

STATE OF SOUTH DAKOTA )  
  :  
COUNTY OF HUGHES )

IN CIRCUIT COURT  
  
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

WAYFAIR INC.,  
OVERSTOCK.COM, INC., and  
NEWEGG INC.,

Defendants.

32CIV16-000092

**ORDER GRANTING  
DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

This matter came before me on the Defendants' Motion for Summary Judgment regarding the Complaint for declaratory relief filed by the Plaintiff pursuant to Senate Bill 106, "An Act to provide for the collection of sales taxes from certain remote sellers," 91st Sess., S.D. Legis. (2016) ("S.B. 106"), which has been codified as SDCL Chapter 10-64 "Collection of Sales Taxes From Out-of-State Sellers."

Upon a review of the record and the filings made by the parties, the Court rules in favor of the Defendants in granting them summary judgment. In reaching this decision, the Court finds as follows:

1. The Parties agree that no material issue of fact exists and this action may be decided as a matter of law. Defendants' Brief in Support of Summary Judgment at 7-8 (noting that the parties agree that this case "presents no genuine dispute of fact" and "turns on pure questions of law"); Plaintiff's Response to Defendants' Motion for Summary Judgment at 2 ("the State agrees that there are no disputes of material fact");

*see also* Defendants' Statement of Material Facts, ¶¶ 1-9; Plaintiff's Response to Defendants' Statement of Material Facts, ¶¶ 1-9.

2. The parties further agree that no hearing on the Defendants' Motion is necessary. In accordance with SDCL 10-64-3, this Court is directed to act on this matter "as expeditiously as possible" with the presumption that "the matter may be fully resolved through a motion to dismiss or a motion for summary judgment."

3. Because each of the Defendants lacks a physical presence in South Dakota, *see* Plaintiff's Response to Defendants' Statement of Material Facts, ¶¶ 1-3, the State acknowledges that under *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), the State of South Dakota is prohibited from imposing sales tax collection and remittance obligations on the Defendants. The State further admits that this Court is required to grant summary judgment in Defendants' favor, because of the *Quill* ruling. Parties' Joint Statement of Proceedings Following Remand at 4.

4. SDCL 10-64-2, by requiring remittance of sales tax by sellers who "do[] not have a physical presence in the state," fails as a matter of law to satisfy the physical presence requirement that remains applicable to state sales and use taxes under *Quill* and its application of the Commerce Clause (U.S. Const., Art. I, s.8, cl. 3).

5. This Court is duty bound to follow applicable precedent of the United States Supreme Court. *James v. Boise*, -- U.S. --, 136 S.Ct. 685, 686 (2016) (state court is required to follow U.S Supreme Court precedent interpreting federal law); *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) (where precedent of the Supreme Court has direct application in a case, lower courts must follow the decision which directly controls). This is true even when changing times and events clearly

suggest a different outcome; it is simply not the role of a state circuit court to disregard a ruling from the United States Supreme Court.

6. The initiation of this action by the Plaintiff on April 27, 2016, resulted in the injunction of its enforcement as a matter of law under SDCL 10-64-4.

NOW, THEREFORE, after due consideration of the parties' submissions, the terms of SDCL Chapter 10-64, and controlling precedent, the Court hereby ORDERS that:

Defendants' Motion for Summary Judgment is GRANTED;

Judgment on the Plaintiff's Complaint shall enter for the Defendants;

The Plaintiff is enjoined from enforcing SDCL 10-64-2, in accordance with SDCL 10-64-4; and

Each party shall bear its own costs, disbursements, and fees.

Dated this 6th day of March, 2017.

BY THE COURT:



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Mark W. Barnett  
Circuit Court Judge  
Sixth Judicial Circuit

ATTEST:


KELLI SITZMAN, Clerk of Court

By:   
Deputy Clerk



STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CC  
**FILED**

**MAR 06 2017**

 Clerk  
By \_\_\_\_\_ Deputy