



Chairwoman Tyson and Members of the Committee,

We appreciate this opportunity to submit testimony for SB 369, which requires small businesses sales through online marketplace to collect and send sales tax to Kansas state and local governments. Here are three points for your consideration:

1. SB 369 follows SCOTUS guidance
2. SB 369 's De minimis threshold is too low for Kansas
3. SB 369 broadens the base but does not lower the sales tax rate

SB 369 follows SCOTUS guidance

Under the *Wayfair* decision handed down by the U.S. Supreme Court, states have the authority to tax online sales in a manner that does not pose undue burdens on interstate commerce. Under this decision, the court provided a checklist, that if followed, strongly suggest state action would pass constitutional muster.

1. Safe harbor or De minimis threshold: Those who conduct limited business in the state should be exempt from sales/use taxation
2. State-level administration of all sales taxes in the state
3. Uniform definitions of products and services
4. No retroactive taxation
5. Simplified tax rate structure
6. Software: access to sales tax administration software provided by the state
7. Immunity: users of sales tax software are immune from audit liability

SB 369, if passed, put Kansas in compliance with 1 and 4. The other five items are met through Kansas's inclusion in the Streamlined Sales and Use Tax Administration or SSUTA.

SB 369's De minimis threshold is too low for Kansas

SB 369 should create a safe harbor for small and startup businesses with little economic nexus in Kansas. Failure to do so decreases the scale of interstate commerce in Kansas or worse; it encourages illegal market activity.

Wayfair established the safe harbor as part of their larger test and suggested that South Dakota's law would be found constitutional. South Dakota represents 0.3% of national sales and has set a de minimis threshold for sales taxation of out of state sellers of \$100,000 and/or 200 transactions. Kansas represents 0.8% of national sales. **As such, SB 369 threshold should be set at roughly \$311,000 and/or 600 transactions.**

SB 369 broadens the base but does not lower the sales tax rate

For tax bills to be considered optimal or near-optimal tax policy a good rule of thumb is whether it broadens the tax base and lowers the tax rate. The reason such a rule is considered is because it decreases volatility of tax revenues to the state while also keeping taxes on a personal basis at a constant level. Though SB 369 follows SCOTUS guidance to not place an undue burden on interstate commerce, not lowering Kansas's sales tax rate means Kansans will ultimately send more tax dollars to state coffers.

Kansas has the 8th highest sales tax rate in the nation¹. The state government also passed a record income tax increase in 2017. Outside of constitutionality, SB 369 in its current form invites consequences for the economic health of Kansans.

We urge the committee to consider these points for action on SB 369.

¹ <https://taxfoundation.org/sales-tax-rates-2019/>