

Remote Seller Law – Thresholds – SDCL 10-64-2

How to Apply the Thresholds

How do you apply the minimum thresholds in South Dakota's remote seller law?

Under current law, which does not change, any seller **with a physical presence** in South Dakota is required to be licensed and pay applicable sales taxes on South Dakota sales regardless of the dollar amount or number of sales made.

South Dakota's remote seller law, SDCL 10-64-2, requires any seller **with no physical presence** in the state to become licensed and pay applicable sales taxes if the seller meets either of the minimum thresholds in the previous or current calendar year:

1. The seller has gross sales into South Dakota exceeding \$100,000; or
2. The seller has 200 or more separate transactions into South Dakota.
Gross sales or transactions include the sale of tangible personal property, any products transferred electronically, or services.

A seller must follow the steps below when making the threshold determination:

- A. The previous calendar year --- 2017 --- when and how applicable:

If the seller met the \$100,000 gross sales threshold or the 200 transaction threshold in 2017, the seller will need to get licensed and pay applicable sales taxes for all 2018 transactions that occur **after the injunction is lifted in 2018**.

- B. The current calendar year --- 2018 --- when and how applicable:

If the seller meets the \$100,000 gross sales threshold or the 200 transaction threshold **for the first time in 2018**, the seller will need to get licensed and pay applicable sales taxes:

- For all 2018 transactions that occur **after** either threshold is met in 2018 **and** that occur **after the injunction is lifted in 2018**; and
- For all 2019 transactions.

To summarize, a seller must first review any sales made in the previous calendar year, 2017. If the seller did not meet either threshold in 2017, the seller must then review any sales made in the current calendar year, 2018, to determine if either threshold is met.

Please also note that the obligation to get licensed and pay applicable sales taxes will only occur **after the injunction is lifted in South Dakota**. South Dakota will not require a seller with no physical presence to get licensed and remit sales taxes retroactively.

South Dakota does not have a specific date when it will begin to implement the remote seller law.

For your convenience, the South Dakota remote seller law, SDCL 10-64-2, is found below:

10-64-2. Notwithstanding any other provision of law, any seller selling tangible personal property, products transferred electronically, or services for delivery into South Dakota, who does not have a physical presence in the state, is subject to chapters 10-45 and 10-52, shall remit the sales tax and shall follow all applicable procedures and requirements of law as if the seller had a physical presence in the state, provided the seller meets

either of the following criteria in the previous calendar year or the current calendar year:

(1) The seller's gross revenue from the sale of tangible personal property, any product transferred electronically, or services delivered into South Dakota exceeds one hundred thousand dollars; or

(2) The seller sold tangible personal property, any product transferred electronically, or services for delivery into South Dakota in two hundred or more separate transactions.