

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

915S0529

SENATE BILL NO. 147

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

1 FOR AN ACT ENTITLED, An Act to expand the application of nexus for the purpose of
2 collecting sales and use taxes owed to the state.

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 Pursuant to this Act, a retailer is engaged in the business of selling tangible personal
7 property, services, and products transferred electronically for use in this state if:

8 (1) Both of the following conditions exist:

9 (a) The retailer holds a substantial ownership interest in, or is owned in whole or
10 in substantial part by, a retailer maintaining a place of business within this
11 state; and

12 (b) The retailer sells the same or a substantially similar line of products as the
13 related retailer in this state and does so under the same or a substantially
14 similar business name, or the instate facility or instate employee of the related
15 retailer is used to advertise, promote, or facilitate sales by the retailer to a



1 consumer; or

2 (2) The retailer holds a substantial ownership interest in, or is owned in whole or in
3 substantial part by, a business that maintains a distribution house, sales house,
4 warehouse, or similar place of business in this state that delivers property sold by the
5 retailer to consumers.

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

8 Terms used in section 1 of this Act mean:

9 (1) "Substantial ownership interest," an interest in an entity that is not less than the
10 degree of ownership of equity interest in an entity that is specified by Section 78p of
11 Title 15 of the United States Code as of January 1, 2011, with respect to a person
12 other than a director or officer;

13 (2) "Ownership," includes both direct ownership and indirect ownership through a
14 parent, subsidiary, or affiliate.

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

17 The processing of orders electronically, including facsimile, telephone, the internet, or other
18 electronic ordering process, does not relieve a retailer of responsibility for collection of the tax
19 from the purchaser if the retailer is doing business in this state pursuant to this Act.

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

22 Any retailer that is part of a controlled group as defined in § 10-45-20.3 and that controlled
23 group has a component member that is a retailer engaged in business in this state as described
24 in this Act, shall be presumed to be a retailer engaged in business in this state. This presumption

1 may be rebutted by evidence that during the calendar year at issue the component member that
2 is a retailer engaged in business in this state did not engage in any of the activities described in
3 this Act on behalf of the retailer. For purposes of this section, the term, component member,
4 means any component member as defined in Section 1563(b) of the Internal Revenue Code as
5 of January 1, 2011.

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

8 Any retailer making sales of tangible personal property to purchasers in this state by mail,
9 telephone, the internet, or other media which has a contractual relationship with an entity to
10 provide and perform installation, maintenance, or repair services for the retailer's purchasers
11 within this state shall be included within the definition of retailer under the provisions of this
12 Act.