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MEMORANDUM

To: Members of the House Committee on Taxation

From: Adam Siebers, Assistant Revisor

Date: March 16, 2021

Subject: House Bill No. 2395

Summary

House Bill No. 2395 requires the collection and remittance of sales, compensating use and transient guest taxes and prepaid wireless 911 fees by marketplace facilitators with sales subject to tax.

Section 2 – defines a “marketplace facilitator” as a person that, pursuant to an agreement with a marketplace seller, facilitates sales by such marketplace seller through a physical or electronic marketplace operated by the person and takes any of the actions listed in the bill. "Marketplace seller" is defined as a seller that makes retail sales through any physical or electronic marketplaces operated by a marketplace facilitator regardless of whether the seller is required to be registered with the department.

Section 3 – requires a marketplace facilitator to collect and remit sales tax starting July 1, 2021, for sales made through the marketplace.

Section 4 – the marketplace facilitator would be required to provide KDOR information that is reasonably necessary to enforce the provisions of the act. The marketplace facilitator would be relieved of liability if provided incorrect information by a marketplace seller. Marketplace sellers would not be obligated to collect and remit sales tax if the marketplace facilitator was obligated to collect and remit. Purchasers would no be able to bring a class action against a marketplace facilitator for claims related to the overpayment of taxes collected by the marketplace facilitator.

Section 7 – requires marketplace facilitators to also collect and remit transient guest taxes and 911 fees.

Section 11 – amends the nexus provisions in K.S.A. 79-3702 removing references to “referrals” for nexus for retailers doing business in this state and provides nexus for retailers that “sells tangible personal property or services for or on behalf of the retailer.”