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300 SW TENTH AVENUE ▪ SUITE 24-E ▪ TOPEKA, KS 66612 ▪ (785) 296-2321

MEMORANDUM

To: Members of the House Committee on Taxation
From: Adam Siebers, Assistant Revisor
Date: March 22, 2021
Subject: House Bill No. 2173 (**with SB 50 changes noted**)

Summary

HB 2173 and SB 50 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 in the state in excess of \$100,000.

Section 1 defines a “marketplace facilitator” as a person, including an affiliate, that contracts or agrees with a marketplace seller to facilitate for consideration the sale of the marketplace seller’s products or rooms, lodgings or accommodations through a physical or electronic marketplace or platform and collects the payment from the purchaser to transmit to the marketplace seller. **SB 50 changed “lodging establishment” to “hotel”.**

The term “tax” for purposes of this act means: (1) The retailers’ sales tax; (2) the compensating use tax; and (3) the transient guest tax.

Section 2 provides that any marketplace facilitator selling or facilitating sales of property or services subject to tax in this state shall be required to collect and remit such tax, if the marketplace facilitator in the previous calendar year: (1) Makes sales of property or services otherwise subject to tax in this state in an amount exceeding \$100,000; or (2) makes or facilitates the sales of property or services subject to tax in the state for delivery into the state in an amount exceeding \$100,000.

The bill includes provisions for a waiver of the requirements under certain conditions when a marketplace facilitator can demonstrate that substantially all of its marketplace sellers are already collecting and remitting taxes to the department of revenue. If such a waiver is granted, the taxes shall be collectible from the marketplace seller.

Any marketplace facilitator obligated to collect the taxes under the act would also be required to collect and remit applicable prepaid wireless 911 fees beginning (April) 1, 2022. (was “July” in HB 2173)

Section 3 sets forth liability and audit provisions. The department of revenue may waive penalties and interest if reasonable cause exists.

Section 4 provides that a marketplace facilitator shall not be required to collect and remit any taxes from sales occurring prior to July 1, 2021.

Section 5 would amend the nexus statutes in K.S.A. 79-3702 to include the definition of a “retailer doing business in this state” any retailer who had in excess of \$100,000 in cumulative gross receipts from sales by the retailer to customers in this state during the period January 1, 2021, through June 30, 2021, or during the current or immediately preceding calendar year. A retailer who satisfies the threshold in the current calendar year for the first time would be required to collect and remit the tax on sales in excess of \$100,000.

K.S.A. 79-3702 would also be amended to remove the click-through nexus provisions.