



# Remote Sellers in South Dakota

2016's Senate Bill 106 & *South Dakota v. Wayfair*

## 2016's Senate Bill 106

- Senate Bill 106 introduced during South Dakota's 2016 Legislative Session.
- Senate Bill 106 signed into law by Governor Daugaard (March 22, 2016).

## Notification to Remote Sellers

- Letters mailed to internally identified top internet sellers (March 25, 2016).
  - Top internet sellers reviewed using "Top500Guide", *Internet Retailer 2014 sales*.
  - 208 internet sellers noted as likely to meet the requirements of SB 106 (excluding sellers already registered with the Department).
  - Letters sent to the 208 identified remote sellers informing seller of Senate Bill 106.
- Press releases sent by the Department of Revenue and Governor's Office.
- The Department created a webpage specific to Senate Bill 106.
- Social media notices.

## Lawsuits Filed

- The Department of Revenue filed a lawsuit against Wayfair Inc, Systemax Inc, Overstock.com Inc, and Newegg Inc in South Dakota Circuit Court (April 28, 2016).
  - The filing created an injunction stopping the Department from enforcing Senate Bill 106.
- Lawsuit filed against the Department of Revenue in South Dakota Circuit Court (April 29, 2016).
  - Filed by American Catalog Mailers Association and Netchoice.

## Injunction

- During the injunction, any sales tax license applicants that identified themselves as remote sellers were informed of the injunction. Those that chose to continue with the registration did so on a voluntary basis.

## Progression of the Department of Revenue's Lawsuit

- The South Dakota Circuit Court ruled against the Department of Revenue (March 6, 2017) and the Department appealed to the South Dakota Supreme Court (March 8, 2017).
- The South Dakota Supreme Court ruled against the Department (September 13, 2017).
- United States Supreme Court heard the *South Dakota v. Wayfair* case (April 17, 2018) and ruled that *Quill v. North Dakota* no longer applies (June 21, 2018).
- *South Dakota v. Wayfair* is settled and dismissed (October 31, 2018).

## South Dakota's Special Legislative Session - September 12, 2018

- Senate Bill 1 - lifted tax collection compliance injunction on remote sellers except for Wayfair, Overstock.com, and Newegg - remote sellers required to comply starting November 1, 2018.
  - Settlement agreement with Wayfair, Overstock.com, and Newegg requires compliance starting January 1, 2019.
- Senate Bill 2 - imposes South Dakota sales tax on marketplace providers starting March 1, 2019.

## **Notification to Remote Sellers Post-Wayfair Decision**

- Letters mailed to internally identified top internet sellers on September 13, 2018.
  - Top internet sellers reviewed using *"Top500Guide", Internet Retailer 2017 sales.*
  - Letters sent to approximately 750 identified remote sellers
- Press releases sent by the Department of Revenue and Governor's Office.
- The Department created a webpage specific to remote sellers and marketplace providers.
- Social media notices.

## **Remote Seller Registration Management**

- Specific Department of Revenue agents assigned to review and issue tax licenses for remote sellers.
- Registrants identified as a remote seller if they registered as a result of South Dakota's remote seller laws - phone contact made with all applicants.
- Special 'remote seller' indicator created within the Department's database - only used for tracking and managing the registrations
- Identification of remote sellers from audits, citizen notifications, and other outside sources (*still in process*).

## **Remote Seller Compliance - *not yet implemented***

- Unlicensed remote sellers previously identified but not complying will be notified of the actions to be taken if they do not comply. Actions may include assessment, audit, and civil collections.
- Additional sources will continue to be looked for to identify unlicensed remote sellers.
- Remote seller compliance becomes part of the Department of Revenue's normal tax compliance process.