

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

276P0514

SENATE BILL NO. 127

Introduced by: Senators Olson (Ed) and Nesselhuf and Representatives Krebs and Faehn

1 FOR AN ACT ENTITLED, An Act to provide for a sales tax holiday on certain tangible
2 personal property for going back to school.

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 There are exempted from the provisions of this chapter and the tax imposed by it, gross
7 receipts from the sale of the following items of tangible personal property, if sold between 12:01
8 a.m. on the first Friday of August and 11:59 p.m. the following Sunday:

- 9 (1) Clothing with a sales price of one hundred dollars or less per item;
- 10 (2) School supplies with a sales price of one hundred dollars or less per item; and
- 11 (3) Computers with a sales price of one thousand five hundred dollars or less per item.

12 For the purposes of this Act, the term, sales tax holiday, means the sales tax exemption
13 provided by this section.

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



1 The exemption provided by section 1 of this Act does not apply to the following:

- 2 (1) Computer software;
- 3 (2) Clothing accessories or equipment;
- 4 (3) Protective equipment;
- 5 (4) Sport or recreational equipment;
- 6 (5) School art supplies;
- 7 (6) School instructional material;
- 8 (7) School computer supplies;
- 9 (8) Any item for use in a trade or business; or
- 10 (9) The lease or rental of any item.

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

13 Each retailer making an exempt sale pursuant to this Act shall report the total amount of the
14 exempt sales made during the sales tax holiday to the secretary.

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

17 The exemption provided by section 1 of this Act is subject to the following provisions:

- 18 (1) A sale of eligible property under a layaway sale qualifies for exemption, if:
 - 19 (a) Final payment on a layaway order is made by, and the property is given to, the
20 purchaser during the exemption period; or
 - 21 (b) The purchaser selects the property and the retailer accepts the order for the
22 item during the exemption period, for immediate delivery upon full payment,
23 even if delivery is made after the exemption period;
- 24 (2) A discount by the seller reduces the sales price of the property and the discounted

1 sales price determines whether the sales price is within the price threshold provided
2 by section 1 of this Act. A coupon that reduces the sales price is treated as a discount,
3 if the seller is not reimbursed for the coupon amount by a third party. If a discount
4 applies to the total amount paid by a purchaser, rather than to the sales price of a
5 particular item, and the purchaser has purchased both eligible property and taxable
6 property, the seller should allocate the discount based on the total sales price of the
7 taxable property compared to the total sales price of all property sold in that same
8 transaction;

9 (3) Any article that is normally sold as a single unit shall continue to be sold in that
10 manner. No article may be priced separately and sold as individual items in order to
11 obtain the exemption;

12 (4) A rain check allows a customer to purchase an item at a certain price at a later time,
13 because the particular item was out of stock. Eligible property that any customer
14 purchases during the exemption period with use of a rain check shall qualify for the
15 exemption, regardless of when the rain check was issued. Issuance of a rain check
16 during the exemption period does not qualify eligible property for the exemption, if
17 the property is actually purchased after the exemption period;

18 (5) The procedure for an exchange regarding a sales tax holiday is as follows:

19 (a) If a customer purchases an item of eligible property during the exemption
20 period, but later exchanges the item for a similar eligible item, even if a
21 different size, different color, or other feature, no additional tax is due, even
22 if the exchange is made after the exemption period;

23 (b) If a customer purchases an item of eligible property during the exemption
24 period, but after the exemption period has ended, the customer returns the item

1 and receives credit on the purchase of a different item, the appropriate sales
2 tax is due on the sale of the newly purchased item; and

3 (c) If a customer purchases an item of eligible property before the exemption
4 period, but during the exemption period the customer returns the item and
5 receives credit on the purchase of a different item of eligible property, no sales
6 tax is due on the sale of the new item, if the new item is purchased during the
7 exemption period;

8 (6) Delivery charges, including shipping, handling and service charges, are part of the
9 sales price of eligible property. For the purpose of determining a sales tax holiday
10 price threshold, if all the property in a shipment qualifies as eligible property and the
11 sales price for each item in the shipment is within the sales tax holiday price
12 threshold, then the seller does not have to allocate the delivery, handling, or service
13 charge to determine if the price threshold is exceeded. The shipment shall be
14 considered a sale of eligible products. If the shipment includes eligible property and
15 taxable property, including an eligible item with a sales price in excess of the price
16 threshold, the seller shall allocate the delivery charge by using:

17 (a) A percentage based on the total sales prices of the taxable property compared
18 to the total sales prices of all property in the shipment; or

19 (b) A percentage based on the total weight of the taxable property compared to the
20 total weight of all property in the shipment. The seller shall tax the percentage
21 of the delivery charge allocated to the taxable property, but does not have to
22 tax the percentage allocated to the eligible property;

23 (7) For the purpose of a sales tax holiday, eligible property qualifies for exemption, if:

24 (a) The item is both delivered to and paid for by the customer during the

1 exemption period; or
2 (b) The customer orders and pays for the item and the seller accepts the order
3 during the exemption period for immediate shipment, even if delivery is made
4 after the exemption period. The seller accepts an order when the seller has
5 taken action to fill the order for immediate shipment. Actions to fill an order
6 include placement of an in-date stamp on a mail order or assignment of an
7 order number to a telephone order. An order is for immediate shipment when
8 the customer does not request delayed shipment. An order is for immediate
9 shipment, notwithstanding that the shipment may be delayed because of a
10 backlog of orders, or because stock is currently unavailable to, or on back
11 order by, the seller;

12 (8) For a sixty-day period immediately after the sales tax holiday exemption period,
13 when a customer returns an item that would qualify for the exemption, no credit for
14 or refund of sales tax may be given, unless the customer provides a receipt or invoice
15 that shows tax was paid, or the seller has sufficient documentation to show that tax
16 was paid on the specific item. This sixty-day period is set solely for the purpose of
17 designating a time period during which the customer is required to provide
18 documentation that shows that sales tax was paid on returned merchandise. The
19 sixty-day period is not intended to change a seller's policy on the time period during
20 which the seller will accept returns; and

21 (9) The time zone of the seller's location determines the authorized time period for a
22 sales tax holiday, when the purchaser is located in one time zone and a seller is
23 located in another.

24 For purposes of section, the term, eligible property, means any item that qualifies for

1 exemption pursuant to this Act.