

Date: February 8, 2107

To: Chairwoman Caryn Tyson and Senate Assessment and Taxation Committee Members

From: Cindy Green, Deputy Director

Re: Testimony in Support of SB 111

Chairwoman Tyson and Assessment and Taxation Committee Members, thank you for the opportunity to testify in support of SB 111.

While many consider the collection of sales or compensating use tax from out of state retailers a federal issue, many states are frustrated with the lack of action in Washington, D.C and have taken matters into their own hands to pass laws to assist in the collection of sales and compensating use tax.

Current law in Kansas requires Kansans to report unpaid compensating use tax on line 19 on their K-40 tax form. Unfortunately, compliance is extremely, possibly due to many taxpayers being unaware of the law. SB 111 would require out of state retailers who do not collect Kansas sales or compensating use tax to furnish a notice to a Kansas purchaser and the Kansas Department of Revenue if goods are purchased in a total amount exceeding \$500 annually. This would be required of retailers with sales over \$100,000 purchased in Kansas. The report would provide the Kansas purchaser a dollar amount to report on their K-40 tax forms, theoretically increasing compliance.

This is not a new tax, but a potential new way to collect compensating use taxes due to the state, cities, and counties. This process would be similar to IRS Form 1099, where a third party is paid for services but income taxes are not withheld and remitted to the Kansas Department of Revenue. The third party is responsible for reporting the income and paying income tax on their K-40.

Sales tax is applied to purchases made by Kansans at retail locations within the state. Compensating use tax is applied to purchases made remotely and are not paid at the time of purchase. Remote sales are defined as items sold via internet, mail order or phone by a company without a physical presence in Kansas.

The state, cities, and counties are all impacted by the loss of sales tax due to remote sales. Remote sales are expected to continue increasing, while “brick and mortar” sales continue declining, which inevitably means the current sales tax structure will continue to see declining revenue if remote sales are untaxed. The League estimates the fiscal note on SB 111 could increase annual local-option sales and compensating use tax revenue for cities in Kansas by approximately \$45,000,000 to \$65,000,000. Based on a study performed by Bruce, Fox & Luna (2009), League staff estimated all lost remote sales from 2006 to 2015. Over the 10-year period the Highly Conservative Scenario shows cities lost \$369.2 million in tax revenue and the number continues to increase. Attachment 1 listing optimistic and conservative scenarios is attached to our testimony.

Data on Thanksgiving weekend ecommerce sales from 2014 – 2016 provides an example of increased online shopping. On Thanksgiving Day, ecommerce sales increased from \$1.38 billion to \$1.93 billion; Black Friday from \$2.40 billion to \$3.34 billion; and Cyber Monday from \$2.65 billion to \$3.5 billion. That is an increase of \$2.2 billion just over three days that sales or compensating use tax may not have been paid on. This graph is attached to our testimony as Attachment 2.

Brick and mortar sellers are at a 7-10% price disadvantage, depending on their location in Kansas compared to online sellers. These retailers are carrying a heavier burden because online retailers are not required to collect and submit retail sales tax. It is time to update the laws and make equitable the collection of sales and compensating use tax.

SB 111 is similar to Colorado House Bill 10-1193, which passed in 2010. The Colorado law was in litigation (*DMA v. Brohl*) until last December, when the U.S. Supreme Court declined to hear an appeal of the U.S. 10th Circuit Court of Appeals ruling upholding the law.

The 2017 retail sales world is different than 1992, when the U.S. Supreme Court said retailers had to have a physical presence in a state to be required to collect sales tax. In addition, to increased remote sales, technology and software have vastly improved, allowing for easier access to sales tax rates by address and the ability to transmit online.

Based on this testimony the League of Kansas Municipalities requests you pass SB 111 favorably out of committee and to the full Senate.

Attachment 1

Lost Remote Sales Tax Revenue for Cities

All Remote Sales – Slightly Optimistic Scenario (in millions)

<i>Year</i>	<i>Lost Local Revenue</i>
2006	23.3
2007	26.8
2008	29.3
2009	30.9
2010	37.2
2011	56.6
2012	67.1
2013	68.5
2014	74.3
2015	66.0
<i>Total</i>	480.5

All Remote Sales – Highly Conservative Scenario (in millions)

<i>Year</i>	<i>Lost Local Revenue</i>
2006	17.9
2007	20.6
2008	22.5
2009	23.7
2010	28.6
2011	43.5
2012	51.5
2013	52.7
2014	57.1
2015	50.7
<i>Total</i>	369.2

The Effect of E-Commerce

Thanksgiving Weekend E-Commerce Roundup

Thanksgiving weekend e-commerce sales in the United States, by device

Desktop Tablet Smartphone



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Source: Adobe Digital Insights



<https://www.statista.com/chart/7045/thanksgiving-weekend-e-commerce-roundup/>