

March 3, 2021

REVISED

The Honorable Adam Smith, Chairperson  
House Committee on Taxation  
Statehouse, Room 185A-N  
Topeka, Kansas 66612

Dear Representative Smith:

**SUBJECT:** Revised Fiscal Note for HB 2173 by House Committee on Taxation

In accordance with KSA 75-3715a, the following revised fiscal note concerning HB 2173 is respectfully submitted to your committee.

HB 2173 would require marketplace facilitators to start collecting Kansas retail sales, compensating use, and transient guest tax taxes on sales to Kansas customers. The bill defines a “marketplace facilitator” as a person or their affiliate that contracts with marketplace sellers to facilitate sales through a physical or electronic marketplace. Marketplace facilitators would also include platforms that offer short term rentals for lodging or sleeping accommodations that are not regulated under the Lodging Inspection Act. A marketplace facilitator would not include advertising services, payment processing services, or commodity futures. The bill would require marketplace facilitators with at least \$100,000 in total gross sales in Kansas in the preceding calendar year to start collecting retail sales, compensating use, and transient guest tax taxes on sales in Kansas on July 1, 2021. Marketplace facilitators would not be responsible to remit any taxes from sales occurring prior to July 1, 2021. The bill would allow the Department of Revenue to grant a waiver to a marketplace facilitator under certain conditions and if all of its marketplace sellers are already collecting and remitting retail sales and compensating use taxes. The Department of Revenue would be allowed to audit sales of marketplace facilitators. The bill would relieve the liability of a marketplace facilitator to collect and remit the correct amount of the tax if an error was made due to incorrect or insufficient information from the marketplace seller. The marketplace facilitator would also be responsible for the collection and remittance of applicable 911 fees beginning on July 1, 2022.

The bill would amend the definition of “retailer doing business in this state” in the Kansas Compensating Tax Act by establishing a *de minimus* threshold of \$100,000 before a business is

defined as a retailer doing business in this state, requiring the business to start collecting and remitting retail sales and compensating use taxes on sales to Kansas. The bill would also set up a procedure that would require future out-of-state retailers to start collecting and remitting retail sales and compensating use taxes on sales to Kansas after the threshold is reached.

Estimated State Fiscal Effect				
	FY 2021 SGF	FY 2021 All Funds	FY 2022 SGF	FY 2022 All Funds
Revenue	--	--	\$35,500,000	\$42,400,000
Expenditure	--	--	\$305,973	\$305,973
FTE Pos.	--	--	--	3.00

The Department of Revenue estimates that HB 2173 would increase state revenues by \$42.4 million in FY 2022. Of that total, the State General Fund is estimated to increase by \$35.5 million in FY 2022, while the State Highway Fund is estimated to increase by \$6.9 million. 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. The fiscal effect to state revenues during subsequent years would be as follows:

	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>
State General Fund	\$41,700,000	\$44,100,000	\$46,600,000	\$49,300,000
State Highway Fund	<u>8,100,000</u>	<u>8,600,000</u>	<u>9,100,000</u>	<u>9,600,000</u>
	\$49,800,000	\$52,700,000	\$55,700,000	\$58,900,000

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 the amounts that the state already receives from Streamlined Sales Tax Volunteer Filers. Making these adjustments, the Department of Revenue estimates that Kansas would likely collect \$51.5 million in FY 2022 specifically from marketplace facilitators, including \$43.1 million from the State General Fund and \$8.4 million from the State Highway Fund. The fiscal effect associated with requiring marketplace facilitators to start collecting retail sales and compensating use taxes is reflected in *The FY 2022 Governor’s Budget Report*.

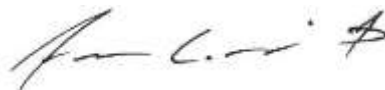
To formulate the estimates for establishing a threshold for out-of-state retailers, the Department of Revenue reviewed data on compensating use tax collections from calendar year 2020. The Department indicated that 8,794 out-of-state retailers reported taxable sales of less than \$100,000 in Kansas. These retailers collectively had total net sales of \$137.0 million that resulted in \$8.9 million in state compensating use tax liability in calendar year 2019. The Department indicates that under the provisions of the bill, these out-of-state retailers would no longer be

required to collect compensating use taxes on sales in Kansas resulting in \$9.1 million in lower state compensating use tax collections in FY 2022, including \$7.6 million from the State General Fund and \$1.5 million from the State Highway Fund. The estimates assume compensating use tax collections would grow approximately 6.0 percent each year. Any fiscal effect associated with establishing a *de minimus* threshold of \$100,000 before a business is defined as a retailer doing business in this state is not reflected in *The FY 2022 Governor's Budget Report*.

The Department indicates that the bill would require \$305,973 from the State General Fund in FY 2022 to implement the bill and to modify the automated tax system. The bill would require the Department to hire 3.00 new FTE positions to answer questions from taxpayers and to review, process, and audit retailer's compliance with the \$100,000 threshold. The required programming for this bill by itself would be performed by existing staff of the Department of Revenue. In addition, 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. Since the original fiscal note was issued, the Department of Revenue increased its estimate on administrative costs needed to implement the bill.

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. 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt  
Director of the Budget

cc: Lynn Robinson, Department of Revenue  
Ben Cleeves, Transportation  
Wendi Stark, League of Municipalities  
Jay Hall, Association of Counties