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Date: February 15, 2017  
To: House Committee on Taxation  
From: Michael Koss, Assistant City Attorney  
Re: HB 2177 – Neutral with concerns

The City of Overland Park appreciates the opportunity to provide information to the Committee regarding HB 2177. The decision to change from destination sourcing to origin sourcing for intrastate sales is an important one, and the City hopes the Committee carefully weighs the costs and benefits of such a change.

Although the exact impact of HB 2177 is difficult to determine, our analysis indicates that the City's annual sales tax revenue could be significantly impacted by the legislation. This is in large part a result of a significant increase in sales tax collections since 2009 for home construction due to the recovery in the housing market. The loss of these sales taxes could potentially result in the deferral or loss of capital improvement projects from which our citizens would otherwise benefit. With the other restrictions imposed on City revenues, it would be difficult, if not impossible, to find replacement revenue to make up for this loss.

The City also requests that the Committee consider the impact of HB 2177 on the constitutionality of local compensating use taxes (authorized by K.S.A. 12-198), in light of the U.S. Supreme Court's ruling in *Associated Industries of Missouri, Inc. v. Lohman*, 511 U.S. 641 (1994). If a sales tax of 8% applies to an intrastate transaction based on the origin's source, but the use tax results in a total 9% tax levy because it is destination-based, that would seem to implicate the Commerce Clause.

The City is also concerned that New Section 1(a)(3) could provide businesses with a loophole for opting out of their local sales tax rates. As a result of this provision, businesses may be able to choose to not source intrastate sales on an origin basis by failing to capture origin information in the "recordkeeping system... used to calculate the proper amount of sales or use tax."

Finally, the City asks that the Committee also consider how HB 2177 would impact the ease of transitioning to a federally-created system for collecting sales and compensating use taxes on remote internet purchases. The majority of states (33) that charge sales tax use a destination-based system, and the most realistic Congressional proposals have also contemplated such systems. Encouraging a federal solution to this unresolved issue by passing legislation similar to SB 111 should take precedence over changing the state's sourcing rules.

Thank you for the opportunity to submit testimony on this important issue.