State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

786V0781

SENATE CONCURRENT RESOLUTION NO. 3

Introduced by: Senators Peters, Brown, Frerichs, Heineman (Phyllis), Jones (Tom), Krebs, Lucas, Maher, Novstrup (Al), Otten (Ernie), Rave, Solano, Sutton, Tidemann, Van Gerpen, and White and Representatives Cronin, Bolin, Carson, Dryden, Gosch, Greenfield, Haggar (Don), Hawley, Hoffman, Lust, Mickelson, Novstrup (David), Ring, Romkema, Werner, Westra, Wick, and Wismer

A CONCURRENT RESOLUTION, Urging the members of the South Dakota Congressional delegation to sponsor and support the Marketplace Fairness Act, or similar legislation that would grant the states authority to collect sales and use tax on remote sales.

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, and the sales tax base is eroding as consumers are altering their purchasing habits; 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

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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 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 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, 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, as of February 2014, twenty-four states, Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, 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 estimated that South Dakota lost over $60.8 million in 2012 and that state and local governments nationally lost over $23 billion in 2012 because they were not able to collect taxes

on remote sales; and

WHEREAS, the Marketplace Fairness Act grants states that comply with the agreement the authority to require sellers, regardless of nexus, to collect those states' sales and use taxes; and

WHEREAS, the Marketplace Fairness Act for the first time would 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 be granted authority to require collection of taxes on remote sales, thereby removing the potential for competitive advantage among the states; and

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

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

WHEREAS, the United States Senate understands the importance of the Marketplace Fairness Act to main street retailers and to state and local governments and overwhelmingly passed it on May 6, 20l3, 69-27; 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:

NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Eighty-Ninth Legislature of the State of South Dakota, the House of Representatives 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 the Marketplace Fairness Act; and

BE IT FURTHER RESOLVED, that the Legislature of South Dakota expresses its appreciation and gratitude to Senators Tim Johnson and John Thune for supporting and passing the Marketplace Fairness Act in the United States Senate and to Representative Kristi Noem for cosponsoring the Marketplace Fairness Act in the House of Representatives; 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 the Congress.