

South Dakota Sales Tax Public Notice for Non-Collecting Retailers

April 2011

The 2011 South Dakota Legislature approved Senate Bill 146 that may impact out-of-state retailers making sales into South Dakota. This bill goes into effect July 1, 2011. Senate Bill 146 requires all non-collecting retailers with annual gross sales into South Dakota of \$100,000 or more to give notice to customers on the billing statement and receipt that South Dakota use tax is due to the South Dakota Department of Revenue on non-exempt purchases of tangible personal property, services and products transferred electronically.

1. The notice shall be readily visible and contain the information as follows:

- a. The noncollecting retailer is not required, and does not collect South Dakota sales or use tax;
- b. The purchase is subject to state use tax unless it is specifically exempt from taxation;
- c. The purchase is not exempt merely because the purchase is made over the Internet, by catalog, or by other remote means;
- d. The state requires each South Dakota purchaser to report any purchase that was not taxed and pay tax on the purchase. The tax may be reported and paid on the South Dakota use tax form; and
- e. The use tax form and corresponding instructions are available on the South Dakota Department of Revenue website.

2. The notice shall be placed as follows:

- a. Website: placed on a page necessary to facilitate the transaction
- b. Internet purchase: placed on the electronic confirmation. If an electronic confirmation is not issued, the complete notice must be placed on the purchase order, bill, receipt, sales slip, order form, or packing slip.
- c. Internet purchase: notice on the check out page fulfills both the website and invoice requirement.
The notice on the website or internet purchase is sufficient if there is a prominent link that reads as follows: "See important South Dakota sales and use tax information regarding the tax you may owe directly to the State of South Dakota." The link must direct the purchaser to the notice as required in paragraph 1.
Note: with exception of notification on an invoice, the above applies to online auction websites.
- d. Catalog: placed on the order form. The notice on the order form is sufficient if a prominent reference to a supplemental page that reads as follows: "See important South Dakota sales and use tax information regarding the tax you may owe directly to the State of South Dakota on page __." This reference must direct the purchaser to the page that includes the notice.
- e. Catalog or phone purchase: the complete notice shall be placed on the purchase order, bill, receipts, or packing slip.

A retailer required to provide a similar notice for another state in addition to South Dakota may provide a consolidated notice so long as the notice includes the required information, specifically references South Dakota, and meets the placement requirements of the notice.

A noncollecting retailer may not state, display or imply that no tax is due on any South Dakota purchase.

A non-collecting retailer is any retailer, not currently registered to collect and remit South Dakota sales and use tax, who makes sales of tangible personal property, services, and products transferred electronically from a place of business outside of South Dakota to be shipped to South Dakota for use, storage, or consumption and who is not required to collect South Dakota sales or use taxes.

Any noncollecting retailer or online auction that makes less than \$100,000 in gross sales in South Dakota in the current calendar year is not subject to these requirements.

Additional Terms used Senate Bill 146:

"De minimis online auction website," means any online auction website that facilitates total gross sales in South Dakota in the prior calendar year of less than one hundred thousand dollars and reasonably expects South Dakota sales in the current calendar year will be less than one hundred thousand dollars.

"De minimis retailer," means any noncollecting retailer that made total gross sales in South Dakota in the prior calendar year of less than one hundred thousand dollars and reasonably expects South Dakota sales in the current calendar year will be less than one hundred thousand dollars.

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"**Online auction website**," means a collection of web pages on the Internet that allows any person to display tangible personal property, services, or products transferred electronically for sale which is purchased through a competitive process where a participant places a bid with the highest bidder purchasing the property, service, or product when the bidding period ends.

"**South Dakota purchaser**," means any purchaser that purchases tangible personal property, services, or products transferred electronically to be shipped or transferred to South Dakota.

Additional Notice Requirements:

1. The **notice required on a website** shall occur on a page necessary to facilitate the applicable transaction. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important South Dakota sales and use tax information regarding the tax you may owe directly to the state of South Dakota." The prominent linking notice shall direct the purchaser to the principal notice information.

2. The **notice required in a catalog** shall be part of the order form. The notice shall be sufficient if the noncollecting retailer provides a prominent reference to a supplemental page that reads as follows: "See important South Dakota sales and use tax information regarding the tax you may owe directly to the state of South Dakota on page ___." The notice on the order form shall direct the purchaser to the page that includes the principal notice.

3. **For any internet purchase**, the invoice notice shall occur on the electronic order confirmation. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important South Dakota sales and use tax information regarding the tax you may owe directly to the state of South Dakota." The invoice notice link shall direct the purchaser to the principal notice. If the noncollecting retailer does not issue an electronic order confirmation, the complete notice shall be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

4. **For any catalog or phone purchase**, the complete notice shall be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

5. **For any internet purchase**, notice on the check-out page fulfills both the website and invoice notice requirements simultaneously, the notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important South Dakota sales and use tax information regarding the tax you may owe directly to the state of South Dakota." The check-out page notice link shall direct the purchaser to the principal notice.

If a retailer is required to provide a similar notice for another state in addition to South Dakota, the retailer may provide a consolidated notice so long as the notice includes the required information, specifically references South Dakota, and meets the placement requirements of the notice.

6. Notwithstanding the limitation in this section, if a noncollecting retailer knows that a purchase is exempt from South Dakota tax pursuant to South Dakota law, the noncollecting retailer may display or indicate that no sales or use tax is due even if the display is not accompanied by the required notice .

7. With the exception of notification on an invoice, SB 146 applies to online auction websites.

8. A de minimis retailer and a de minimis online auction website are exempt from the notice requirements.

9. No criminal penalty or civil liability may be applied or assessed for failure to comply with the provisions of SB 146.

Talk to Us!

If you have a tax problem or question, call the South Dakota Department of Revenue toll-free at 1-800-TAX-9188. Visit us on the web at www.state.sd.us/revenue, email us at bustax@state.sd.us or write us:

SD Department of Revenue
445 East Capitol Ave.
Pierre, SD 57501-3100