

CORRECTED
SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2756

As Amended by House Committee on Taxation

Brief*

HB 2756, as amended, would create the Kansas Main Street Parity Act, requiring certain out-of-state retailers and “marketplace facilitators,” as that term would be defined by the bill, to collect and remit sales and compensating use taxes on sales made to Kansas customers. The sale of various forms of digital media and property also would be made subject to Kansas sales and use taxes.

Marketplace facilitators, whether in their own name or as an agent of a “marketplace seller,” as that term would be defined by the bill, would be required to collect and remit sales and use taxes if the facilitators have at least \$50,000 in total gross sales in Kansas during the current or preceding calendar year.

Starting on January 1, 2019, an out-of-state retailer that does not have a physical presence in Kansas would be required to collect and remit sales and use taxes if the retailer meets certain minimum thresholds and engages in one or more of the following activities:

- Electronic applications or cookies are distributed to or stored on the computers or other physical communications devices of the in-state customers;
- The retailer has contracts or other relationships with content distribution networks that result in the use of in-state servers and other computer

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

hardware or the receipt of server-related or hardware-related in-state services; or

- The retailer has contracts or other relationships with online marketplace facilitators or delivery companies that result in in-state services, including payment processing; order management and fulfillment; return processing, or otherwise assisting with returns and exchanges; the preparation of sales reports, or other business analytics; or the provision of customer service.

Out-of-state retailers exceeding the minimum thresholds of \$50,000 in total gross sales and 100 transactions in Kansas during the preceding calendar year would be required to collect and remit sales and use taxes.

The Secretary of Revenue would be required to adopt rules and regulations necessary to implement the bill.

Background

On January 30, the House Committee on Taxation met jointly with the Senate Committee on Assessment and Taxation to hold a conference call with representatives from the South Dakota Attorney General's Office regarding the lawsuit *South Dakota v. Wayfair*, which is scheduled to be heard by the U.S. Supreme Court in spring of 2018. Conferees explained the history of the litigation. Responding to recent federal court decisions and decreased revenue growth from state sales and use taxes, the South Dakota Legislature enacted legislation in 2016 that declared an economic nexus was present between the state and certain out-of-state retailers. South Dakota's law specified that if it was legally challenged, the Unified Judicial System of South Dakota was directed to hear the case as expeditiously as possible. Out-of-state retailers prevailed at the state court level. The U.S. Supreme Court agreed to hear the case,

which is scheduled to be heard on April 17, 2018. Conferees expected a decision could be announced by summer of 2018.

The House Committee on Taxation, at the request of Representative Francis, introduced the bill on February 22. During the hearing before the House Committee on February 28, representatives of numerous state associations, economic development corporations, and chambers of commerce spoke in favor the bill, stating it would broaden the tax base for the State and local units of government and provide a more even playing field for retailers that have a physical presence. Written-only testimony in favor of the bill was provided by various representatives from local units of government and economic development corporations, which expressed a similar sentiment.

A representative of the Kansas City, Kansas, Chamber of Commerce spoke in opposition to the bill, explaining it would be preferable to have a congressional solution to the challenges to online sales taxation. The conferee expressed concern that businesses would be detrimentally impacted by complying with the laws and regulations of numerous taxing jurisdictions.

A representative of the National Conference of State Legislatures (NCSL) provided neutral testimony. In 2016, NCSL provided technical expertise to the 45 states that have sales and use taxes. Since then, 38 states have considered remote sales tax legislation, and 15 states have enacted measures. In 2018, seven states are considering similar legislation.

On March 7, the House Committee amended the bill to:

- Clarify the internal references; and
- Change the commencement date on the taxation of digital goods from July 1, 2018, to January 1, 2019.

A revised fiscal estimate was not available at the time the House Committee recommended the bill, as amended, be passed. However, the fiscal note on the bill, as introduced, indicated a July 1 implementation of the tax on digital goods would have been expected to produce \$8.5 million of additional sales tax receipts in FY 2019 (\$7.127 million to the State General Fund (SGF) and \$1.373 million to the State Highway Fund (SHF)). Assuming the deceleration of these provisions to January 1 would be expected to produce half such amounts, the amount of additional revenue for the latter half of FY 2019 would be expected to be \$4.25 million (\$3.563 million to the SGF and \$0.687 million to the SHF).

Additional commentary in the original fiscal note cited information from the U.S. Government Accountability Office, suggesting Kansas might be expected to receive \$84.750 million in additional state sales tax receipts annually if the provisions of the Kansas Main Street Parity Act could be fully enforced. However, the fiscal note also pointed out the Kansas Attorney General has said, under current U.S. Supreme Court case law (pending further action in the aforementioned South Dakota litigation), states cannot require out-of-state retailers with no physical presence to collect and remit sales and use taxes.