

Date: March 20, 2107

To: Chairman Steven Johnson and House Taxation Committee Members

From: Cindy Green, Deputy Director

Re: Testimony in Support of HB 2400, Oral and Written

Chairman Johnson and Taxation Committee Members, thank you for the opportunity to testify in support of HB 2400 on behalf of the League of Kansas Municipalities member cities.

While many consider the collection of sales or compensating use tax from out of state retailers a federal issue, many states are frustrated with the lack of action in Washington, D.C and have taken matters into their own hands to pass laws to assist in the collection of sales and compensating use tax.

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. HB 2400 would require any out of state retailer, receiving gross revenues in excess of \$100,000 or delivering 200 or more separate transactions into the state, to collect the Kansas sales tax and remit to the Kansas Department of Revenue. This is not a new tax, but a potential new way to collect sales tax due to the state, cities, and counties.

The state, cities, and counties 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 declining, which inevitably means the current sales tax structure will continue to see declining revenue if remote sales are untaxed. The League estimates that Kansas cities are losing approximately \$45,000,000 to \$65,000,000 annually. These figures are based on a study performed by Bruce, Fox & Luna (2009). Over, the 10-year period the Highly Conservative Scenario shows cities lost \$369.2 million in tax revenue and the number continues to increase. Attachment 1, listing optimistic and conservative scenarios is attached to our testimony.

The graph on attachment 2 provides an example of increased online shopping during Thanksgiving weekend ecommerce sales from 2014 – 2016. On Thanksgiving Day, ecommerce sales increased from \$1.38 billion to \$1.93 billion; Black Friday from \$2.40 billion to \$3.34 billion;

and Cyber Monday from \$2.65 billion to \$3.5 billion. That is an increase of \$2.2 billion over just three days of sales on which sales or compensating use tax may not have been paid.

Brick and mortar sellers are at a 7-10% price disadvantage, depending on their location in Kansas compared to online sellers. 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 equitable the collection of sales and compensating use tax.

HB 2400 is comparable to South Dakota Senate Bill 106, which passed in 2016. The South Dakota law is in litigation (*South Dakota v. Wayfair*). A state trial court judge in South Dakota has ruled that the law requiring remote sellers to collect sales tax is unconstitutional. South Dakota is expected to appeal this decision to the South Dakota Supreme Court. If they rule against the state, the U.S. Supreme Court can then decide whether it wants to review the case.

In addition to the South Dakota case, Alabama is involved in a similar lawsuit, *Newegg v. Alabama Department of Revenue*. Given the changes in online shopping and technology, the belief is the Justices will be willing to hear a case to review the validity of *Quill vs. North Dakota* in 1992. It is time to make changes to allow states, cities, and counties an opportunity to collect taxes that are due.

Based on this testimony, the League of Kansas Municipalities requests you pass HB 2400 favorably out of committee and to the full House.

**Attachment 1****Lost Remote Sales Tax Revenue for Cities***All Remote Sales – Slightly Optimistic Scenario (in millions)*

<i>Year</i>	<i>Lost Local Revenue</i>
2006	23.3
2007	26.8
2008	29.3
2009	30.9
2010	37.2
2011	56.6
2012	67.1
2013	68.5
2014	74.3
2015	66.0
<i>Total</i>	<i>480.5</i>

*All Remote Sales – Highly Conservative Scenario (in millions)*

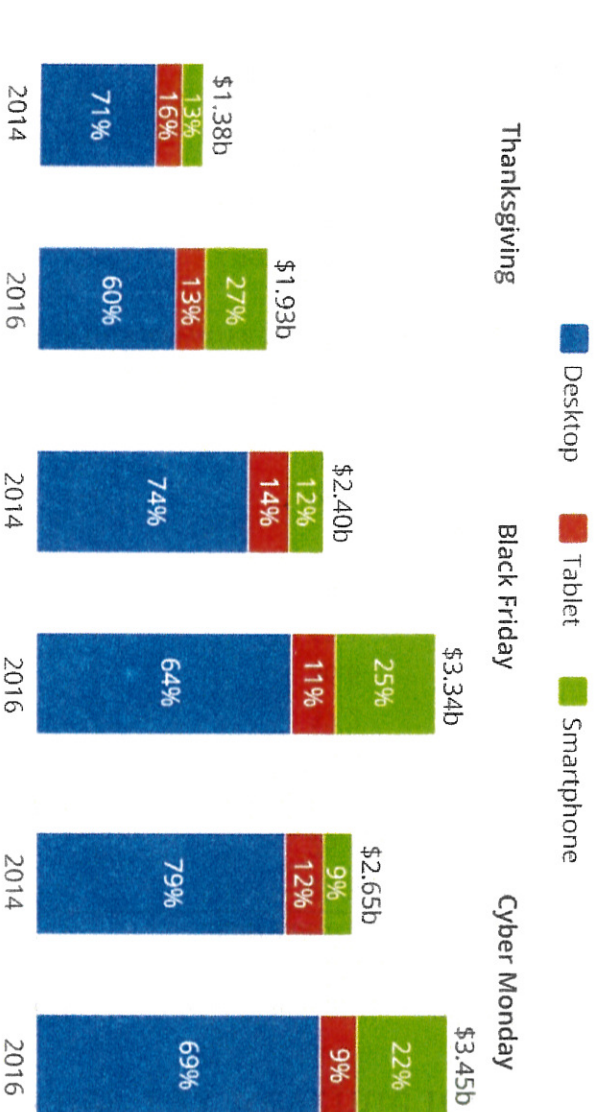
<i>Year</i>	<i>Lost Local Revenue</i>
2006	17.9
2007	20.6
2008	22.5
2009	23.7
2010	28.6
2011	43.5
2012	51.5
2013	52.7
2014	57.1
2015	50.7
<i>Total</i>	<i>369.2</i>



# The Effect of E-Commerce

## Thanksgiving Weekend E-Commerce Roundup

Thanksgiving weekend e-commerce sales in the United States, by device



Source: Adobe Digital Insights  
@StatistaCharts



<https://www.statista.com/chart/7045/thanksgiving-weekend-e-commerce-roundup/>