

House Committee on Taxation

Testimony in Support of House Bill 2513

Presented by Eric Stafford, Vice President of Government Affairs

Wednesday, February 5, 2020

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium and large businesses of all industry segments across the state, and also serves as the state affiliate of the National Retail Federation through our Kansas Retail Council.

The Kansas Chamber appreciates the opportunity to testify in support of House Bill 2513, which would require marketplace facilitators to collect and remit sales tax to the State of Kansas when annual sales into the state exceed \$100,000. As you'll see on the map below, Kansas is one of a handful of states who are still left who still need to take legislative action on this matter.

If you recall, in June 2018, the U.S. Supreme Court case *South Dakota v. Wayfair* was a monumental decision that granted states the ability to collect sales tax for online purchases, with some restrictions. The Court provided a checklist of factors present in South Dakota law that strongly suggested why it would be constitutional under this standard:

1. Safe harbor: Exclude "those who transact only limited business" in the state. (South Dakota's is \$100,000 in sales or 200 transactions.) **(HB 2513 only contains the \$100,000 in sales threshold)**
2. No retroactive collection.
3. Single state-level administration of all sales taxes in the state.
4. Uniform definitions of products and services.
5. Simplified tax rate structure. (South Dakota requires the same tax base between state and local sales tax, has only three sales tax rates, and limited exemptions from the tax.)
6. Software: access to sales tax administration software provided by the state.
7. Immunity: sellers who use the software are not liable for errors derived from relying on it.

(Items three through seven are accomplished as Kansas is a participating state of the streamlined sales tax agreement)

In August 2019, Governor Kelly issued an Executive Order effective October 1, 2019, requiring all out-of-state retailers to collect and remit sales tax to the state. Lacking from this executive order is item #1 from the Wayfair checklist- a safe harbor provision for those conducting limited business in the state. Upon the announcement of the Executive Order, the Tax Foundation wrote:

"Kansas just unveiled the most aggressive remote sales tax collections regime in the country, and it did so without adopting any new, post-Wayfair legislation. The new requirements, set out in a [Department of Revenue notice](#), obligate all remote sellers with any transactions in Kansas to begin collecting and remitting sales taxes by October, no matter how small the company or how few Kansas sales they have. The new guidance challenges the emerging consensus on remote sales tax collections and raises legal issues most states have been eager to avoid."

