

STATE OF KANSAS



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March 1, 2018

The Honorable Steven Johnson, Chairperson
House Committee on Taxation
Statehouse, Room 185-N
Topeka, Kansas 66612

Dear Representative Johnson:

SUBJECT: Fiscal Note for HB 2756 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2756 is respectfully submitted to your committee.

HB 2756 would create the Kansas Main Street Parity Act by requiring certain marketplace facilitators and out-of-state retailers to start collecting Kansas retail sales and compensating use taxes on sales to Kansas customers. The bill defines marketplace facilitators as persons who facilitate sales by an internet retailer through a physical or electronic marketplace. The bill would require marketplace facilitators, whether in their own name or as an agent of a marketplace seller, with at least \$50,000 in total gross sales in Kansas in the current or immediately preceding calendar year to start collecting retail sales and compensating use taxes on sales in Kansas starting the first day of the next calendar month that is at least 30 days from the date that they reached the \$50,000 threshold. The bill would require that marketplace facilitators begin collecting sales tax on January 1, 2019. The bill includes definitions for items that are used in the Kansas Main Street Parity Act.

Beginning on July 1, 2018, the bill would require that out-of-state retailers with at least \$50,000 in total gross sales and at least 100 transactions in Kansas in the preceding calendar year to start collecting retail sales and compensating use taxes on sales in Kansas. Out-of-state retailers that do not have a physical presence in the state would also be required to collect Kansas retail sales and compensating use taxes on sales to Kansas customers if the retailer has or is engaged in the following contact:

1. Applications or cookies are distributed to or stored on the computers or other physical communications devices of the retailer's in-state customers and may enable the retailer's use of the physical devices;
2. Contracts or other relationships with content distribution networks resulting in the use of in-state servers and other computer hardware or the receipt of server- or hardware-related in-state services; or

3. Contracts or other relationships with online marketplace facilitators or delivery companies resulting in in-state services, including payment processing and order fulfillment, order management, return processing or otherwise assisting with returns and exchanges, the preparation of sales reports or other analytics and consumer access to customer service.

The bill would require sales taxes to be collected from all sales of digital property and subscription services. The bill includes definitions for digital audio-visual works, digital audio works, digital books, digital code, and digital property. The Department of Revenue would have the authority to write rules and regulations to implement the bill.

Estimated State Fiscal Effect				
	FY 2018 SGF	FY 2018 All Funds	FY 2019 SGF	FY 2019 All Funds
Revenue	--	--	\$78,190,000	\$93,250,000
Expenditure	--	--	\$16,720	\$16,720
FTE Pos.	--	--	--	--

The Department of Revenue estimates that HB 2756 would increase state revenues by \$93,250,000 in FY 2019. Of that total, the State General Fund is estimated to increase by \$78,190,000 in FY 2019, while the State Highway Fund is estimated to increase by \$15,060,000 in FY 2019. This bill also is estimated to increase local sales tax revenues; however, the specific estimate of higher local sales tax revenues was not calculated by the Department of Revenue.

To formulate the estimates for increased sales tax authority from remote sellers, the Department of Revenue reviewed data from the U.S. Government Accountability Office (GAO) that released a study on sales taxes in November 2017. The report shows that Kansas has the potential to receive an additional \$113.0 million to \$170.0 million each year in increased state and local sales tax collections with expanded collection authority with out-of-state remote sellers. The numbers quoted from GAO include both state and local sales tax collections and assuming that local collections comprise 25.0 percent of this amount, then allowing expanded sales tax authority from remote sellers would increase state sales tax collections by between \$84,750,000 and \$127,500,000. The formation of this fiscal note used the lower estimate from GAO.

The Department of Revenue reviewed data from the New York City Independent Budget Office that released a Fiscal Brief in September 2015 that addressed placing a sales tax on digital goods. Their estimate, based on national numbers, indicated that the State of New York would receive \$38.0 million annually in sales tax revenue by taxing the digital equivalents of physical media goods. After adjusting for population and rate differences, it is estimated that Kansas could receive an additional \$8.5 million in state sales tax by imposing a tax on digital property.

The Department indicates that the bill would require \$16,720 from the State General Fund in FY 2019 to implement the bill and to modify the automated tax system. The required programming for this bill by itself would be performed by existing staff of the Department of

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Revenue. However, if the combined effect of implementing this bill and other enacted legislation exceeds the Department's programming resources, or if the time for implementing the changes is too short, additional expenditures for outside contract programmer services beyond the Department's current budget may be required.

The Kansas Department of Transportation indicates that the bill would increase state revenues to the State Highway Fund as noted above. The additional revenues would fund additional expenditures for projects funded under the comprehensive transportation plan, known as T-WORKS.

The Kansas Association of Counties and the League of Kansas Municipalities indicate that the bill would provide a net increase to local sales tax collections that are used in part to finance local governments.

The Attorney General indicates that under current Supreme Court case law, states cannot require out-of-state retailers with no physical presence in the state to collect and remit sales and use taxes on sales into the state. Later this year, the Supreme Court will review a pending case (*South Dakota v. Wayfair, Inc.*) that will review the extent of a state's authority to tax sales into the state by sellers with no physical presence in the state. The Attorney General's Office indicates the bill has the potential to increase litigation costs, if the Supreme Court does not abandon the physical presence rule that would allow HB 2756 to be challenged as unconstitutional. However, the Office did not provide an estimate of the additional litigation costs or how long the estimated litigation costs would continue from enactment from the bill, or if the bill would require the hiring of outside counsel. Any fiscal effect associated with HB 2756 is not reflected in *The FY 2019 Governor's Budget Report*.

Sincerely,



Larry L. Campbell
Chief Budget Officer

cc: Lynn Robinson, Department of Revenue
Ben Cleeves, Transportation
Chardae Caine, League of Municipalities
Melissa Wangemann, Association of Counties
Willie Prescott, Office of the Attorney General