

STEPHEN P. KRANZ
DIRECT LINE: 202.383.0267
E-mail: steve.kranz@sutherland.com

March 12, 2012

VIA HAND DELIVERY

Rep. Richard Carlson
Chair, Committee on Taxation
Kansas State Capitol
300 SW 10th St.
Room: 274-W
Topeka, Kansas 66612

Re: Opposition to HB 2763 Tax on Digital Goods

Dear Representative Carlson:

I am writing to express broad concern regarding the proposed tax on digital products in House Bill 2763 (“HB 2763”). I am a partner at Sutherland Asbill & Brennan LLP where I specialize in state and local taxation of digital goods and cloud computing services. This new tax will hurt the Kansas economy and create an incentive for high-tech businesses to locate in states that do not tax digital products or cloud computing services, like Missouri and Oklahoma. In addition, the proposed new tax suffers from a lack of clear sourcing rules for electronically transferred goods and services and, thus, may subject Kansas residents to double taxation.

Because of the substantial lack of clarity and the uncertainty that would be created by HB 2763, the Legislature will create an unfriendly atmosphere for businesses that sell digital goods in Kansas. For example, by attempting to tax “sounds, images, data, facts or information, or any combination thereof, transferred electronically, including but not limited to, specified digital products and other products transferred electronically not included within the definition of specified digital products,” the legislation may inadvertently impose multiple levels of tax on information and other services purchased and sold by Kansas businesses. Furthermore, because appropriate federal and state guidance for sourcing digital goods and services sold in interstate commerce does not currently exist, the legislation may lead to Kansas consumers being taxed twice for the same transaction. For instance, a Kansas resident may purchase a digital movie

Rep. Richard Carlson
March 12, 2012
Page 2

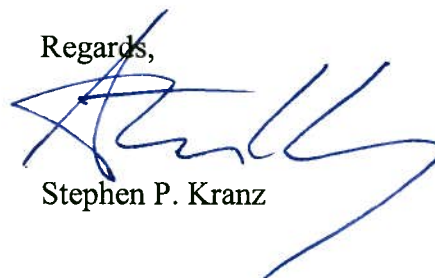
through an account with a Kansas address, but make that purchase while visiting family in Nebraska. Because of potentially inconsistent sourcing rules, that Kansas resident may face use tax obligations in both states.

Moreover, Kansas does not presently impose sales tax on the sale of digital goods, which are extremely price-sensitive. The location of a business in a particular state may hinge on whether the sales of digital goods are subject to tax. This is especially true when a viable, tax-free alternative for consumers is a screen tap away. HB 2763 sends a clear message to existing and start-up businesses: locate in a more digital-friendly state if you want to sell your digital goods without charging Kansas sales tax. Kansas is surrounded by states that do not tax digital goods. A Kansas entrepreneur could easily decide to locate his or her start-up digital business in Missouri, where the sales tax climate for such a business would be much more attractive if HB 2763 were enacted. Simply put, enacting this bill may ultimately damage the vitality of the Kansas economy by targeting a high-growth, high-tech industry.

Rather than rushing to tax digital goods, we respectfully request this Committee recommend a moratorium on taxing electronically transferred goods and services in order to study how any new taxes imposed thereon would affect the Kansas economy. In so doing, Kansas will have the needed time to invest in and develop this rapidly growing portion of the economy. Like many states, Kansas is hungry for good jobs for its citizens. The digital goods industry is well-situated to add important jobs to the Kansas economy. However, with this legislation, Kansas may squander that opportunity. Enacting HB 2763 is akin to placing a digital “not open for business” sign over the entire state.

I appreciate the Committee’s serious consideration of the issues arising from the proposed new tax on electronically transferred goods and services. For the above-stated reasons, I respectfully request that the tax on digital goods proposed in HB 2763 be rejected. I look forward to additional discussions on this important issue.

Regards,



Stephen P. Kranz

cc: Rep. Marvin Kleeb
Vice Chair, Committee on Taxation

Rep. Nile Dillmore
Ranking Minority Member, Committee on Taxation