

Testimony in Opposition to HB2756

Kansas City Kansas Chamber of Commerce

Mr. Michael Smallwood, KCK Chamber of Commerce Legislative Affairs Committee Chairman

House Committee on Taxation

Thursday, March 1, 2018

Mister Chairman and members of the committee, my name is Michael Smallwood, Kansas City Kansas Chamber of Commerce Legislative Committee Chairman. I'm also President of Smallwood Lock Supply, Inc., a fourth generation family business that has been located in Kansas City, KS since 1912. On behalf of both organizations, I appreciate the opportunity to testify against House Bill 2756, which would compel out of state businesses to collect and remit sales taxes on sales made to destinations in Kansas.

To be clear, the Kansas City Kansas Chamber of Commerce believes that internet sales should be subject to sales tax. However, we support a Federal solution versus 45 individual state solutions with the corresponding compliance burden this approach brings, particularly to our small business members. Large national retailers are already collecting and remitting sales tax. The burden of a state by state approach falls squarely on the businesses with the least ability to comply, in effect giving preference to large national businesses over small companies.

The Federal solution should be structured using an Origin based model. Destination based models, such as HB 2756, have onerous compliance burdens which are impossible for small vendors to follow. There are 12,000 - 13,000 taxing jurisdictions in the United States, as well as varying degrees of what is and is not taxable. Consider this ... a Destination model is equivalent to requiring every brick and mortar store to collect and remit sales tax based on where the customer lives.

The Online Sales Simplification Act (OSSA), sponsored by Rep. Bob Goodlatte of Virginia, House Judiciary Committee Chair, provides an excellent framework. The OSSA is a modified Origin based model. Key features of the bill are a single tax rate per state, and, most importantly, remittance would be made to the vendor's home state, with compliance audits the prerogative of the vendor's home state only.

HB 2756 is modeled after state laws recently passed in Massachusetts and Ohio. These bills have been dubbed "Cookie Nexus" laws, and have already been challenged in court. Should Kansas proceed along a similar path, it will most certainly face similar litigation with its inherent costs, all in an effort to support a law which, according to the Grant Thornton accounting firm, is "particularly controversial".



The United States Supreme Court has taken a case to test the physical nexus rule established by the *Quill Corp. v. North Dakota* case. A decision is expected in June.

The KCK Chamber's recommendation to the Kansas Legislature would be similar to that of Professor Richard D. Pomp of the University of Connecticut School of Law who told Bloomberg Tax, "Right now, states are in a holding pattern." Professor Pomp added that states wouldn't want to establish a premature "second-best" solution before the court comes to a decision in June.

We also believe the Kansas Legislature should make known to our elected Federal officials that we support a small business friendly solution, such as the OSSA, to the issue of taxation of internet sales.

Thank you for the opportunity to provide testimony in opposition to House Bill 2756. I am happy to answer questions at the appropriate time.

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