State of South Dakota

Revenue Bill #1 - Lift injunction

NINETY-THIRD SPECIAL SESSION
LEGISLATIVE ASSEMBLY, 2018s

400C0001

SENATE BILL NO. _____

Introduced by: _____

FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the collection and remittance of certain taxes by remote sellers and to declare an emergency.

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

Section 1. That § 10-64-1 be amended by adding a NEW SUBDIVISION to read:

(12) The Supreme Court of the United States issued its decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), on June 21, 2018, holding:

> For these reasons, the Court concludes that the physical presence rule of *Quill* is unsound and incorrect. The Court's decisions in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), and *National Bellas Hess, Inc. v. Dept. of Revenue of Ill.*, 386 U.S. 753 (1967), should be, and now are, overruled.

Wayfair, 138 S.Ct. at 2099. With the Supreme Court's decision in *Wayfair* that the physical presence rule of *Quill* and *Bellas Hess* is "unsound and incorrect" and that *Quill* and *Bellas Hess* are "overruled," the Legislature hereby finds that the purpose of the declaratory judgment provision in 2016 Senate Bill 106, codified in § 10-64-3, has been fulfilled and completed.

Section 2. That § 10-64-3 be amended to read:

10-64-3. Notwithstanding any other provision of law, and whether or not the state initiates an audit or other tax collection procedure, the state may bring a declaratory judgment action under chapter 21-24 in any circuit court against any person the state believes meets the criteria of § 10-64-2 to establish that the obligation to remit sales tax is applicable and valid under state and federal law. The circuit court shall act on this declaratory judgment action as expeditiously as possible and this action shall proceed with priority over any other action presenting the same question in any other venue.

In this action, the court shall presume that the matter may be fully resolved through a motion to dismiss or a motion for summary judgment. However, if these motions do not resolve the action, any discovery allowed by the court may not exceed the provisions of subdivisions 15-6-73(2) and (4).

The provisions of § 10-59-34, along with any other provisions authorizing attorney's fees, do not apply to any action brought pursuant to this chapter or any appeal from any action brought pursuant to this chapter.

<u>No declaratory judgment action may be initiated pursuant to this section or this chapter at any time after the effective date of this Act.</u>

Section 3. That § 10-64-4 be amended to read:

10-64-4. The filing of the declaratory judgment action established in this chapter by the state operates as an injunction during the pendency of the action, applicable to each state entity, prohibiting any state entity from enforcing the obligation in § 10-64-2 against any taxpayer who does not affirmatively consent or otherwise remit the sales tax on a voluntary basis. The injunction does not apply if there is a previous judgment from a court establishing the validity of the obligation in § 10-64-2 with respect to the particular taxpayer. <u>Except as to a defendant in an action initiated by the state pursuant to § 10-64-3, any injunction imposed by this section</u>

is automatically dissolved and lifted on November 1, 2018.

Section 4. That § 10-64-6 be amended to read:

10-64-6. No obligation to collect or remit the sales tax required by this chapter may be applied ~~retroactively~~ before November 1, 2018.

Section 5. That § 10-64-7 be amended to read:

10-64-7. If an injunction provided by this chapter is lifted or dissolved, ~~in general or with respect to a specific taxpayer~~ as to a defendant in an action initiated by the state pursuant to § 10-64-3, the state shall assess and apply the obligation established in § 10-64-2 from that date forward ~~with respect to any taxpayer covered by the injunction~~.

Section 6. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.