AN ACT

ENTITLED, An Act to expand the application of nexus for the purpose of collecting sales and use taxes owed to the state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

Pursuant to this Act, a retailer is engaged in the business of selling tangible personal property, services, and products transferred electronically for use in this state if:

(1) Both of the following conditions exist:

(a) The retailer holds a substantial ownership interest in, or is owned in whole or in substantial part by, a retailer maintaining a place of business within this state; and

(b) The retailer sells the same or a substantially similar line of products as the related retailer in this state and does so under the same or a substantially similar business name, or the instate facility or instate employee of the related retailer is used to advertise, promote, or facilitate sales by the retailer to a consumer; or

(2) The retailer holds a substantial ownership interest in, or is owned in whole or in substantial part by, a business that maintains a distribution house, sales house, warehouse, or similar place of business in this state that delivers property sold by the retailer to consumers.

Section 2. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

Terms used in section 1 of this Act mean:

(1) "Substantial ownership interest," an interest in an entity that is not less than the degree of ownership of equity interest in an entity that is specified by Section 78p of Title 15 of the

United States Code as of January 1, 2011, with respect to a person other than a director or officer;

(2) "Ownership," includes both direct ownership and indirect ownership through a parent, subsidiary, or affiliate.

Section 3. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

The processing of orders electronically, including facsimile, telephone, the internet, or other electronic ordering process, does not relieve a retailer of responsibility for collection of the tax from the purchaser if the retailer is doing business in this state pursuant to this Act.

Section 4. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

Any retailer that is part of a controlled group as defined in § 10-45-20.3 and that controlled group has a component member that is a retailer engaged in business in this state as described in this Act, shall be presumed to be a retailer engaged in business in this state. This presumption may be rebutted by evidence that during the calendar year at issue the component member that is a retailer engaged in business in this state did not engage in any of the activities described in this Act on behalf of the retailer. For purposes of this section, the term, component member, means any component member as defined in Section 1563(b) of the Internal Revenue Code as of January 1, 2011.

Section 5. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

Any retailer making sales of tangible personal property to purchasers in this state by mail, telephone, the internet, or other media which has a contractual relationship with an entity to provide and perform installation, maintenance, or repair services for the retailer's purchasers within this state shall be included within the definition of retailer under the provisions of this Act.

An Act to expand the application of nexus for the purpose of collecting sales and use taxes owed to the state.

I certify that the attached Act originated in the

SENATE as Bill No. 147

_____
Secretary of the Senate

_____
President of the Senate

Attest:

_____
Secretary of the Senate

_____
Speaker of the House

Attest:

_____
Chief Clerk

Senate Bill No. 147
File No. ____
Chapter No. _____

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State