

Date: February 3, 2021
To: Chairman Adam Smith, House Taxation Committee
From: Trey Cocking, Deputy Director
Re: Testimony in Support of HB 2173

Chairman Adam Smith and Committee Members, thank you for the opportunity to testify in support of HB 2173 on behalf of the League of Kansas Municipalities' member cities.

The inability of governments to collect local option sales or compensating use tax on remote sales continues to erode a viable and fair revenue source. The League supports state legislation establishing a program to help the state collect state and local sales and compensating use taxes due from in-state purchasers. Remitted taxes should be distributed using existing methods/formulas for the state and local governments. The League further supports the adoption of the safe harbor provisions as used by South Dakota to ensure constitutional compliance with the recent U.S. Supreme Court decision in *South Dakota v. Wayfair, Inc et al.*, 138 S. Ct. 2080 (2018) to bring tax fairness to Kansas' brick-and-mortar businesses.

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 low, possibly due to many taxpayers being unaware of the law. SB 50 would require any marketplace facilitator receiving gross revenues more than \$100,000 in purchases from consumers in the state to collect the state and local retail and use tax and remit the tax collected to the Kansas Department of Revenue. This is not a new tax; it is a potential new way to collect sales tax already due to the state, cities, and counties.

The state, cities, counties, and Kansas businesses 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 to decline. This inevitably means the current sales tax structure will see declining revenue if remote sales are untaxed. Legislative Post Audit estimates that the loss of state sales tax is between \$40-\$70 million. Looking at information from other states and cities, we believe that this range is conservative.

According to CNBC.com, Cyber Monday 2020 was the biggest shopping day of all time with \$10.8 billion in sales. This represents over a 408% increase in Cyber Monday sales since 2014 when Cyber Monday sales were only \$2.65 billion.

Analyzing my own *Amazon.com* purchases in 2020, I made 244 transactions, and 74 were not taxed, or 30.3%. In 2019, I made 106 transactions, and 32 were not taxed (30.1%).

Brick-and-mortar sellers are at a 7-10% price disadvantage, depending on their location in Kansas compared to online sellers if this tax is not collected. 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 the collection of sales and compensating use tax equitable. Brick and mortar sellers have been at an unfair advantage for a long time. We urge you to swiftly enact this legislation to bring badly needed parity as soon as possible and reject any efforts to push back the effective dates in SB 50.

Based on this testimony, the League of Kansas Municipalities requests you pass HB 2173 favorably out of committee and to the full Senate.