

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

843S0528

SENATE BILL NO. 146

Introduced by: Senators Peters and Hansen (Tom) and Representatives Cronin and Dennert

1 FOR AN ACT ENTITLED, An Act to require certain notice requirements for retailers that do
2 not have nexus in South Dakota which are selling tangible personal property, services, or
3 products transferred electronically for use in South Dakota.

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

5 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Terms used in this Act mean:

8 (1) "De minimis online auction website," any online auction website that facilitates total
9 gross sales in South Dakota in the prior calendar year of less than one hundred
10 thousand dollars and reasonably expects South Dakota sales in the current calendar
11 year will be less than one hundred thousand dollars;

12 (2) "De minimis retailer," any noncollecting retailer that made total gross sales in South
13 Dakota in the prior calendar year of less than one hundred thousand dollars and
14 reasonably expects South Dakota sales in the current calendar year will be less than
15 one hundred thousand dollars;



- 1 (3) "Noncollecting retailer," any retailer, not currently registered to collect and remit
2 South Dakota sales and use tax, who makes sales of tangible personal property,
3 services, and products transferred electronically from a place of business outside of
4 South Dakota to be shipped to South Dakota for use, storage, or consumption and
5 who is not required to collect South Dakota sales or use taxes;
- 6 (4) "Online auction website," a collection of web pages on the Internet that allows any
7 person to display tangible personal property, services, or products transferred
8 electronically for sale which is purchased through a competitive process where a
9 participant places a bid with the highest bidder purchasing the property, service, or
10 product when the bidding period ends;
- 11 (5) "South Dakota purchaser," any purchaser that purchases tangible personal property,
12 services, or products transferred electronically to be shipped or transferred to South
13 Dakota.

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

16 Pursuant to this Act, each noncollecting retailer shall give notice that South Dakota use tax
17 is due on nonexempt purchases of tangible personal property, services, or products transferred
18 electronically and shall be paid by the South Dakota purchaser. The notice shall be readily
19 visible and contain the information as follows:

- 20 (1) The noncollecting retailer is not required, and does not collect South Dakota sales or
21 use tax;
- 22 (2) The purchase is subject to state use tax unless it is specifically exempt from taxation;
- 23 (3) The purchase is not exempt merely because the purchase is made over the Internet,
24 by catalog, or by other remote means;

1 (4) The state requires each South Dakota purchaser to report any purchase that was not
2 taxed and pay tax on the purchase. The tax may be reported and paid on the South
3 Dakota use tax form; and

4 (5) The use tax form and corresponding instructions are available on the South Dakota
5 Department of Revenue and Regulation website.

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

8 The notice required by section 2 of this Act on a website shall occur on a page necessary to
9 facilitate the applicable transaction. The notice shall be sufficient if the noncollecting retailer
10 provides a prominent linking notice that reads as follows: "See important South Dakota sales
11 and use tax information regarding the tax you may owe directly to the state of South Dakota."
12 The prominent linking notice shall direct the purchaser to the principal notice information
13 required by section 2 of this Act.

14 The notice required by section 2 of this Act in a catalog shall be part of the order form. The
15 notice shall be sufficient if the noncollecting retailer provides a prominent reference to a
16 supplemental page that reads as follows: "See important South Dakota sales and use tax
17 information regarding the tax you may owe directly to the state of South Dakota on page __."
18 The notice on the order form shall direct the purchaser to the page that includes the principal
19 notice required by section 2 of this Act.

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

22 For any internet purchase made pursuant to this Act, the invoice notice shall occur on the
23 electronic order confirmation. The notice shall be sufficient if the noncollecting retailer provides
24 a prominent linking notice that reads as follows: "See important South Dakota sales and use tax

1 information regarding the tax you may owe directly to the state of South Dakota." The invoice
2 notice link shall direct the purchaser to the principal notice required by section 2 of this Act. If
3 the noncollecting retailer does not issue an electronic order confirmation, the complete notice
4 shall be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

5 For any catalog or phone purchase made pursuant to this Act, the complete notice shall be
6 placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

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

9 For any internet purchase made pursuant to this Act, notice on the check-out page fulfills
10 both the website and invoice notice requirements simultaneously, the notice shall be sufficient
11 if the noncollecting retailer provides a prominent linking notice that reads as follows: "See
12 important South Dakota sales and use tax information regarding the tax you may owe directly
13 to the state of South Dakota." The check-out page notice link shall direct the purchaser to the
14 principal notice required by section 2 of this Act.

15 If a retailer is required to provide a similar notice for another state in addition to South
16 Dakota, the retailer may provide a consolidated notice so long as the notice includes the
17 information contained in section 2 of this Act, specifically references South Dakota, and meets
18 the placement requirements of this section.

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

21 A noncollecting retailer may not state or display or imply that no tax is due on any South
22 Dakota purchase unless the display is accompanied by the notice required by section 2 of this
23 Act each time the display appears. If a summary of the transaction includes a line designated
24 "sales tax" and shows the amount of sales tax as zero, this constitutes a display implying that

1 no tax is due on the purchase. This display shall be accompanied by the notice required by
2 section 2 of this Act each time it appears.

3 Notwithstanding the limitation in this section, if a noncollecting retailer knows that a
4 purchase is exempt from South Dakota tax pursuant to South Dakota law, the noncollecting
5 retailer may display or indicate that no sales or use tax is due even if the display is not
6 accompanied by the notice required by section 2 of the Act.

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

9 With the exception of notification on an invoice, the provisions of this Act apply to online
10 auction websites.

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

13 A de minimis retailer and a de minimis online auction website are exempt from the notice
14 requirements provided by this Act.