

February 8, 2017  
Senate Assessment & Taxation Committee  
Neutral Written Testimony on Senate Bill 111  
by Kathleen Smith

Senator Tyson and Members of the Committee:

SB 111, as introduced, requires retailers that do not collect Kansas sales and use taxes to complete certain reporting requirements if specified conditions are met.

The bill would require retailers who do not collect Kansas sales and use taxes to provide records of untaxed Kansas sales to the Department of Revenue. In addition, each retailer that does not collect Kansas sales and use taxes would be required to notify Kansas purchasers that sales and use tax is due on all purchases made from the retailer that are not exempt from sales tax. The notice must be provided with each transaction between the retailer and the purchaser and the retailer must provide an annual notice to all Kansas purchasers summarizing the Kansas purchases from the preceding calendar year. Retailers with less than \$100,000 in total gross sales in Kansas are exempt from this act. Retailers are not required to send annual notices to Kansas purchasers if the purchaser's total annual purchases are less than \$500.

Current practice provides that consumers owe applicable sales taxes on purchases made from out-of-state businesses, but that states cannot require those businesses to collect and remit them based upon U. S. Supreme Court Case, *Quill v. North Dakota* 504 U.S. 298 (1992). The Court provided that a business must have a physical presence in a state for that state to require that business to collect sales tax.

This proposed Kansas legislation appears to be similar to legislation that was passed in Colorado in 2010. Colorado sought to impose on retailers notice and information reporting requirements, mandating that they provide tax notices to their customers in the state and report information about in-state sales to the state revenue department. Based on the similarities, the Department will work with the Colorado Department of Revenue for implementation strategies.

Our department will need to research and determine the retailers that are not collecting sales and use taxes. Once identified, an attempt will be made to register these companies to collect the sales and use taxes and/or notify them of the requirements based on this proposed legislation. KDOR will need to develop an educational program to ensure that retailers are aware of the new Kansas requirements.

The Kansas Department of Revenue has spoken with the Colorado Department of Revenue regarding the fiscal impact of their legislation. According to Colorado officials, the media had reported a fiscal note of \$170 million as the estimated amount of unpaid use tax in Colorado, based on a 2009 study conducted by professors at the University of Tennessee. However in speaking with the Colorado officials, the original fiscal note on Colorado HB 10-1193 was \$12.5

million in increased revenue. The Colorado Department of Revenue has not finalized an implementation plan for the measure, however the anticipated revenue is expected to be below the \$12.5 million estimated in 2010 and they are now stating the possible fiscal impact may be more like \$6 million.

KDOR estimates a \$2.0 million fiscal impact in FY 2020, \$100,000 in FY 2019 and \$0 in FY 2018.