

Sales/Use/Indirect:

South Dakota DOR Guidance Addresses *Wayfair* Retroactivity and Taxation of Electronically Delivered Products

Tax Facts - Remote Seller Bulletin, S.D. Dept. of Rev. (July 2023); *Tax Facts - Products Transferred Electronically*, S.D. Dept. of Rev. (July 2023). Administrative guidance issued by the South Dakota Department of Revenue (Department) addressing remote sellers explains that as a consequence of the *Wayfair* decision, South Dakota “cannot go back and retroactively collect sales tax from a remote seller,” as it is legally precluded from enforcing retroactive tax collection on remote sellers for any sale made prior to November 1, 2018. In another document, the Department explains that, despite some other states concluding otherwise, products transferred electronically are taxed as a sale of tangible personal property in South Dakota and that new state law clarifying this tax treatment “does not change any tax liability.” Accordingly, sellers that sell products transferred electronically will continue to owe sales tax on receipts of products delivered to customers in South Dakota, and South Dakota consumers using products delivered electronically will continue to owe South Dakota use tax on their cost of the products, if sales tax was not collected by the seller. Please contact us with any questions.

URL: <https://dor.sd.gov/media/yh0n3oc2/remote-seller-bulletin.pdf>

URL: <https://dor.sd.gov/media/argitevb/products-transferred-electronically.pdf>

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