

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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February 17, 2016

The Honorable Gary Cammack, Chair,
Senate State Affairs Committee
State Capitol Building
500 East Capitol Ave
Pierre, SD 57501

RE: Opposition to SB 106 - Online Sales Tax

Dear Sen. Cammack,

We ask that you do not pass SB 106. South Dakotans will likely see it as a new tax, since any tax collected will come from the pockets of South Dakotans, not from out-of-state businesses.

SB 106 is likely opposed by South Dakotans. We recently polled Utah residents on similar approaches in that state. 71% opposed requiring businesses to collect and file sales taxes for up to 46 states. Two-thirds said requiring them to pay tax on online purchases from out-of-state businesses would be a statewide tax increase. We would likely see similar results in a poll of South Dakotans.

SB 106 is not likely to survive a constitutional challenge (bill sponsors acknowledge this would require the Supreme Court to overturn decades of legal decisions). But enactment and litigation could prompt other states to force South Dakota businesses to comply with *their* tax rules, rates, tax holidays, thresholds, and caps. SB 106 could thereby encourage 46 state tax auditors to go after South Dakota business. Imagine telling your local businesses that New York and Illinois tax auditors can now go after them for taxes due on out-of-state sales.

Advocates of SB 106 have said they introduced this bill with the intent of sparking litigation, all the way to the US. Supreme Court. What advocates are not discussing is the cost of this lawsuit to taxpayers. The US Supreme Court has repeatedly upheld the protection of businesses from other states' tax auditors.

Not only is it unlikely that the Supreme Court would overturn a hundred years of jurisprudence, but such a challenge would cost South Dakota taxpayers millions of dollars. South Dakota has so many better ways to spend taxpayer money, other than paying lawyers to fight an issue on which the Supreme Court has already repeatedly ruled.

Regardless of the outcome of SB 106 and its Supreme Court challenge, no new money will flow into the state. Any sales taxes collected as the result of SB 106 would not come from out-of-state businesses, but would instead come from the pockets of South Dakotans. In essence, all SB 106 would do is transfer money from South Dakota citizens to Pierre's tax coffers.

We ask that you not pass SB 106 and instead protect South Dakota businesses from out-of-state tax auditors, protect South Dakota citizens from a new tax, and protect South Dakota from costly litigation.

Thank you for considering our views and please let me know if we can provide further information.

Sincerely,

A handwritten signature in black ink that reads "Steve DelBianco". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steve DelBianco
Executive Director, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org