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February 3, 2021

Senator Caryn Tyson, Chair
Senator Larry Alley, Vice Chair
Senator Tom Holland, Ranking Minority Member
Kansas Legislature, Senate Committee on Assessment and Taxation

Re: Support of S.B. 50 – Imposing Remote Seller & Marketplace Laws

Dear Chair Tyson, Vice Chair Alley, Ranking Minority Member Holland, and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing in support of S.B. 50, which would require retailers without a physical presence in Kansas to collect and remit the State's sales/use tax if they incur over \$100,000 in Kansas sales, and would also impose a collection and remittance responsibility on marketplace facilitators. The legislation closely follows model legislation adopted by the National Conference of State Legislatures (NCSL).¹

About COST

COST is a non-profit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of over 500 major corporations engaged in interstate and international business, many of which directly do business in Kansas. COST's objective is to preserve and promote the equitable and non-discriminatory state and local taxation of multijurisdictional business entities.

COST Supports Uniform Marketplace Laws

When states collectively seek legislation impacting a segment of the business community in a significant manner, uniformity with other states is important by helping ease taxpayer burdens and creating greater certainty and predictability for compliance and administration. Accordingly, we appreciate that S.B. 50 closely follows the definitions used in the NCSL model legislation.

Significant features addressed by the legislation are as follows:

- The bill specifies who is a marketplace facilitator required to collect and remit the tax on behalf of its marketplace sellers, clarifies the definition of marketplace facilitator, and specifies types of businesses (*e.g.*, mere advertisers, payment processors, etc.) which are not covered by the definition.
- The bill also follows the NCSL model legislation by imposing a \$100,000 threshold that triggers a collection responsibility for remote sellers, but it does not contain a more problematic 200 transaction threshold (adopted by some states), which would inefficiently require certain sellers to collect and remit small dollar amounts and administratively burden the Kansas Department of Revenue with processing the related *de minimis* returns.

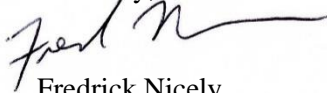
¹ The NCSL Marketplace Facilitator Sales Tax Collection Model Legislation is available at: https://www.ncsl.org/Portals/1/Documents/Taskforces/SALT_Model_Marketplace_Facilitator_Legislation.pdf?ver=2020-01-30-122035-320.

- Another important provision in S.B. 50, drawn from the NCSL Model, allows established sellers that already collect and remit sales taxes in Kansas to continue to collect the State's tax if such sellers incur over \$1 billion in U.S. sales and the marketplace facilitator agrees. This would allow sellers with sophisticated collection systems to continue to collect Kansas' sales/use tax along with other taxes and fees associated with a transaction.
- We recognize that among the more difficult compliance burdens for marketplace facilitators is collecting and remitting other taxes and fees that are not sales taxes but are levied on certain transactions. Accordingly, we recommend an effective date for the prepaid wireless service fee that will allow all marketplace facilitators sufficient time to program their systems to accommodate that fee, preferably July 1, 2022.
- We appreciate the clarification that specifies a marketplace facilitator stands in the same shoes as a seller and is entitled to all the benefits and has the same responsibilities imposed on other sellers in the State.
- We appreciate the provision allowing marketplace facilitators to either report all sales (by the marketplace facilitator and its marketplace sellers) on one return or to file two separate returns (one for the marketplace facilitator's sales and another for its marketplace sellers' sales).
- We approve of the bill's provisions to address errors in sales tax collection made by incorrect or incomplete information on the nature of the product or service given to the marketplace facilitator by the marketplace seller, provided that the marketplace facilitator can demonstrate it made a reasonable effort to obtain correct and sufficient information from the marketplace seller.
- Finally, we support the prohibition of class action suits against a facilitator; clear assignment of audit responsibilities (generally on the marketplace facilitator), penalty relief for reasonable cause, and a provision that absolves a marketplace facilitator of collection liability if it can show to the Department of Revenue that a seller had previously paid the tax on a transaction.

Conclusion

As one of the few states that has not legislatively addressed this issue, we appreciate and support the efforts by the Kansas Legislature to move forward with S.B. 50 in substantial conformity with the NCSL Model. It meets a significant need by clarifying when sellers and marketplace facilitators are required to collect and remit the State's sales/use tax in the aftermath of the U.S. Supreme Court's landmark decision in *South Dakota v. Wayfair*.

Sincerely,



Fredrick Nicely
Senior Tax Counsel

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director