to the purchaser; and~~

17 ~~———— (c) Any taxes legally imposed directly on the consumer that are separately stated~~
18 ~~on the invoice, bill of sale, or similar document given to the purchaser.~~

19 Section 6. That chapter 10-52A be amended by adding thereto a NEW SECTION to read
20 as follows:

21 For the purposes of this chapter, the term, gross receipts, means the total amount or
22 consideration, including cash, credit, property, and services, for which tangible personal
23 property or services are sold, leased, or rented, valued in money, whether received in money or
24 otherwise, without any deduction for the following:

- 1 (1) The retailer's cost of the property or service sold;
- 2 (2) The cost of materials used, labor or service cost, interest, losses, all costs of
- 3 transportation to the retailer, all taxes imposed on the retailer, and any other expense
- 4 of the retailer; and
- 5 (3) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for any
- 6 services necessary to complete the sale whether or not separately stated, including
- 7 delivery charges.

8 Section 7. That chapter 10-52A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 Gross receipts, as defined in section 6 of this Act, include consideration received by the
11 retailer from third parties if:

- 12 (1) The retailer actually receives consideration from a party other than the purchaser and
- 13 the consideration is directly related to a price reduction or discount on the sale;
- 14 (2) The retailer has an obligation to pass the price reduction or discount through to the
- 15 purchaser;
- 16 (3) The amount of the consideration attributable to the sale is fixed and determinable by
- 17 the retailer at the time of the sale of the item to the purchaser; and
- 18 (4) One of the following criteria is met:
 - 19 (a) The purchaser presents a coupon, certificate, or other documentation to the
 - 20 retailer to claim a price reduction or discount where the coupon, certificate, or
 - 21 documentation is authorized, distributed, or granted by a third party with the
 - 22 understanding that the third party will reimburse any retailer to whom the
 - 23 coupon, certificate, or documentation is presented;
 - 24 (b) The purchaser identifies himself or herself to the retailer as a member of a

1 group or organization entitled to a price reduction or discount (a preferred
2 customer card that is available to any patron does not constitute membership
3 in such a group); or

4 (c) The price reduction or discount is identified as a third party price reduction or
5 discount on the invoice received by the purchaser or on a coupon, certificate,
6 or other documentation presented by the purchaser.

7 For the purposes of this section, the purchaser is the end consumer.

8 Section 8. That chapter 10-52A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 Gross receipts, as defined in section 6 of this Act, do not include:

- 11 (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party
12 that are allowed by a retailer and taken by a purchaser on a sale;
- 13 (2) Interest, financing, and carrying charges from credit extended on the sale of tangible
14 personal property or services, if the amount is separately stated on the invoice, bill
15 of sale, or similar document given to the purchaser; and
- 16 (3) Any taxes legally imposed directly on the consumer that are separately stated on the
17 invoice, bill of sale, or similar document given to the purchaser.