

House Committee on Taxation
Testimony in Support of House Bill 2513
Presented by Eric Stafford, Vice President of Government Affairs

## Wednesday, February 5, 2020

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium and large businesses of all industry segments across the state, and also serves as the state affiliate of the National Retail Federation through our Kansas Retail Council.

The Kansas Chamber appreciates the opportunity to testify in support of House Bill 2513, which would require marketplace facilitators to collect and remit sales tax to the State of Kansas when annual sales into the state exceed \$100,000. As you'll see on the map below, Kansas is one of a handful of states who are still left who still need to take legislative action on this matter.

If you recall, in June 2018, the U.S. Supreme Court case *South Dakota v. Wayfair* was a monumental decision that granted states the ability to collect sales tax for online purchases, with some restrictions. The Court provided a checklist of factors present in South Dakota law that strongly suggested why it would be constitutional under this standard:

- 1. Safe harbor: Exclude "those who transact only limited business" in the state. (South Dakota's is \$100,000 in sales or 200 transactions.) (HB 2513 only contains the \$100,000 in sales threshold)
- 2. No retroactive collection.
- 3. Single state-level administration of all sales taxes in the state.
- 4. Uniform definitions of products and services.
- 5. Simplified tax rate structure. (South Dakota requires the same tax base between state and local sales tax, has only three sales tax rates, and limited exemptions from the tax.)
- 6. Software: access to sales tax administration software provided by the state.
- 7. Immunity: sellers who use the software are not liable for errors derived from relying on it. (Items three through seven are accomplished as Kansas is a participating state of the streamlined sales tax agreement)

In August 2019, Governor Kelly issued an Executive Order effective October 1, 2019, requiring all out-of-state retailers to collect and remit sales tax to the state. Lacking from this executive order is item #1 from the Wayfair checklist- a safe harbor provision for those conducting limited business in the state. Upon the announcement of the Executive Order, the Tax Foundation wrote:

"Kansas just unveiled the most aggressive remote sales tax collections regime in the country, and it did so without adopting any new, post-Wayfair legislation. The new requirements, set out in a <u>Department of Revenue notice</u>, obligate all remote sellers with any transactions in Kansas to begin collecting and remitting sales taxes by October, no matter how small the company or how few Kansas sales they have. The new guidance challenges the emerging consensus on remote sales tax collections and raises legal issues most states have been eager to avoid."

HB 2513 addresses the compliance issue which Kansas potentially faces without legislative action. The bill before you is a slightly different version of marketplace facilitator legislation than what we've had in the past and complies with the Court's Wayfair checklist. The bill is largely based off model language from the National Conference of State Legislators (NCSL), which has been adopted and supported by the retail industry, as well as the telecom industry.

The variation of language from the NCSL model bill included in HB 2513 was the inclusion of language dealing with transient guest taxes for app-based services such as Airbnb, and VRBO. Kansas law requires collection of sales tax on the rental of rooms or lodging, or other sleeping accommodations. According to the Department of Revenue website, "The guest tax applies when there are more than two bedrooms furnished for the accommodations of guests and when the room is rented for 28 consecutive days or less." HB 2513 extends existing Kansas law to short-term, app-based rental services, much like the rest of the bill applies sales tax to remote sellers. This bill is not imposing a new tax.

HB 2513 also strikes outdated "click through nexus" statutes which were passed in 2013 as this issue was gaining more attention nationally.

In closing, while we expect this bill to generate new revenue for the state, like last year, our preference is to keep this proposal revenue neutral and buy down rates with revenue generated by online sales. We appreciate the opportunity to testify in support of House Bill 2513, and I am happy to answer any questions at the appropriate time.

## Wayfair and Marketplace Implementation

as of 10/1/19

