



Chairman Johnson and Members of the Committee,

We appreciate this opportunity to submit testimony for HB 2537, which changes nexus requirements for Kansas retailers to be set at \$100,000. Here are three points for your consideration:

1. HB 2537 could affect Nexus requirements for all businesses in Kansas
2. HB 2537's nexus threshold is too low for out of state businesses selling into Kansas
3. HB 2537 does not follow SCOTUS guidance due to retroactive taxation

### **HB 2537 could affect Nexus requirements for all businesses in Kansas**

Under HB 2537, a retailer is presumed to be doing business in this state if it “maintains a distribution house, sales house, warehouse, or similar place of business in Kansas.” This could mean that all businesses that have sales above \$100,000 could be subject to HB 2537. In other words, smaller in-state retailers could be exempt from remitting sales taxes to the state and local government.

### **HB 2537's nexus threshold is too low for out of state businesses selling into Kansas**

HB 2537 should create a safe harbor for small and startup businesses with little economic nexus in Kansas. Failure to do so decreases the scale of interstate commerce in Kansas or, worse; it encourages illegal market activity.

Under *The Wayfair Decision*, the Supreme Court established the safe harbor as part of their more extensive test and suggested that South Dakota's law would be found constitutional. South Dakota represents 0.3% of national sales and has set a de minimis threshold for sales taxation of out of state sellers of \$100,000 or 200 transactions. Kansas represents 0.8% of national sales. **As such, the HB 2537 threshold should be set at roughly \$311,000 or 600 transactions.**

### **HB 2537 does not follow SCOTUS guidance due to retroactive taxation**

Under the *Wayfair* decision handed down by the U.S. Supreme Court, states have the authority to tax online sales in a manner that does not pose undue burdens on interstate commerce. Under this decision, the court provided a checklist, that if followed, strongly suggest state action would pass constitutional muster.

1. A safe harbor or De minimis threshold: Those who conduct limited business in the state should be exempt from sales/use taxation
2. State-level administration of all sales taxes in the state
3. Uniform definitions of products and services
4. No retroactive taxation

5. A simplified tax rate structure
6. Software: access to sales tax administration software provided by the state
7. Immunity: users of sales tax software are immune from audit liability

HB 2537, if passed, put Kansas in compliance with 1. HB 2537 requires remittance of sales tax for the six months before the effective date, now violating number 4. The other five items are met through Kansas' inclusion in the Streamlined Sales and Use Tax Administration or SSUTA.

We urge the committee to consider these points for action on HB 2537.