

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

717T0080

HOUSE CONCURRENT RESOLUTION NO. 1007

Introduced by: Representatives Lucas, Conzet, Cronin, Dennert, Hunhoff (Bernie), Jones, Turbiville, Vanneman, Willadsen, and Wink and Senators Peters, Bradford, Hansen (Tom), Nelson (Tom), Novstrup (Al), Putnam, Rampelberg, and Tidemann

1 A CONCURRENT RESOLUTION, Urging the members of the South Dakota Congressional
2 delegation to sponsor and support the Marketplace Fairness Act and the Marketplace Equity
3 Act.

4 WHEREAS, the 1967 Bellas Hess and the 1992 Quill Supreme Court decisions denied states
5 the authority to require the collection of sales and use taxes by businesses that have no physical
6 presence in the taxing state; and

7 WHEREAS, the ability of consumers to make purchases from remote sellers that have no
8 physical presence has become significantly more accessible via the internet, and the sales tax
9 base is eroding as consumers are altering their purchasing habits; and

10 WHEREAS, the constraints imposed by the Supreme Court's decisions threaten the future
11 viability of the sales tax as a revenue source for state and local governments in this changing
12 market for consumer goods and services; and

13 WHEREAS, the federal government continues to shift program and financial responsibilities
14 to the states, but the inaction of Congress to permit states to require sales and use tax collection



1 on remote sales limits the states' ability to raise revenues for the funding of such programs from
2 one of the major state revenue sources; and

3 WHEREAS, if Congress were to act on this matter, it would provide some fiscal relief for
4 the states without costing the federal government a single cent or otherwise affect the federal
5 budget; and

6 WHEREAS, the Streamlined Sales and Use Tax Agreement (Agreement) provided the states
7 with one viable blueprint to create a simplified and more uniform sales and use tax collection
8 system. The states and the business community have worked for over ten years to simplify state
9 and local sales and use tax systems by establishing common definitions, sourcing rules, and
10 other factors to provide a streamlined system for the twenty-first century; and

11 WHEREAS, small businesses that have less than five hundred thousand dollars in gross
12 annual receipts are exempt from the provisions of the Agreement; and

13 WHEREAS, the Legislature of South Dakota and our colleagues in the other states have
14 shown the resolve to acknowledge the complexities of the current sales and use tax collection
15 system, have worked with the business community to formulate a truly simplified and
16 streamlined collection system, and have shown the political will to enact the necessary changes
17 to make the streamlined collection system the law; and

18 WHEREAS, by June 2011, twenty-one states, Arkansas, Georgia, Indiana, Iowa, Kansas,
19 Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota,
20 Oklahoma, Rhode Island, South Dakota, Vermont, West Virginia, Washington, Wisconsin, and
21 Wyoming, have enacted legislation to bring their states' sales and use tax statutes into
22 compliance with the Agreement; and

23 WHEREAS, the Center for Business and Economic Research at the University of Tennessee
24 has estimated that the states and local governments will lose as much as \$14.8 billion in fiscal

1 year 2012 because they were not able to collect taxes on remote sales, a figure that increases to
2 \$23 billion if mail order sales are included according to the National Conference of State
3 Legislatures, and the Center has estimated that South Dakota will lose as much as \$38.8 million
4 in fiscal year 2012; and

5 WHEREAS, the Marketplace Fairness Act has been introduced in the United States Senate
6 and the Marketplace Equity Act has been introduced in the United States House of
7 Representatives, and both bills grant those states that comply with the Agreement the authority
8 to require sellers, regardless of nexus, to collect those states' sales and use taxes; and

9 WHEREAS, the Marketplace Fairness Act and the Marketplace Equity Act for the first time
10 would provide a comprehensive national solution to the sales tax collection by permitting states
11 that are unable to join the Agreement to enact sales and use tax simplifications and be granted
12 authority to require collection of taxes on remote sales, thereby removing the potential for
13 competitive advantage among the states; and

14 WHEREAS, the Marketplace Fairness Act and the Marketplace Equity Act will create fair
15 market competition between traditional and online only retailers which will enable South
16 Dakota businesses to grow and expand resulting in more jobs and continued economic growth
17 for South Dakota; and

18 WHEREAS, the Marketplace Fairness Act and the Marketplace Equity Act will allow South
19 Dakota small businesses to compete fairly in order to sustain and increase the fifty-two thousand
20 retail jobs throughout the state; and

21 WHEREAS, until Congress and the President enact legislation to permit states to require
22 collection of tax on remote sales, participation by remote sellers will only ever be voluntary
23 making it unlikely that the states will close the sales and use tax gap between what is owed on
24 remote transactions and what is collected:

1 NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Eighty-
2 seventh Legislature of the State of South Dakota, the Senate concurring therein, that the
3 Legislature of South Dakota calls upon the members of our congressional delegation, Senators
4 Tim Johnson and John Thune, to support the Marketplace Fairness Act and Representative
5 Kristi Noem to support the Marketplace Equity Act; and

6 BE IT FURTHER RESOLVED, that the Legislature of South Dakota expresses its
7 appreciation and gratitude to Senator Tim Johnson for cosponsoring the Marketplace Fairness
8 Act and to Representative Kristi Noem for cosponsoring the Marketplace Equity Act; and

9 BE IT FURTHER RESOLVED, that the Legislature of South Dakota urges President Barack
10 Obama to sign into law legislation granting the states authority to collect sales and use tax on
11 remote sales, upon its passage by the Congress.