

House Committee on Taxation

Testimony in Opposition to House Bill 2537

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 opposition to House Bill 2537, which changes the definition of retailer in Kansas to include anyone who has \$100,000 worth of sales into the state. This bill is problematic for several reasons.

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.)
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)

Page 3 of House Bill 2537 includes language reading “(a) For calendar year 2019, the retailer had in excess of \$100,000 of gross receipts from sales by the retailer to customers in this state;” While the language in (ii)(a) appears to prevent collection of sales tax prior to the effective date of the law, retailers would, in our view, become a qualifying retailer for years where they had more than \$100,000 of sales into the state prior to the effective date ((G)(a)). We believe it must be crystal clear there will be no retroactive application of liability or as a qualifying retailer.

Additionally, HB 2537 has no definition of marketplace facilitator or marketplace seller. The bill is simply amending existing sales tax laws to broadly apply based on the new threshold. The retail industry fully supports House Bill 2513, which was also introduced this session, as it clearly establishes definitions and guidelines for out-of-state retailers, and clearly complies with Wayfair.

We appreciate the opportunity to testify in opposition to House Bill 2537, and I am happy to answer any questions at the appropriate time.