

SENATE CONCURRENT RESOLUTION NO. 4

A CONCURRENT RESOLUTION, Urging Congress to support equity and sales tax fairness.

WHEREAS, United States Supreme Court decisions in *National Bellas Hess v. Department of Revenue*, 386 U.S. 753 (1967) and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), have ruled that the Commerce Clause of the United States Constitution denies states the authority to require the collection of sales and use taxes by remote sellers that have no physical presence in the taxing state; and

WHEREAS, the United States Supreme Court also declared in the *Quill v. North Dakota* decision that Congress could exercise its authority under the Commerce Clause of the United States Constitution to decide "whether, when, and to what extent" the states may require sales and use tax collection on remote sales; and

WHEREAS, states and localities that use sales and use taxes as a revenue source may not collect revenue from some portion of remote sales commerce; and

WHEREAS, since 1999, various state legislators, governors, local elected officials, state tax administrators, and representatives of the private sector have worked together as the Streamlined Sales Tax States to develop a streamlined sales and use tax system currently adopted in some form in twenty-four states; and

WHEREAS, between 2001 and 2002, forty states enacted legislation expressing their intent to simplify the states' sales and use tax collection systems, and to participate in discussions to allow for the collection of states' sales and use taxes; and

WHEREAS, the actions of these states arguably provide some justification for Congress to enact legislation to allow states to require remote sellers to collect the states' sales and use tax; and

WHEREAS, any federal legislation should be fair to both in-state and remote sellers and purchasers, whether such legislation requires sales and use taxes to be collected on a point-of-sales or point-of-delivery basis; and

WHEREAS, Congress, in considering federal legislation, should consider the following principles:

- (1) State-provided or state-certified tax collection and remittance software that is simple to

implement and maintain;

- (2) Immunity from civil liability for retailers utilizing state-provided or state-certified software in tax collection and remittance;
- (3) Tax audit accountability to a single state tax audit authority;
- (4) Elimination of interstate tax complexity by streamlining taxable good categories;
- (5) Adoption of a meaningful small business exception so that small businesses that sell remotely are not adversely affected by the legislation; and
- (6) Fair compensation to the tax-collecting retailer; and

WHEREAS, the South Dakota State Legislature and some of its sister legislatures in other states have acknowledged the complexities of the current sales and use tax system, have formulated varied alternative collection systems, and have shown the political will to make changes in their respective sales and use tax systems; and

WHEREAS, the enactment of legislation by Congress and the President that allows states to require remote sellers to collect the states' sales and use taxes, will facilitate the states' ability to enforce their current laws for collecting sales and use taxes on remote sales; and

WHEREAS, requiring remote sellers to collect the sales and use taxes may broaden South Dakota's sales tax base and potentially enable the South Dakota State Legislature to lower sales and use tax rates; and

WHEREAS, empowering states to collect sales and use taxes on in-state and remote sales is consistent with the 10th Amendment to the United States Constitution and is a states' rights issue; and

WHEREAS, adoption of the hybrid origin sourcing concept being considered will:

- (1) Create an unlevel playing field between in-state and remote sellers by giving an advantage to those remote sellers located in the lowest rate state;
- (2) Result in a tax increase on all purchasers who make purchases from remote sellers located in any taxing jurisdiction with a rate higher than the rate in the purchaser's jurisdiction;
- (3) Require purchasers to pay sales or use tax on certain purchases from remote sellers that are currently exempt from sales and use tax;
- (4) Require sellers that make both remote and non-remote sales to have two tax calculation systems operating simultaneously;

- (5) Put the sales and use tax revenues of a state that are generated by remote sales into the hands of the other states; and
- (6) Likely cause the sales and use tax revenues to decline as sellers and purchasers develop methods to legally circumvent paying sales and use taxes:

NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Ninetieth Legislature of the State of South Dakota, the House of Representatives concurring therein, that the Legislature urges the United States House of Representatives and the United States Senate to pass, without delay, and the President of the United States to sign, federal legislation that provides for the fair and constitutional collection of state sales and use taxes; and

BE IT FURTHER RESOLVED, that the Legislature of the State of South Dakota urges that, in passing such legislation, Congress consider the following principles:

- (1) State-provided or state-certified tax collection and remittance software that is simple to implement and maintain;
- (2) Immunity from civil liability for retailers utilizing state-provided or state-certified software in tax collection and remittance;
- (3) Tax audit accountability to a single state tax audit authority;
- (4) Elimination of interstate tax complexity by streamlining taxable good categories;
- (5) Adoption of a meaningful small business exception so that small businesses that sell remotely are not adversely affected by the legislation; and
- (6) Fair compensation to the tax-collecting retailer; and

BE IT FURTHER RESOLVED, that the Legislature of the State of South Dakota, recognizing that such legislation may not include all of these principles, declares that Congress' passage of the legislation will help create consistent standards for retailers forced to collect state sales and use taxes, thus leveling the playing field between in-state and remote sellers; and

BE IT FURTHER RESOLVED, that this resolution be sent to the President of the United States, the Majority and Minority Leaders of the United States Senate, the Speaker and Minority Leader of the United States House of Representatives, and to the members of South Dakota's congressional delegation.

Adopted by the Senate,
Concurred in by the House of Representatives,

January 29, 2015
February 3, 2015

Matt Michels
President of the Senate

Kay Johnson
Secretary of the Senate

Dean Wink
Speaker of the House

Arlene Kvislen
Chief Clerk of the House