



1. Pursuant to the Act and SDCL 21-8-9, a Complaint has been filed in this matter, a copy of which is attached as Exhibit 1, and is being used in lieu of an affidavit for purposes of meeting the requirements for this preliminary injunction order.

2. The State of South Dakota's Legislature passed the Act in order to allow the State to require sellers of "tangible personal property, products transferred electronically, or services for delivery into South Dakota, who do[] not have a physical presence in the state" to remit the state sales tax. S.B. 106 § 1.

3. The Act also provides that the State may bring a declaratory judgment action against any seller the State "believes meets the criteria of [the Act] to establish that the obligation to remit sales tax is applicable and valid under state and federal law." S.B. 106 § 2.

4. The Act further provides that the filing of a complaint seeking declaratory judgment by the State "operates as an injunction . . . prohibiting any state entity from enforcing the obligations in [the Act] against any taxpayer who does not affirmatively consent or otherwise remit the sales tax on a voluntary basis." S.B. 106 § 3.

5. Plaintiff, State of South Dakota, by and through the Department of Revenue, filed a Complaint seeking declaratory judgment against the Defendants on April 28, 2016.

6. The Act provides that the filing of the declaratory judgment action itself acts as an automatic injunction. Nonetheless, in conformance with this

provision, the State seeks a separate order to ensure that the Act's injunctive provision is officially recorded.

7. Because the injunction occurs by operation of the Act, and the State is the requesting party and the party to be enjoined, a hearing is not necessary and the injunction can immediately issue as contemplated by the Act. See SDCL 15-6-65(b) (allowing an injunction to be issued for period of time as consented to by the party against whom the order is directed). In fact, the State has filed this action shortly before the effective date so that this injunction can be entered before the law goes into effect.

8. As to any taxpayer who has not affirmatively consented or otherwise remitted the state sales tax on a voluntary basis during the pendency of the above-entitled action, including all appeals, or until such time as an order dissolving the injunction has been issued by this Court, this injunction will maintain the status quo prior to the Act's effective date of May 1, 2016.

9. While a request for a preliminary injunction usually rests in the discretion of the trial court, in the case at bar, the Act implemented the injunction as a matter of law. Compare *Prairie Hills Water & Development Company v. Gross*, 2002 S.D. 133, ¶ 36, 653 N.W.2d 745, 753, with S.B. 106 § 3. Accordingly, Plaintiffs request entry of an order memorializing the application of the Act's injunctive provision.

WHEREFORE, the State of South Dakota, by and through the Department of Revenue, hereby prays that this Court issue a Preliminary Injunction Order consistent with the Act's injunctive provision.

Dated this 28th day of April, 2016.

/s/ Richard M. Williams  
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