



entertainment
software
association

March 6, 2012

The Honorable Les Donovan
Chair, Kansas Senate Standing Committee on Assessment and Taxation
Kansas State Capitol
300 SW 10th Street
Topeka, KS 66612

Dear Chairman Donovan:

On behalf of the Entertainment Software Association (ESA)¹, I am writing to oppose SB 376, an act concerning taxation, which would tax access to or use of computer software. We strongly believe that whatever revenue this tax might create would hinder Kansas' ability to grow its technology sector.

Taxing online services would discourage game publishers from locating server farms within Kansas. In recent years, the video game industry has made significant investments in online games, mobile games, casual and free-to-play games, and game networks, all of which are heavily dependent upon online services and digital distribution. Whether and how a state taxes these products and services have thus become increasingly important questions for our members.

SB 376 would tax subscription fees for online games and possibly other transactions. Notably, ~~the exceptionally broad approach reflected in SB 376 would impose burdensome new taxes on~~ Kansas residents and businesses, which may force purchasers to look outside Kansas when purchasing video games, software, and digital goods.²

Not only is SB 376 problematic for taxing innovative services, but its broad definitions create uncertainty about how games, game services, and add-on game content would be taxed. It is unclear whether games would be considered "software" or a "digital good." Both definitions are broad and ambiguous and would only add to the uncertainty and confusion in how to implement this new tax. Moreover, SB 376 does not clearly set forth sourcing rules that would determine when Kansas would have jurisdiction to tax online video games, remotely accessed software,

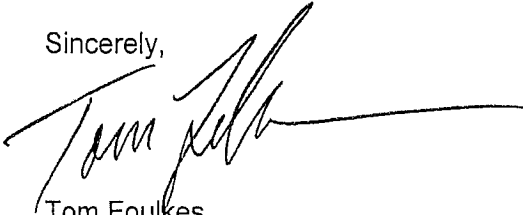
¹ The ESA is the U.S. trade association representing the publishers of computer and video games for video game consoles, personal computers, mobile phones, handheld devices, and the Internet. ESA members include: 38 Studios; 345 Games; 505 Games; Capcom USA, Inc.; Deep Silver; Disney Interactive Studios, Inc.; Eidos Interactive; Electronic Arts; Epic Games, Inc.; Her Interactive, Inc.; Ignition Entertainment; Konami Digital Entertainment; LEVEL-5 Inc.; Little Orbit; Microsoft Corporation; Namco Bandai Games America Inc.; Natsume Inc.; Nexon America, Inc.; Nintendo of America Inc.; Nival; NVIDIA; O-Games, Inc.; Perfect World Entertainment; SEGA of America, Inc.; Slang; Sony Computer Entertainment America; Sony Online Entertainment, Inc.; Square Enix, Inc.; Take-Two Interactive Software, Inc.; Tecmo Koei America Corporation; THQ, Inc.; Trion Worlds, Inc.; Ubisoft Entertainment, Inc.; Warner Bros. Interactive Entertainment Inc. and XSEED Games.

² Under current law, online video games, remotely accessed software, digital goods, and various other digital services are not subject to Kansas sales or use tax.

digital goods, and various other digital services, thereby creating additional uncertainty for Kansas residents and businesses.

Taken together, these concerns would present game publishers and entrepreneurs with a tougher decision on whether to open game studios and server farms within Kansas or look to other jurisdictions with more favorable tax policies. We urge you not to support SB 376.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Foulkes", with a long horizontal line extending to the right.

Tom Foulkes
Vice President, State Government Affairs