

State of South Dakota

NINETY-THIRD SPECIAL SESSION
LEGISLATIVE ASSEMBLY, 2018s

400C0001

SENATE BILL NO. 1

Introduced by: Senators Tidemann, Cronin, Haverly, Nesiba, Partridge, Peters, White, and Wiik and Representatives Anderson, Ahlers, Bartels, Carson, and Hunhoff at the request of the Interim Committee on Appropriations

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the collection and
2 remittance of certain taxes by remote sellers and to declare an emergency.

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

4 Section 1. That § 10-64-1 be amended by adding a NEW SUBDIVISION to read:

5 (12) The Supreme Court of the United States issued its decision in *South Dakota v.*
6 *Wayfair*, 138 S.Ct. 2080 (2018), on June 21, 2018, holding:

7 For these reasons, the Court concludes that the physical presence rule of *Quill*
8 is unsound and incorrect. The Court's decisions in *Quill Corp. v. North*
9 *Dakota*, 504 U.S. 298 (1992), and *National Bellas Hess, Inc. v. Dept. of*
10 *Revenue of Ill.*, 386 U.S. 753 (1967), should be, and now are, overruled.

11 *Wayfair*, 138 S.Ct. at 2099. With the Supreme Court's decision in *Wayfair* that the
12 physical presence rule of *Quill* and *Bellas Hess* is "unsound and incorrect" and that
13 *Quill* and *Bellas Hess* are "overruled," the Legislature hereby finds that the purpose
14 of the declaratory judgment provision in 2016 Senate Bill 106, codified in § 10-64-3,



1 has been fulfilled and completed.

2 Section 2. That § 10-64-3 be amended to read:

3 10-64-3. Notwithstanding any other provision of law, and whether or not the state initiates
4 an audit or other tax collection procedure, the state may bring a declaratory judgment action
5 under chapter 21-24 in any circuit court against any person the state believes meets the criteria
6 of § 10-64-2 to establish that the obligation to remit sales tax is applicable and valid under state
7 and federal law. The circuit court shall act on this declaratory judgment action as expeditiously
8 as possible and this action shall proceed with priority over any other action presenting the same
9 question in any other venue.

10 In this action, the court shall presume that the matter may be fully resolved through a motion
11 to dismiss or a motion for summary judgment. However, if these motions do not resolve the
12 action, any discovery allowed by the court may not exceed the provisions of subdivisions 15-6-
13 73(2) and (4).

14 The provisions of § 10-59-34, along with any other provisions authorizing attorney's fees,
15 do not apply to any action brought pursuant to this chapter or any appeal from any action
16 brought pursuant to this chapter.

17 No declaratory judgment action may be initiated pursuant to this section or this chapter at
18 any time after the effective date of this Act.

19 Section 3. That § 10-64-4 be amended to read:

20 10-64-4. The filing of the declaratory judgment action established in this chapter by the state
21 operates as an injunction during the pendency of the action, applicable to each state entity,
22 prohibiting any state entity from enforcing the obligation in § 10-64-2 against any taxpayer who
23 does not affirmatively consent or otherwise remit the sales tax on a voluntary basis. The
24 injunction does not apply if there is a previous judgment from a court establishing the validity

1 of the obligation in § 10-64-2 with respect to the particular taxpayer. Except as to a defendant
2 in an action initiated by the state pursuant to § 10-64-3, any injunction imposed by this section
3 is automatically dissolved and lifted on November 1, 2018.

4 Section 4. That § 10-64-6 be amended to read:

5 10-64-6. No obligation to collect or remit the sales tax required by this chapter may be
6 applied ~~retroactively~~ before November 1, 2018.

7 Section 5. That § 10-64-7 be amended to read:

8 10-64-7. If an injunction provided by this chapter is lifted or dissolved, ~~in general or with~~
9 ~~respect to a specific taxpayer~~ as to a defendant in an action initiated by the state pursuant to
10 § 10-64-3, the state shall assess and apply the obligation established in § 10-64-2 from that date
11 ~~forward with respect to any taxpayer covered by the injunction.~~

12 Section 6. Whereas, this Act is necessary for the support of the state government and its
13 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
14 full force and effect from and after its passage and approval.