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MEMORANDUM

To: Madam Chair and Members of the Committee on Assessment and Taxation
From: The Office of Revisor of Statutes
Date: March 16, 2020
Subject: Senate Bill No. 369

Summary

Senate Bill No. 369 requires marketplace facilitators to collect and remit sales, use and transient guest taxes from sales made through their platforms and establishes nexus provisions for remote sellers.

New Section 1 provides definitions for purposes of Sections 1 through 4, including in part:

"Marketplace facilitator" means a person, including any affiliate of the person, that: (A) Contracts or otherwise agrees with marketplace sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the marketplace seller's products or rooms, lodgings or accommodations through a physical or electronic marketplace operated, owned or otherwise controlled by the person; and (B) either directly or indirectly through contracts, agreements or other arrangements with third parties, collects the payment from the purchaser and transmits all or part of the payment to the marketplace seller. The term is further defined in the bill with some specific inclusions and exclusions.

"Tax" means: (1) The retailers' sales tax imposed under K.S.A. 79-3603, and amendments thereto; (2) the compensating use tax imposed under K.S.A. 79-3703, and amendments thereto; or (3) the transient guest tax imposed under K.S.A. 12-1693 or 12-1697, and amendments thereto, or any applicable city or county resolution or ordinance.

New Section 2 requires any marketplace facilitator selling or facilitating the sale of property or services subject to tax in this state to collect and remit such taxes and follow all applicable procedures and requirements provided by law for the collection and remittance of such taxes.

A marketplace facilitator shall only be required to collect and remit such taxes if in the previous calendar year:

(1) The marketplace facilitator makes sales of property or services otherwise subject to tax in the state in an amount exceeding \$100,000; or

(2) if a marketplace facilitator makes or facilitates the sale of property or services subject to tax in the state, on its own behalf or on behalf of one or more marketplace sellers, for delivery into this state in an amount exceeding \$100,000.

The department of revenue may grant a waiver under certain conditions if substantially all of the marketplace sellers of a marketplace facilitator are already collecting and remitting taxes to the department.

New Section 3 provides additional administrative provisions including that a marketplace facilitator has the same rights and duties as a seller to collect and remit all such taxes and nothing in this section affects the obligation of any consumer to remit the tax for any taxable transaction for which a marketplace facilitator or seller does not collect and remit the tax. The department may audit a marketplace facilitator and may waive penalties and interest if reasonable cause exists. A marketplace facilitator may be relieved of liability under this section if it can prove that the tax levied on a sale was paid to the department by the marketplace seller.

New Section 4 provides that a marketplace facilitator shall not be required to collect and remit any taxes from sales occurring prior to July 1, 2020.

With respect to collection of compensating use tax, Section 5 amends the definition of “retailer doing business in this state” in K.S.A. 79-3702(h)(1) to include, in a subparagraph (G), any retailer that does not satisfy any of the requirements contained in subparagraphs (A) through (E), if:

(a) For calendar year 2019, the retailer had in excess of \$100,000 of cumulative gross receipts from sales by the retailer to customers in this state;

(b) for the period beginning on January 1, 2020, through September 30, 2020, the retailer had in excess of \$100,000 of cumulative gross receipts from sales by the retailer to customers in this state; or

(c) during the current or immediately preceding calendar year, the retailer had in excess of \$100,000 of cumulative gross receipts from sales by the retailer to customers in this state.

Such retailer shall not be required to collect and remit any taxes from sales occurring prior to October 1, 2020.

For any retailer who satisfies the provisions of subparagraph (G)(i)(c) for sales in the current calendar year for the first time, such retailer shall be required to collect and remit the tax on any sales in excess of the \$100,000 of cumulative gross receipts from sales in the current calendar year by the retailer to customers in this state.

Section 5 further provides that a retailer shall be presumed to be doing business in this state if the retailer is subject to the provisions set forth in subsection (h)(1)(G) for a retailer doing business in this state and has in excess of \$100,000 of cumulative gross receipts from sales by the retailer to customers in this state. Such retailer shall have nexus with this state sufficient to require such retailer to collect and remit taxes under the provisions of the constitution and laws of the United States.

The bill would take effect from and after its publication in the statute book.