

SENATE CONCURRENT RESOLUTION NO. 3

A CONCURRENT RESOLUTION, Urging the members of the South Dakota Congressional delegation to sponsor and support legislation granting states the authority to require sellers, regardless of nexus, to collect sales and use taxes if certain tax simplification and streamlining thresholds are met by the states.

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

WHEREAS, the ability of consumers to make purchases from remote sellers that have no physical presence has become significantly more accessible via the internet as evident by the \$1.5 billion dollars spent online during the 24-hour period on Cyber Monday. The sales tax base is eroding as consumers are adopting purchasing habits that vary substantially from ten years ago; and

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

WHEREAS, the federal government continues to shift program and financial responsibilities to the states, but the inaction of Congress to permit states to require sales and use tax collection on remote sales limits the states' ability to raise revenues for the funding of such programs from one of the major state revenue sources; and

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

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

WHEREAS, small businesses that have less than one million dollars in gross annual receipts are

exempt from the provisions of the Agreement; and

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

WHEREAS, by January 1, 2013, twenty-three states, Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, West Virginia, Washington, Wisconsin, and Wyoming, have enacted legislation to bring their states' sales and use tax statutes into compliance with the Agreement; and

WHEREAS, the Center for Business and Economic Research at the University of Tennessee has estimated that the states and local governments may lose as much as \$14.8 billion in fiscal year 2012 because they were not able to collect taxes on remote sales, a figure that increases to \$23 billion if phone and mail order sales are included according to the National Conference of State Legislatures, and the Center has estimated that South Dakota will lose as much as \$38.8 million in fiscal year 2012, a figure that increases to \$60.8 million if phone and mail order sales are included; and

WHEREAS, Congress has the capacity to provide a comprehensive national solution to the sales tax collection by permitting states that are unable to join the Agreement to enact sales and use tax simplifications and thereby granting such states the authority to require collection of taxes on remote sales, thereby removing the potential for competitive advantage among the states; and

WHEREAS, Congress has the opportunity to create an environment for fair market competition between traditional and online only retailers which will enable South Dakota businesses to sustain and increase the fifty-two thousand retail jobs throughout the state; and

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

WHEREAS, the Marketplace Fairness Act of 2013 has been introduced in the United States Senate, and grants those states that comply with the provisions of the Act the authority to require

sellers, regardless of nexus, to collect the states' sales and use taxes:

NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Eighty-seventh Legislature of the State of South Dakota, the Senate concurring therein, that the Legislature of South Dakota calls upon the members of our congressional delegation, Senators Tim Johnson and John Thune, and Representative Kristi Noem to support legislation addressing market fairness and equity; and

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

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

February 21, 2013
February 25, 2013

Matt Michels
President of the Senate

Jeannette Schipper
Secretary of the Senate

Brian Gosch
Speaker of the House

Arlene Kvislen
Chief Clerk of the House