

SESSION OF 2017

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2235**

As Amended by House Committee on Taxation

**Brief\***

HB 2235, as amended, would revise the Kansas Retailers' Sales Tax Act by requiring retailers who do not collect Kansas sales and use taxes to provide records of untaxed Kansas sales to the Department of Revenue (Department). In addition, each retailer that does not collect Kansas sales and use taxes would be required to notify Kansas purchasers that sales and use tax is due on all purchases made from the retailer that are not exempt from sales tax. The notice would be provided with each transaction between the retailer and the purchaser. The retailer would provide an annual notice to all Kansas purchasers summarizing the Kansas purchases from the preceding calendar year. Failure to provide the applicable notice to either the Department or purchasers could result in a penalty, which could be equal to \$10 times the number of purchasers covered by the bill. The Director of Taxation would have the discretion to waive all or a portion of the penalty for a reasonable cause shown. Retailers with less than \$50,000 in total gross sales in Kansas would be exempt from the bill. Retailers would not be required to send annual notices to Kansas purchasers if their total amount of purchases would be less than \$200. The Secretary of Revenue would have the discretionary authority to adopt rules and regulations to implement the provisions of the bill.

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\*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>

## **Background**

Purchasers owe applicable sales or use taxes on purchases made from out-of-state businesses, but based upon a ruling of the U.S. Supreme Court, *Quill v. North Dakota* 504 U.S. 298 (1992), states cannot require an out-of-state business to collect and remit those taxes because the business has no physical presence in the state. In an attempt to address the concerns identified in *Quill*, the National Governors Association and the National Conference of State Legislatures created the Streamlined Sales and Use Tax Agreement (Streamline Agreement) in 1999. Kansas is a member of the Streamline Agreement, which attempts to minimize costs and administrative burdens on retailers that collect sales tax, particularly retailers operating in multiple states. Federal legislation has been introduced multiple times to grant Streamline states the authority to collect sales tax, but Congress has not taken action yet.

In 2010, Colorado enacted legislation that imposed notification and reporting requirements on out-of-state retailers that do not collect sales tax in that state. The constitutionality of the law was challenged in federal court. On February 22, 2016, the U.S. Court of Appeals for the Tenth Circuit, which is the circuit that has jurisdiction over Kansas, upheld the constitutionality of the Colorado law. On December 12, 2016, the U.S. Supreme Court denied to hear the case, allowing Colorado to begin enforcing its law.

The bill was introduced by the House Committee on Taxation. During the House Committee hearing, representatives of the League of Kansas Municipalities (LKM) and the City of Manhattan (Manhattan) spoke in favor the bill, providing estimates of the amount of loss revenue due to remote sales. LKM estimated cities in Kansas did not collect a minimum of \$50.7 million in 2015. Manhattan estimated it has not collected approximately \$5 million since 2011.

A representative of the Kansas Chamber provided neutral testimony, suggesting the term “Kansas purchaser” contained in the bill be clarified.

Representatives from the Department provided neutral testimony, observing the bill looked similar to the legislation enacted in Colorado. If the bill would be enacted, the Department would research and determine the retailers who are not collecting sales and uses taxes. Once identified, an attempt would be made to register the retailers to collect the sales and use tax or, in the alternative, comply with the bill. The Department would cooperate with the Colorado Department of Revenue to develop and implement plans, including an educational program for retailers.

No other testimony was provided.

The Committee amended the bill to specify the provisions of the legislation would be made part of the Kansas Retailers’ Sales Tax Act.

According to the fiscal note prepared by the Division of the Budget, in consultation with the Department, it is estimated the bill, as introduced, would cost \$270,000 from the State General Fund (SGF) and 4.0 FTE positions in FY 2018 and FY 2019 for the Department. In FY 2019, revenues are estimated to increase by \$100,000, which would include \$83,836 for the SGF. During its neutral testimony, the Department estimated sales tax receipts would increase by \$2.0 million in FY 2020 (\$1.677 million of which would be attributable to an increase in SGF receipts).