

South Dakota's Remote Seller's Sales Tax Law

SB 106



Timeline

- Discussion about potential legislation establishing a threshold for remote seller sales tax requirement in South Dakota.

December

January

- A bill is drafted establishing remote seller requirements; eventually becoming SB106

March 22

- Gov. Dennis Daugaard signs SB 106 into law with an effective date of May 1, 2016.

March-April

- SB 106 is prepared to be implemented

April 28-29

- Legal action associated with SB 106 takes place

Senate Bill 106 Background

December

- **Inability to collect sales tax from remote sellers threatens South Dakota's efforts to sustain a broad tax system, which allows South Dakota to keep taxes low.**
 - **Because South Dakota doesn't have a state income tax, sales and use tax revenue are essential in funding state and local services.**
 - **The growth of online retail ensures further erosion to our sales tax base.**

Senate Bill 106 Background

Remote Sellers must remit South Dakota sales tax if they meet one of two criteria

January

- The seller's gross revenue exceeds **\$100,000**.
 - The sellers made **200** or more separate transactions into South Dakota.
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- Any sales tax obligation required by this act cannot be applied to past sales.

Senate Bill 106 Background

January

- **State Governments**
- **Multi-State Tax Commission (MTC)**
- **South Dakota Retailers Association (SDRA)**
- **Retail Industry Leaders Association (RILA)**

“These entities contend that South Dakota is the ‘ideal’ target state for this legislation.”

Getting Prepared

Knowing this will take a long time...

March-
April

- **Developing a sound and fair legislative bill**
- **SDDOR identified 200+ companies who meet one or both of the remote seller sales tax requirements**
 - **Accomplished through past audit information**
- **Staff training**
- **Media education and talking points**

Promoting Compliance

March-
April



- **DOR sent 206 letters on March 25 to those most likely to meet one of the two remote seller requirements**
- **The letters explained the two criteria and how the companies can apply for a South Dakota Sales Tax License.**
- **DOR also created a new webpage with this information, which has more than 2,500 visits.**

Remote Seller Compliance



March-
April

- **After the letters were sent, 118 remote sellers applied for licenses, 93 of which have been issued.**
- **45 of the applicants applied as a result of receiving DOR's letter.**

Legal Action



April 28-
29

- On April **28, 2016**, the State of South Dakota filed a declaratory judgment action in the Sixth Judicial Circuit Court, Hughes County, against four remote sellers: Newegg, Overstock, Systemax, Wayfair.
- On April 29, American Catalog Mailers and NetChoice filed a declaratory judgment action against Revenue Secretary Gerlach in the Sixth Judicial Circuit Court, Hughes County.

Next Steps

- ***State of South Dakota v. Wayfair INC, Systemax INC, Overstock.com INC, Newegg INC***
 - **On May 25, the defendants moved the State initiated case from State Circuit court to the United States District court, District of South Dakota, Central Division.**
- ***American Catalog Mailers Association and Netchoice v. Andy Gerlach***
 - **Venued in South Dakota's Sixth Judicial Circuit in Hughes Co., South Dakota.**

Next Steps

- *The case moved from State court to Federal court and then back to State court after South Dakota made a motion to Remand and the Defendants filed a Motion for Summary Judgement.*
- *Both parties have completed briefing the motions for the Federal court and are currently waiting for the Court to either schedule oral arguments on the motions or enter a decision.*

Updates from the litigation

http://dor.sd.gov/Taxes/Business_Taxes/SB106.aspx

- **As a result of SB 106, \$108,980.87 has been collected in State sales and use tax.**
- **An additional \$47,928.30 in municipal sales and use tax has been collected.**



For more information, visit

- **http://dor.sd.gov/Taxes/Business_Taxes/SB106.aspx**