

FISCAL NOTE
Requested by Legislative Council
01/21/2019

Bill/Resolution No.: SB 2338

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2017-2019 Biennium | | 2019-2021 Biennium | | 2021-2023 Biennium | |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2017-2019 Biennium | 2019-2021 Biennium | 2021-2023 Biennium |
|-------------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2338 changes the definition of retailer and defines a "marketplace facilitator" for the purposes of the collection of sales and use taxes from remote sellers.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sections 2 and 4 deal with the sales and use tax collection requirements of the marketplace facilitator.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, SB 2338 is likely to increase state general fund and state aid distribution fund revenues in the 2019-21 biennium. The amount of the increase cannot be determined.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 01/29/2019

2019 SENATE FINANCE AND TAXATION

SB 2338

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2338
1/30/2019
Job #31800

- Subcommittee
 Conference Committee

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| Committee Clerk: Alicia Larsgaard |
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Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact sections 57-39.2-02.3 and 57-40.2-02.4 of the North Dakota Century Code, relating to collection of sales and use tax by marketplace facilitators; to amend and reenact subsection 22 of section 57-39.2-01, and subsections 6 and 7 of section 57-40.2-01 of the North Dakota Century Code, relating to the definition of retailer and retail sale; and to provide an effective date.

Minutes:

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| Attachments: 2 |
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Vice Chairman Kannianen will take over the hearing as Senator Cook introduces the bill.

Chairman Kannianen: Called the hearing to order on SB 2338.

Senator Dwight Cook, District 34, Mandan: Introduced the bill. We have collection authority now and an economic threshold. Anyone that sells more than \$100,000 into the state of ND is required to collect our tax. There are situations where people manage to get around them. One of the people are market place facilitators. Amazon is probably the biggest marketplace facilitators. They have many different companies that sell through them. Amazon does not collect the sales tax; this bill would bring them in. Miles gave me this handout. See attachment #1. He just googled market place facilitators. You will see a lot of familiar names. That is what this bill is about; bringing them back in so they have to collect and remit our sales tax also.

Senator Unruh: Yesterday, I purchased a dress on Amazon and I did not pay sales tax.

Chairman Cook: Take it up to the 8th floor and pay your use tax.

Senator Unruh: I will go do that now, especially since it is on the record.

Chairman Cook: I made the mistake of admitting that I didn't pay any use tax on some shoes. It was on the record and Rick Clayberg with the Tax Commissioner said "here" and I went up and did it.

Dee Wald, Tax Department: Testified in favor of the bill. This bill is intended to get those marketplace sellers who sell on a marketplace facilitator such as Amazon website, and require Amazon to collect those sales tax on the sales it facilitates. Walmart, Etsy, Poshmark and over 200 others do this. We will walk through this bill now and the changes. The first change is on page 2 lines 3-6. Back in the 1987 session, that language was enacted. We do not need that so we are removing it. Section 2 is the meat of the bill. The first few pages are definitions. Line 15; market place is the electronic place where one or more marketplace sellers offer for sale, its products. That can be inside or outside the state. A marketplace facilitator is one that also contracts with the sellers and there is a two-part test. The first part begins on line 26. It requires, to be a marketplace facilitator, to engage in one or more of the following transactions. The first one on line 28, is when you relay the offer and acceptance between the buyer and the seller. That is Amazon and Etsy, etc. The second thing, is to own the infrastructure. On page 3; we have a very broad definition of marketplace facilitator which is what other states are doing. The reason for that is so we can try to be ahead of what these companies are doing. We anticipate some marketplace changes in the way they do business to try to get around some of this. We are modeling our after Washington and they have been wildly successful. Right now, those subdivisions on paragraphs 3-4 were waiting to see what happens. In addition, that marketplace facilitator has to do one of the following things under C. They have to process the payments for the seller's product, fulfil or store the product, lift the products for sale, setting prices, branding sales as those of the facilitator, advertising promotion, or providing customer service. To be a market place facilitator you have to engage in at least one of the things under B and at least one under C. On page 3, lines 19-22, I was participating in a white group that put together a white paper on marketplace facilitators where the states were looking at what the best practices were. One of the comments received was from one of the payment processors such as PayPal. They wanted to make sure they weren't pulled into this somehow. We added some language that said if you are square, you are not a marketplace facilitator. On line 23, we defined marketplace seller. The meat of the bill and also the most important starts on line 27. This is the part that imposes the tax on the marketplace facilitator who is facilitating sales in which does not have a physical presence in the state. If the retailer they are selling for, is subject to taxation. With remote sellers, that is pretty much everyone who sells into this state.

Senator Cook took over the hearing.

Chairman Cook: A market place seller that does not meet the \$100,000 threshold, selling under a market place facilitator who does meet the \$100,000, the marketplace facilitator would have to collect and remit the sellers tax?

Dee Wald: That is correct. Those sales do not count towards that sellers own sales. They could sell on their own platform or website. They will have two thresholds; the remote seller that has its own sales, and then the marketplace that uses all of its sales for its \$100,000 threshold.

Chairman Cook: So you have a remote seller in MN selling directly into ND and sells \$80,000 per year. Then he sells on a marketplace facilitator in which he sells \$20,000 into ND. The only sales we would get tax collected on are the sales through the marketplace facilitator

Dee Wald: That is correct.

Senator Dotzenrod: You mentioned that the marketplace facilitator is a three-part test. It looks like under B on page 2, you have to have 2 of those and under C on page three, you have to have 2 of those. Then the other is under A or what is the third one?

Dee Wald: I consider a three-part test. Test one is when they have to have a contract with the seller. That is test one which is on line 22. Under B, you have to do just one of those and then again, just one under C. Continuing on the imposition of tax on the marketplace facilitator, on the top of page 4, we indicated the \$100,000 threshold applies to the facilitator. I can't imagine a facilitator that wouldn't meet that and then again when they have to begin collecting the tax. If they hit the threshold, then they start for the following calendar year, or 60 days after they hit the threshold which is the same as some of the changes made in SB 2191. That bill got rid of the 200 transactions.

Senator Patten: How easy is it to track these things?

Dee Wald: For example, the remote sellers; when Wayfare over turned quill, we sent out letters to the top 1,000 remote sellers. We are just getting ready to send letters to those who didn't comply. We are making huge efforts to get these people on board. Out of that 1,000 some of them are overseas and some don't make sales into the state. With respect to the marketplace facilitator in every state that has passed this law, the marketplace facilitator has begun collecting the tax right away. Amazon was supportive of the work we were doing to get the facilitator to collect the tax. Facilitators are just waiting for the legislation to do so. On line 5, we are clarifying that a marketplace facilitator is now considered the retailer. We require them to collect and remit the tax as well as be responsible for all other obligations under the sales tax law as if they were the true retailer of the sale and keep records. We also require that it certifies to its market place sellers that it will collect the tax. That will allow the marketplace seller to exclude those sales from its threshold and make sure we will not audit those sales made through the facilitator.

Senator Unruh: Is that how other states are doing it, with the scenario that Senator Cook stated earlier about the \$80,000 and \$20,000 and meeting that threshold through their own sales?

Dee Wald: There are a lot of different thresholds. Most are hitting that \$100,000. It just depends on the size of the state. Tennessee has \$500,000, Michigan is \$100,000 or \$200,000. A lot of the states are going to get rid of the 200 transactions because that is probably hitting a lot of the smaller retailers.

Chairman Cook: There is also a discussion in other states that the \$100,000 for smaller states such as ND is too high. If you are a remote seller, you are going to reach \$100,000 selling into New York a lot quicker than you are in ND. We need to start looking at lowering that number.

Dee Wald: That section is making them the retailer and relieving the seller of liability if they have provided all the information. The certification is to the seller. I will read page 4, line 25. This section provides that the marketplace seller is not reliable for the tax if it meets these

three conditions. One is that the marketplace facilitator has a system in place to require the seller to provide accurate information to the facilitator. The facilitator has to have made an effort to get accurate information from the seller. If they fail to collect and remit tax because the marketplace seller gave them incorrect information about the product, one could be taxable and the other could possibly not be.

Chairman Cook: So the marketplace seller is responsible to make sure that it's the right product code.

Dee Wald: That is correct. There is some responsibility on the marketplace seller to correctly give information to the facilitator. The other time is if the marketplace facilitator and seller are not affiliated. That would be your typical marketplace seller and facilitator. Amazon is a good example of an affiliated company. They have 4-5 different arms that all do different things. If they incorrectly collect tax on certain taxes, they will be reliable for the tax. One of the issues we have was with respect to exempt sales. We were providing a very limited refund procedure to tax exempt entities and that begins on page 5 line 11. If you qualify for an exemption under those subsections; I will tell you what those are. Five is textbooks, 6 is hospitals, and 52 is Native American sales if they are exempt. They are exempt right now from sales tax. We are providing a limited refund for them. It has to be done almost like the Canadian refund where they have to give us receipts. The total tax that was charged to them, was more than five dollars. They can accumulate their receipts to get to over that \$5 threshold. We are doing that because we can't issue a refund if it is \$5 or under.

Chairman Cook: Under the company that is under the \$100,000 threshold, selling into the reservation; can they get a refund for tax collected there also?

Dee Wald: No. This is what this bill is attempting to address.

Chairman Cook: This isn't just for Native American sales made by a market place facilitator, it would be made by any seller that is over the \$100,000 threshold?

Dee Wald: This provision only applies to the marketplace facilitator.

Chairman Cook: Do we have a similar provision?

Dee Wald: No.

Chairman Cook: Does the sales tax travel agreement bill that we introduce tomorrow morning have it?

Dee Wald: That would resolve the issue because there would be tax collected.

Dee Wald: Under line 19, this is class action protection for the market place facilitator. We could see situations if certain purchase of the products has been over charged for sales tax or they think they have been. North Dakota does not allow a class action for sales tax or incorrect collected tax. This is just giving the marketplace facilitators some comfort. On line 23, is the effective date. We are giving them until October 21, 2019 if this bill passes. There are 11 states that are already collecting on this with 6 states that have pending legislation.

Our neighbor down south has marketplace facilitator statutes and so does our neighbor to the east. The one drafted here is close to SD. This has been considered by other states to be the best practices.

Chairman Cook: How long has SD had it?

Dee Wald: Not quite a year. If you want to look at how this would impact ND, products sold on Amazon that are fulfilled by Amazon, as of 2017 they had 140,000 sellers. Those amounts are growing more than 50%. It is a very fast and growing method of selling.

Chairman Cook: I remember last session having the annual report from Amazon that they had over 100,000 sellers selling over \$100,000 per year.

Dee Wald: Talking to Washington state which was the first one that had this; they went from nothing to \$300,000 in a very short amount of time.

Chairman Cook: I assume the rest of the bill is the same thing only use tax?

Dee Wald: That is correct. On behalf of Ryan Rauschenberger I would like to state the tax department supports this bill.

Senator Dotzenrod: We have been referring back to the \$100,000. I don't see it anywhere in the bill. It must be a reference to the section. Which section is that?

Dee Wald: On page 4, line 1 is where you see that.

Chairman Cook: Further testimony in support?

Mike Rud: Testified in support of the bill. There are about 16 states that have implemented this. It is interesting when you talk about the expanse of this. I found some information that said nearly half of the online sales in 2018 came through a marketplace. It is a huge business and these sales should abide by the same rules as all the other sales. We want to keep building on the momentum and we urge a do pass of this bill.

Bill Wocken, ND League of Cities: Testified in favor of the bill. See attachment #2. Word for Word.

Chairman Cook: Further testimony in favor? Testimony opposed? Neutral?

Senator Dotzenrod: We passed a bill in the last session that would take place if there was a successful resolution in the courts. That has kicked in. I assume that the transactions online that are not done by a marketplace facilitator are covered already. Correct?

Chairman Cook: If you are a remote seller that is summoned into ND and you have sales of less than \$100,000, those are still not being collected or remitted. Are there any others?

Dee Wald: As of Monday, we had 2,639 remote seller register with us. We have collect \$400 million in tax since October 1 when it officially began. That is up to the state. We have yet to get the holiday sales.

Chairman Cook: We don't have the total 4th quarter sales collected because of Wayfare? Is it safe to say there is \$100 million out there?

Dee Wald: That is correct and yes there could be. This would be the December and quarterly filers. The return is due at the end of December and you have to file it by the end of the following month.

Senator Patten: Where are we going to spend that money?

Dee Wald: I think the forecast assumes ten.

Senator Dotzenrod: Can I assume that this 2,639 includes some marketplace facilitators?

Dee Wald: Amazon is in there because they have a physical presence. They are only collecting tax on their own sales.

Chairman Cook: I got an email from Craig Johnson which said that we have now crossed streamline with 5,000 plus remote registrations. We now allow a seller to remotely register with streamline, and pick the states they want to collect in. Is it safe to say the 2,400 have chosen not to collect for ND?

Dee Wald: They could not have sales or aren't collecting here. We are getting a lot of applications from our own website. There could be a number of reasons why but I am assuming a number of them are through streamlines.

Chairman Cook: Everything has worked fine. Have you had any major glitches?

Dee Wald: It has been pretty simple to implement. We were prepared.

Senator Dotzenrod: If you have some sort of person that is selling products on eBay and they are handcrafted in which they make at home. Their sales they make in a year is probably \$10,000-\$15,000. Because they are going through a marketplace facilitator, will those sales be sales tax collected?

Dee Wald: Yes.

Chairman Cook: But the marketplace facilitator will take care of the burden.

Senator Unruh: Moved a Do Pass.

Senator Meyer: Seconded.

Senator Dotzenrod: I think this is well done. It looks like they thought of a lot of different circumstances such as refund. They even worked with other states and got a lot of input. Good work.

Chairman Cook: It has been greatly discussed. One of our biggest concerns before we got Wayfare was the software system that we had in place for central registration. We looked at the date in the future where all of a sudden we could get collection authority. We thought of the challenges when the affordable care act was implemented and the crash. We didn't want a crash. We spent a lot of money on updating the software. I am so happy that didn't happen. The house passed a bill this session that will allow out of the 4 governing board members for one to be from the tax department. That will be Miles.

A Roll Call Vote Was Taken. 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Cook will carry the bill.

Date: 1-30-19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2338

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Unruh Seconded By Meyer

| Senators | Yes | No | Senators | Yes | No |
|-------------------------|-----|----|-------------------|-----|----|
| Chairman Cook | ✓ | | Senator Dotzenrod | ✓ | |
| Vice Chairman Kannianen | ✓ | | | | |
| Senator Meyer | ✓ | | | | |
| Senator Patten | ✓ | | | | |
| Senator Unruh | ✓ | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Cook

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2338: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2338 was placed on the Eleventh order on the calendar.

2019 HOUSE FINANCE AND TAXATION

SB 2338

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2338
3/11/2019
33493

- Subcommittee
 Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to collection of sales and use tax by marketplace facilitators; relating to the definition of retailer and retail sale.

Minutes:

Attachments 1-2

Chairman Headland: Opened hearing on SB 2338.

Dee Wald, General Counsel for the Office of the State Tax Commissioner: Introduced bill. The North Dakota Office of the State Tax Commissioner is in support of this bill. This bill is a companion to the remote seller bill. It focuses on marketplace facilitators; Amazon, Etsy, EBay, Poshmark, etc. These different entities have a bunch of small sellers on there and they are not responsible for collecting the tax. It is difficult for us to try and find all these remote sellers. Amazon, who has collected tax in North Dakota for a long time, only collected on those sales that were made by them directly. They have two other market models; one is fulfilled by Amazon so they don't collect tax on those and then there are third party sellers who just list their products on Amazon. We're trying to make the marketplace facilitator responsible for collecting and remitting the sales tax on behalf of all the people selling on its platform. On Amazon Marketplace they have 140,000 sellers who are not collecting sales and use tax in North Dakota. There are 44 states who currently have remote seller laws and of those 38 have enacted or are enacting marketplace fairness legislation. Marketplace sales are growing by 35% in 2019. The five states that don't have sales tax are Alaska, Florida, Oregon, New Hampshire, and Montana. Dee walked through the bill. On page two we are removing the Quill language which was part of the statute that was enacted back in 1987 to go after Quill. We were unsuccessful so we are removing that language. Section two defines a marketplace. The marketplace facilitator begins on line 21. You have to go through three tests and you have to meet one of those three. The tests are listed in a, b, and c. In subsection two payment processors came in. The way it is written it appears that we are covered by this and we would have to collect sales tax on the sales that somebody uses Square for. It doesn't but to give them some comfort we put that in there. The definition of a marketplace seller is on line 23 which is the same as any seller who sells tangible personal property only this seller is doing it through a marketplace. On line 27 this section of the law makes marketplace facilitator a retailer under our law and is subject to the thresholds. Then you have to start collecting the tax 60 days after the threshold is met or after the first calendar

year. With regard to the \$100,000 threshold, you use the marketplace facilitator's threshold and the seller doesn't count marketplace sales towards its \$100,000 threshold. On page five line three that makes a marketplace facilitator subject to all the requirements of other retailers in the state. In d we are providing protection to the seller. On page five line one that marketplace seller relied on incorrect information so the marketplace seller may be subject to tax because they did something affirmatively that made that marketplace seller not collect the tax. On page five line 13 we are providing a very small exception to our current rule that requires a consumer go back and get overpaid sales tax from its retailer then the retailer files a refund claim with us. Here we are going to let the consumer, if they fall within one of those five subsections of the sales tax law, directly file a claim with us but it has to be five dollars or more. They can collect their receipts until they hit that five-dollar threshold. Line 19 we are prohibiting class action lawsuits on behalf of purchasers. That was an industry request. If we wanted them to do this, then this was something we could give them. We do not have class action lawsuits by taxpayers in North Dakota so it really doesn't do much. On line 23 this bill would be effective for October 1, 2019 sales. The rest of the bill remains the same. On page 10 the effective date is changed to July 1, 2019.

Representative Ertelt: Can you clarify section two of the bill where the marketplace facilitator needed to meet one of the three in a, b, or c.

Dee Wald: That's correct.

Representative Ertelt: I see the word "and" at the end of each one of those subsections. I assume they have to meet each one of those.

Dee Wald: That's correct.

Representative Mitskog: Effective October 1, 2019, do we really need to give them that much time because that's a lot of lost revenue?

Dee Wald: In the Wayfair decision it didn't get rid of the undue burden requirement so when we do that October 1 date we're giving them time to set up and not making it so burdensome for them because they are going to have to get information from their retailers.

Representative Mitskog: It isn't starting from ground zero. If other states have enacted legislation, then I would assume systems would be in place.

Dee Wald: They might have the software and the ability to do so but they are going to have to map the taxability and exempt the nature of our sales tax law. That's why you have to give them time.

Representative B. Koppelman: In section two I'm wondering if websites used are similar to a rummage sale so a lot of those things aren't taxed unless it's a retail operation. Does this rope those three websites into that so if I was putting something personal on there then my customers are paying sales tax?

Dee Wald: No. That is still considered a casual sale unless you are in the business of doing that. It's important we get those sales. They have to report to us anyway if they've had 200

or more transactions or \$100,000. This is almost relieving the burden on those smaller sellers too.

Representative B. Koppelman: Couldn't you say that BisMan and Craigslist are creating a marketplace?

Dee Wald: BisMan Online is a referrer, not a marketplace facilitator. All of the payments occur between the buyer and the seller.

Chairman Headland: Why is there a different effective date? The act is effective July 1 but does that mean the use tax would be October 1?

Dee Wald: We mirror in the use tax law what's in the sales tax law so there isn't a different effective date. It's to make it clear. The effective dates are the same.

Chairman Headland: I see that now. It's on the final page in subsection seven.

Dee Wald: The 60-day threshold is on page eight lines 20-21.

Representative Kading: Some of these marketplace sellers are based in China and other countries. How do you deal with that?

Dee Wald: I don't know for sure but if you're going to conduct business in the United States then you will usually have to have some sort of subsidiary so I'm assuming they have some presence in the state.

Representative Ertelt: Do we define Craigslist as marketplace sellers in the code?

Dee Wald: No, we did not define or except them in code. Based on what we did in the work group we just left them out. In the industry everybody knows what a referrer is.

Chairman Headland: Testimony in support?

Mike Rud, North Dakota Retail Association: Retailers are the backbone of every economy. One of every four jobs is covered in the retail sector. It's estimated that nearly ½ of all online sales in 2018 occurred in a marketplace. They grew by 23% from 2017 to 2018. We stand in strong support. It's another source for you to take a look at generating money for roads, schools, law enforcement, and whatever else the state might need general fund money for. We believe the idea that one kind of sale should be treated differently than another just because it was sold in a marketplace and not specified as an online retailer is the equivalent to keeping the disparity between the brick and mortar and online sales. We ask you keep the momentum going forward and give this a do pass recommendation.

Chairman Headland: Would Machinery Finder, Auto Trader, or Tractor House going to be a marketplace facilitator?

Mike Rud: You should ask Dee that question.

Chairman Headland: Further support?

Bill Wocken, North Dakota League of Cities: Distributed written testimony, see attachment 1. Ended testimony at 27:07.

Chairman Headland: Further testimony in support? Is there any opposition?

Amy Lunde with GA Group, representing Ticket Network: Introduced Darnell Goldson, the director of Legislative and Governmental Affairs for Ticket Network.

Darnell Goldson, Director of Legislative and Governmental Affairs for Ticket Network: Distributed written testimony, see attachment 2. Ended testimony at 31:00.

Chairman Headland: Do you sell tickets in all 50 states?

Darnell Goldson: We sell tickets in all 50 states and internationally.

Chairman Headland: Is there any state who already has this law implemented?

Darnell Goldson: In our expectation within the next few years probably all states will do this. Some states have exempted us and some haven't. I can get that list to you.

Representative B. Koppelman: What makes your selling platform software different from EBay?

Darnell Goldson: We only sell tickets. EBay sells goods and services, we do not. We facilitate the sale of tickets.

Representative B. Koppelman: I believe tickets are subject to sales tax here. You're a software so you collect money and give it to somebody else. EBay is a software that collects money and gives it to somebody else. You both have products you display. What makes you different from EBay in the way you conduct yourself in the software where you should be exempt and they shouldn't?

Darnell Goldson: I'm not suggesting that EBay not be exempted. I'm suggesting that our industry certainly should be exempted. Tickets are being sold and resold now. We are not selling them we are just providing a platform for them to be sold. We're not suggesting those tickets shouldn't be taxed we're saying that we shouldn't be the organization that collects the tax and is responsible for that tax.

Representative B. Koppelman: You're a consigner. You're not taking possession of the tickets and putting them in your retail store then selling them. You're collecting money and completing the sale. We'd have to talk to the tax department and see how consigners are handled.

Chairman Headland: How do you facilitate the sale? I'm a season ticket holder and when I resell my tickets there is a certain amount that will go to that team or organization. You're

providing a service and getting a cut for it so that would fall under our use tax as a service so why shouldn't at least that portion be taxed?

Darnell Goldson: That portion is taxed. We collect taxes on portions from the customers and from the sellers. We are not suggesting we not be taxed because we are taxed. We are suggesting that we shouldn't be the collector of the taxes for these sellers who own the property, who hold the property, and sell the property. We don't do either of those things.

Chairman Headland: You will be remitting sales tax to the state of North Dakota on any ticket that you resell, at least on the portion of revenue you receive for your part in the sale?

Darnell Goldson: We don't sell tickets so we won't be remitting sales taxes on those tickets. We will be remitting taxes on the services we provide to those ticket buyers and ticket sellers, which we already do.

Chairman Headland: We'll have to get a clearer explanation from how our tax department does it. Is there further testimony in opposition?

Reverend Carol Two Eagle: We sell on EBay and platforms like that. I'm in opposition to the bill simply because more than 85% of our business is overseas and I can't find that anywhere in the bill that it is covered. Overseas buyers are already getting hit with large shipping charges. It costs \$13.50 to ship a three-ounce package anywhere in the world and we ship by USPS. This compromises us considerable. We haven't done \$200 in North Dakota in the past eight years and we haven't done \$500 in the past 12 years. We maintain a manufacturing facility here and we ship but we don't have a store front. I would like the issue of selling overseas addressed. They are already getting hit with customs charges as well as shipping. We do business with 44 countries. Our total income from this is only around \$20,000 a year. I live on a vow of personal poverty earning \$1 a month. I think this needs desperate attention.

Representative B. Koppelman: Under our current law in sales tax because you are based in North Dakota you have a nexus here. I don't believe this was put in the way it was proposed because it's only saying that EBay would collect North Dakota tax on sales that were to a North Dakotan. If you're selling to someone in France, I don't believe North Dakota would be looking for EBay to collect North Dakota tax.

Reverend Carol Two Eagle: That would be wonderful. I hope you can get that across to EBay. They try to collect sales tax on shipping and we don't make any money on shipping.

Representative B. Koppelman: We can ask the tax department about that.

Chairman Headland: Further opposition? Dee, could you address the amendment that was handed to us? Would this be contrary to what we're trying to accomplish here?

Dee Wald: Yes, this opens up some opportunities for carve outs for other kinds of entities that do business similar to Ticket Nation. They could have EBay come in and ask you the same thing. They reference that they are reselling tickets. Even consignment stores are subject to sales tax. There are equities for the resale. That's a policy decision you'll have to

make as a committee. Regarding your tractor question, it's the exempt used farm machinery so you're not paying tax on that at all. Wherever the sales go to is where the tax is collected.

Chairman Headland: Is there anything else? Seeing none we will close the hearing on SB 2338.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2338
3/13/2019
33641

- Subcommittee
 Conference Committee

| |
|-------------------------------|
| Committee Clerk: Mary Brucker |
|-------------------------------|

Explanation or reason for introduction of bill/resolution:

A bill relating to collection of sales and use tax by marketplace facilitators; relating to the definition of retailer and retail sale.

Minutes:

| |
|----------------|
| No attachments |
|----------------|

Chairman Headland: We were given a proposed amendment by Ticket Network during the hearing. We were told by the tax department that this amendment is contrary to what we we're trying to do with the bill. I would hope that we could look at passing the bill without it but we're open for discussion.

Representative B. Koppelman: MADE A MOTION FOR A DO PASS

Representative Steiner: SECONDED

Chairman Headland: Discussion?

ROLL CALL VOTE: 11 YES 2 NO 1 ABSENT
MOTION CARRIED

Representative Hatlestad will carry this bill.

Date: 3-12-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2338**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Koppelman Seconded By Rep. Steiner

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------------|-----|----|------------------------|-----|----|
| Chairman Headland | X | | Representative Eidson | X | |
| Vice Chairman Grueneich | X | | Representative Mitskog | X | |
| Representative Blum | X | | | | |
| Representative Dockter | X | | | | |
| Representative Ertelt | | X | | | |
| Representative Fisher | X | | | | |
| Representative Hatlestad | X | | | | |
| Representative Kading | X | | | | |
| Representative Koppelman | X | | | | |
| Representative Steiner | X | | | | |
| Representative Toman | | X | | | |
| Representative Trottier | X | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 11 No 2

Absent 1

Floor Assignment Rep. Hatlestad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2338: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2338 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2338

1/30 SB 2338 # pg.1



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58 Leading Online Marketplaces Worldwide | Practical Ecommerce

<https://www.practicalecommerce.com/e-commerce-marketplaces-worldwide>

Jul 23, 2018 - North America. Amazon is the largest ecommerce company in the world. Bonanza is a seller-friendly marketplace with more than 10 million items. Cratejoy is a marketplace for selling subscription boxes.

Top 11 Other Sites Like eBay: eBay Selling Alternatives 2017

<https://www.nchannel.com/blog/other-sites-like-ebay-alternatives/>

Oct 16, 2017 - Other Sites like eBay Honorable Mentions. Craigslist - Classified ads site that focuses on selling to local buyers. Walmart Marketplace - Put your product in front of over 110 million Walmart buyers. Sears Marketplace - Check out their 20 major merchandise categories and sell your products alongside Sear items.

Alternatives to eBay: The 8 best places to sell in 2019 | SaleHoo

<https://www.salehoo.com/blog/sick-of-ebay-try-these-alternative-places-to-sell>

Jump to Amazon - Amazon: A Major Marketplace like eBay, but Cheaper. It's almost ... The world's largest online book store, sure, but it only sold books.
10 Places to Sell Online · Is eBid a Viable Alternative to ... · Pros and Cons



10+ sites like Amazon for online shopping | finder.com

<https://www.finder.com/sites-like-amazon>

We've found 14 online marketplace sites like Amazon that will blow Amazon out of the water with unique finds, lower prices and cheap shipping.
eBay · UnbeatableSale.com · Barnes & Noble · Walmart

7 Amazon Alternatives: Best Marketplaces To Help You ... - Web Retailer

<https://www.webretailer.com/lean-commerce/amazon-alternatives/>

Apr 12, 2018 - The more marketplaces you add, the easier it will be to sustain your ... Like Amazon, Walmart is a retailer, so if you are accepted to sell on their ...

People also ask

- What website is like Amazon?
- What are the best online marketplaces?
- What is the best alternative to Amazon?
- What is the best alternative to eBay?

Feedback

The 10 best online marketplaces to sell in 2018 - Velsof

www.velsof.com/blog/e-commerce/the-8-best-online-marketplaces-to-sell-in-2018

Jul 5, 2018 - The Walmart Marketplace is a platform that allows third-party sellers to list their items on Walmart.com, just like you would on Amazon or eBay.

The Top Online Marketplaces: Where to Sell in 2019 | Neto

<https://www.netohq.com/blog/top-online-marketplaces-comparison>

Aug 2, 2018 - ... online marketplace or auction site like eBay or Amazon every month, ... Selling in online marketplaces is now becoming a core part of many ...

21 Top Online Marketplaces You Can Actually Make Money on Today

<https://crazylistr.com/blog/online-marketplaces-e-commerce/>

Sep 9, 2018 - A complete list of online marketplaces in the US, UK, Europe, Asia and ... Sears which is somewhat similar to Amazon in the sense that they ...

A Complete List Of Online Marketplaces Across The Globe (Updated ...

blog.linnworks.com/complete-list-of-online-marketplaces

Another marketplace that online sellers see a lot of success on is eBay. Similar to Amazon, eBay has a worldwide presence, a huge customer base and a ...

Best 13 Sites Like Amazon: Free Shipping, Better Deals, and More
https://techboomers.com › Online Shopping › Buying and Selling ▾
Mar 26, 2018 - We'll teach you about Amazon's top competitors, so you can find the best alternative to Amazon's online general marketplace, and maybe find ...

$\frac{1}{30}$ SB 2338
#1 pg.2

Searches related to online marketplaces like amazon

- sites like amazon but cheaper
- online marketplaces uk
- online selling sites like ebay
- top online marketplaces 2017
- top online marketplaces 2018
- bonanza selling
- ebid
- websites like amazon and overstock

1 2 3 4 5 6 7 8 9 10 Next

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30 SB 2338 # 1 pg. 3

US ▾

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10+ sites like Amazon for all your online shopping needs 2019

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The best online shopping websites that are like Amazon.

Amazon is one of those sites that fuse the department store with the marketplace to offer you practically everything (even the kitchen sink) either brand new, or secondhand for (potentially) less than the market price.

There's no denying that Amazon is a great stomping ground to browse for bargains and those rare items that you won't find at your local store. However, don't limit yourself to this site. We believe it's important to shop around to make the most of your hard-earned dollars as we've uncovered more than 10 other sites that stock similar items with competitive prices.

Feedback



Read more →

 $\frac{1}{30}$ 88 2338 #1 pg. 4

Top 10+ sites like Amazon

| | |
|--------------------|-----------------|
| eBay | alibris |
| UnbeatableSale.com | Wordery |
| Target | LightInTheBox |
| Barnes & Noble | Overstock.com |
| Walmart | MiniInTheBox |
| AliExpress | Books-A-Million |
| Newegg | Jet.com |



eBay

One of the biggest names in the online shopping game, this online marketplace lets users sell their unwanted goods at a set price or for auction, meaning you can snap up a bargain for less.

Like Amazon, eBay is one of those sites where you find just about anything you're after. They have auction listings for individuals and stores where you can bid for products and, if you're lucky, get a great deal.

eBay is a trusted and secure marketplace that offers payment fraud protection for its buyers via PayPal.

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UnbeatableSale.com

30 SB 2338 #pg.5

This massive online marketplace claims to offer the best deals and customer service on the web.

Its low prices rival Amazon, and its selection is enormous. Whether you're shopping for homewares, baby supplies, furniture, electronics or clothes, Unbeatable Sale has a little bit of just about everything.

24/7 live chat customer support.

Shipping costs determined by weight.

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Target

Hit the bullseye when you shop at this customer favorite store online.

With an even bigger selection of products than in store, you'll be overwhelmed with options as numerous as Amazon's. Plus, Red Card debit and credit card holders get special perks.

Free shipping when you spend \$35 or use your Red Card.

Use your Target debit or credit card to save 5% every day.

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Barnes & Noble



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30 SB 2338 #1 pg. 6

BARNES & NOBLE

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Free shipping on orders over \$25

14-day returns

Loyalty program available for extra savings.

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Price matching available.

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AliExpress ^{30 88 2338 # 1pg.7}



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Businesses turn to AliExpress to buy material and products in bulk direct from the manufacturer or supplier. In other words, if you're a business, then this is your business. If not, you can still find great deals as an individual purchaser.

Delivery available worldwide.

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Newegg

This online marketplace will surprise you with its great selection of products at prices similar to Amazon.

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30 88 2338 #1 pg. 8



alibris

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Different selection of media than Amazon.

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Huge selection of books.

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LightInTheBox ¹/₃₀ SB 2338 # 1pg.9

LightInTheBox has you covered for all your lifestyle purchases, from home and garden to beauty.

This Internet superstore specializes in gadgets, apparel and home goods and cuts out the middle man to keep their prices low and offer fantastic consumer savings.

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Free shipping available.

Easy, straightforward returns.

Great prices.

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^{30 SB 2338 # 1 pg. 10}
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Find anything you need (and things you didn't even know you needed) as you shop online at MiniInTheBox. Use a coupon code to get even bigger savings on these already wholesale prices.

Expedited shipping available.

Large variety of goods similar to Amazon.

Competitive prices.

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Jet.com

30 SB 2338 #1 pg. 11
 Walmart's younger internet brand is one of Amazon's most direct competitors.

With free two day shipping and returns without a membership requirement, Jet.com offers similar products, prices and services to Amazon.

Free two day shipping on orders over \$35: no membership required.

Free returns.

Which online marketplaces sell DVDs like Amazon?

Another big seller for Amazon are hard-to-find DVDs. You can always try auction sites like [eBay](#) to see what sellers are offering. [Target](#) and [Walmart](#) also offer a selection of DVDs.

Which alternative sites have a book variety as large as Amazon?

One of the biggest sellers for Amazon is its book finds. Alternatives include:

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alibris: Connecting you to thousands of independent sellers worldwide and offering free shipping over \$39.

eBay: If you don't mind doing a little bargain hunting, you'll find tons of deals on both new and used books.

Wordery: This UK based online bookstore has more than 10 million books available.

Books-A-Million: Don't forget about this online bookstore with a huge and constantly changing selection of new and used titles.

Feedback

Which alternatives offer free shipping

Want to chat?



1/30 SB 2338 #1 pg.12

| | |
|-------------------------|--|
| Retailer | Free shipping offer |
| eBay | Free shipping on all orders |
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| Walmart | Free shipping on orders over \$30 |
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Testimony in Support of Senate Bill 2338
January 30, 2019
Senate Finance and Taxation Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the Senate Finance and Taxation Committee. For the record, my name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in support of Senate Bill 2338.

As we understand it, Senate Bill 2338 makes clear that a “retailer” or “seller” as defined in various locations in Chapter 57 of the North Dakota Century Code, includes persons who provide for the sale of product or services between the consumer and the product originator; a “marketplace facilitator”. Given the current practice of electronic marketplaces and distance sales this change is appropriate to bring the universe of sales transactions into the Century Code definition of “retailer” or “seller” in reliance on the recent United State Supreme Court decision on the South Dakota sales tax case.

This legislation is a prudent approach to bring state law into agreement with the recent court decision and the North Dakota League of Cities is pleased to support this effort.

#1
SB 2338
3-11-19

Testimony in Support of Senate Bill 2338
March 11, 2019
House Finance and Taxation Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the House Finance and Taxation Committee. For the record, my name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in support of Senate Bill 2338.

As we understand it, Senate Bill 2338 makes clear that a “retailer” or “seller” as defined in various locations in Chapter 57 of the North Dakota Century Code, includes persons who provide for the electronic sale of product or services between the consumer and the product originator; a “marketplace facilitator”. Given the current practice of electronic marketplaces and distance sales, this change is appropriate to bring the universe of sales transactions into the Century Code definition of “retailer” or “seller” in reliance on the recent United State Supreme Court decision on the South Dakota sales tax case.

This legislation is a prudent approach to bring state law into agreement with the recent Supreme Court decision and the North Dakota League of Cities is pleased to support this effort and to request a Do Pass recommendation on Senate Bill 2338.



#2
SB 2338
3-11-19
p. 1

March 11, 2019
House Finance & Taxation Committee

Good morning Chairman Headland and members of the House Finance and Taxation Committee,

For the record, my name is Darnell Goldson, Director of Governmental and Legislative Affairs for TicketNetwork and I'm here today to address SB 2338.

Establishing and enforcing new types of "nexus" legislation, especially for transactions taking place through online marketplaces, creates a tax environment hostile to small businesses and to companies which merely provide a platform for online transactions.

The start-up costs for software and online companies has historically been low, promoting college grads and other entrepreneurs to attempt to start a business in the field of online retail. This has led to amazing companies like eBay and Amazon that now employ tens of thousands of employees. Currently, there is no nationally recognized definition of "nexus," so an entrepreneur attempting to establish an online business must look at each individual state that business could touch and somehow manage to stay on top of a slew of changing regulations and interpretations. By creating a complex requirement to force small businesses to withhold and remit taxes (which vary not only by state, but also by municipality), you are stifling entrepreneurs from venturing into the industry. This stifling effect also has negative implications for the small businesses that do exist and are trying to compete with the behemoths. By requiring such a costly and complex law for them to follow, they may have to just close up shop rather than try to negotiate tax law, pay a tax expert to keep constant attention on the shifting tax environment, or develop software that can handle such complex tax requirements on checkout pages.

Some states have now been looking to online marketplaces, or what they call marketplace providers or facilitators, as an additional player in the tax game. Marketplace providers/facilitators would be required to collect tax on behalf of all sellers operating through their systems. This would include so-called facilitators/providers who do not have a brick and mortar presence in the state (unlike Amazon, who may house seller inventory in a warehouse in that state), who would now be caught under the broad definition of "facilitator" even if there is no physical inventory. This type of legislation removes the burden of collection and reporting from individual sellers, who actually hold the product(s) being sold, and makes the marketplace an enforcer for the state tax commissions, even though the marketplace does not actually hold or sell the goods. This is a burden to online marketplaces that merely provide a platform for transactions, as they are now the one required to hire that tax lawyer or try to interpret the regulations of the fifty states and various municipalities based on where either the seller or the buyer is located.

TicketNetwork is an online resale marketplace and not a platform for the sale or exchange of retail goods like an Amazon transaction. Tickets may not even be defined by the state tax laws as a "retail good," as most tickets are electronic rights of entry to an event. In states that do define a ticket as a

#2
SB 2338
3-11-19
p. 2

retail good, admissions taxes are already paid on the sale of the ticket. Taxing an exchange or transfer of that ticket through a online marketplace should qualify as a double taxation of that ticket.

We therefore urge you to consider amending Senate Bill 2338 to create a carveout for admission tickets or change the definition of “marketplace facilitator/provider” to better capture the retail marketplace environment you want to tax, instead of creating broad language or broad interpretations of such language to create a net for all transactions made over the Internet.

Thank you for your time this morning and we appreciate your consideration.

Darnell Goldson
Director of Governmental and Legislative Affairs

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SB 2338
3-11-19
p. 3

March 11, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2338

Page 3, after line 22, insert

“(3) The term does not include online ticket resale marketplaces which solely enable the transfer of rights of entry from a seller to a purchaser.”