

**Revenue Committee January 31, 2019**

**LINEHAN:** Welcome to the Revenue Committee public hearing. My name is Lou Ann Linehan. I'm from Elkhorn, Nebraska, representing the 39th Legislative District. I serve as Chair of this committee. The committee will take up bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. If you are unable to attend the public hearing and would like your position stated for the record, you must submit your written testimony by 5 p.m. the day prior to the hearing. Letters received after the cutoff will not be read into the record. To better facilitate today's proceedings, I ask that you abide by the following rules. Please turn off your cell phones and other electronic devices. When you're-- if you're going to testify as a proponent or opponent or neutral, when you can see that you're up in the queue, move to the front. It saves a considerable amount of time. The order of testimony is introducer, proponent, opponents, and neutral, and then the closing remarks. If you will be testifying, please complete the green form and hand it to the committee clerk when you come up to testify. If you have written materials that you would like to distribute to the committee, please hand them to the page to distribute. If you need copies, because we'll need

11 copies for everyone to get one, if you need one, please hand them, as soon as you can, to the page so they can make copies at that time. When you begin to testify, please state and spell your name for the record. Please be concise. It is my request that you want to limit your testimony to five minutes. We will use a light system which I think is helpful for everybody. So you have four minutes on the green light, a minute on the yellow light, and when it gets to red, you should be done. If your remarks were reflected in previous testimony or if you would like your position to be known but do not wish to testify, please sign the white forms at the back of the room and it will be included in the official record. Please speak directly into the microphone so our transcribers are able to hear your testimony clearly. I'd like to start by introducing committee staff. To my right is legal counsel, Mary Jane Egr Edson. To my immediate left is research analyst, Kay Bergquist. At the end of the table on the left is committee clerk, Grant Latimer. I'd also like the members to introduce themselves starting at my far right.

**KOLTERMAN:** Senator Mark Kolterman representing District 24.

**GROENE:** Mike Groene, Lincoln County, District 42.

**LINDSTROM:** Brett Lindstrom, District 18, northwest Omaha.

**FRIESEN:** Curt Friesen, District 34, Hamilton, Merrick, Nance, and Hall County.

**McCOLLISTER:** John McCollister, District 20, central Omaha.

**CRAWFORD:** Good afternoon. Sue Crawford, District 45, eastern Sarpy County, Bellevue and Offutt.

**BRIESE:** Tom Briese, District 41.

**LINEHAN:** There are two pages that will help us today. Young ladies, would you mind standing up? Tell your names.

**KYLIE:** I'm Kylie.

**BRIGITA RASMUSSEN:** Brigita.

**LINEHAN:** They're both students at UNL, and they will be here to help as we've said previously. Please remember that senators come it-- may come and go during the hearing as they may have other bills in other committees they have to introduce. Refrain from applause or other indications of support or opposition. I'd also like to remind our committee members to speak directly into the microphones. Also for our audience, the microphones in the room are not for amplification but for recording purposes. Lastly, we are an electronic equipped committee and information provided electronically as well as in paper form. Therefore, if

you see members-- senators using their computers, they could be doing research or trying to find some information for questioning. Be assured that your presence here today and your testimony are important to us and is critical to our state government. So with that, we'll start with the introduction of LB18.

**BRIESE:** Good afternoon, Senator Linehan and members of the Revenue Committee. I'm Tom Briese, T-o-m B-r-i-e-s-e, and I'm here to present for your consideration my LB18. LB18 would require the collection of sales tax by remote sellers meeting certain thresholds, and it would require the revenue generated by such collection to go to the Property Tax Credit Fund. The Legislature has been unsuccessful in the past in requiring the collection of on-line sales tax by remote on-line sellers. Much of the concern centered around an earlier Supreme Court decision, Quill Corporation v. North Dakota, that required on-line sellers to have a physical presence in the taxing jurisdiction. This past summer, the Supreme Court overturned the physical presence requirement of Quill. In doing so, the court recognized the ever-increasing importance of e-commerce to our economy and noted that "Each year the physical presence rule becomes further removed from economic reality." It also recognized the unfairness of previous rulings which allowed a

"judicially created tax shelter" that shielded out-of-state Internet sellers from collecting sales tax that our brick-and-mortar stores must collect. The overturning of Quill appeared to clear the way for safe-- states to require on-line sellers with no physical presence in that state to collect sales tax and the benefits of doing so are obvious. First, it can help level the playing field between our Main Street brick-and-mortar stores and their out-of-state on-line competitors. Second, it will allow our taxing entities to more effectively enforce the collection of sales taxes that are already owed. And finally, it will expand our sales tax base. And in the past, there have been some that suggested, well, there's no legislation necessary to do this. We can just do it. And I certainly would disagree with that. And for several reasons, I believe that what I've proposed in LB18 is a good approach and one we-- we should be pursuing. First, I believe legislation is necessary to clarify the obligation of remote sellers. Currently our statutes require sales tax collection by those retailers who engage in business in our state, but the statute defining engaged in business requires a degree of physical presence not typical of many of the on-line retailers. But regardless of how we interpret our statutory framework, failure to provide clear statutory provisions requiring on-line sales tax collection opens up the

state to legal challenges by those affected. Furthermore, we need to ensure that any remote sales tax system be constitutionally sound. It needs to be able to withstand a commerce clause challenge such as that-- that presented in the Wayfair case. And that challenge, that claim, unduly burdens interstate commerce. And that means protecting small, startup businesses by imposing a minimum threshold of business activity before an obligation to collect sales tax ensues. In the Wayfair decision, the court, after essentially overturning the physical presence rule of the Quill decision, applied previous case law that asks whether the tax applied to an activity with a substantial nexus to the taxing state. The court found that the nexus was clearly sufficient in the case of the sellers in the Wayfair case. And in further discussing the constitutionality of the South Dakota act, the court noted that the act "appears designed to prevent discrimination against or undue burdens upon interstate commerce." In doing so, the court noted that the act applies a safe-- "safe harbor" to those who transact only limited business. And that's what the language of LB18 is designed to do, to provide a safe harbor to the small retailers. It's patterned after the language of the South Dakota act that the court was referring to by exempting retailers with less than \$100,000 in sales and less than 200 separate transactions. And

this raises one of the differences between this bill and I think the other bills we're going to hear about today. South Dakota's statute, which was the statute on which Wayfair was decided, was what one would consider a straightforward economic nexus statute, and I know if there are other-- these other proposals before the body that could be considered marketplace provider approaches. And I would submit that we should be cautious about a scheme that brings all transactions of a marketplace provider within these thresholds. And that would mean-- to me that would mean that a small mom-and-pop business who really doesn't meet the threshold but who employs-- who utilizes a marketplace facilitator would be subject to our sales tax. And I believe those are the types of situations that the Wayfair majority warned us of. A recurring theme in that opinion was the need to protect those small startup businesses, with only de minimis contacts, with the taxing jurisdiction. And subjecting these same small businesses to our tax structure simply because they availed themselves of a marketplace facilitator could subject a remote seller sales tax scheme, I think, to a constitutional challenge. Instead, I think the most responsible approach is to utilize a mechanism found in LB18 which is patterned after the South Dakota statute which the U.S. Supreme Court eventually upheld. But with that said, I'll be interested to hear the

testimony on this bill and the later bills relative to the issue of whether a marketplace approach is constitutionally sound. And then finally, I believe that we owe it to Nebraskans to utilize any new revenue judiciously, and that means, directing it to property tax relief. That's what Nebraskans want. That's what they're demanding. That's what they deserve. And that's why I have a provision in this bill that the revenue that we're talking about here is directed to the Property Tax Credit Fund. Some have suggested difficulty in determining this number. And the language of the bill is somewhat squishy in that regard, requiring whatever is derived pursuant to this act to be mostly allocated to the Property Tax Credit Fund. My intent here is to require that any amount flowing from the Wayfair decision, in other words, any increase in on-line sales tax class-- collected post-Wayfair, should be directed to the Property Tax Credit Fund. And I have confidence in the Department of Revenue that such a number could be accurately determined and if not, an educated estimate may have to suffice. Others have expressed concern that LB18 didn't require the collection of local-- local option sales tax. And I guess I'm flexible with that, but my goal here, with on-line sales tax, is twofold. First, protect our Main Street businesses. Secondly, also protect our taxpayers. And that is why I want to direct the revenue



collected at the state level to be directed to the property-- to property tax relief. And there's no mechanism really in place to ensure that local-option revenue is necessarily going to result in property tax relief. And I guess I'm open to suggestions on that issue. I look forward to discussion on this bill and the other bills, and I'd be happy to answer any questions that you might have.

**LINEHAN:** Thank you, Senator Briese. Are there questions from the committee? Excuse me, Senator Friesen.

**FRIESEN:** Thank you, Senator Linehan. When I was reading the bill, I noticed that on page 2, you know, line 14, where you talk about-- you're making sure that we don't go retroactive. But you're saying that if they meet the criteria on the previous or current calendar year.

**BRIESE:** Um-hum.

**FRIESEN:** How do-- how do you see this working in the current calendar year? I can-- I was under the impression if you met the criteria in a calendar year, that meant the next year, you would start collecting the tax. It's on line 14. It says, or current calendar year.

**BRIESE:** Um-hum.

**FRIESEN:** And I guess I was wondering how you view that to work? So if you're-- if you're a small seller and you hit 200 items in July, do you start collecting taxes in July or?

**BRIESE:** Well, I would think that we would-- if that-- if that is met, we'd simply have to begin collection on the effective date of this act, it would seem to me. I don't know if I'm understanding your question.

**FRIESEN:** So if you qualify, you-- you'd start collecting January 1 of the next calendar year?

**BRIESE:** Yes. Yes. Well, you absolutely can't apply it retroactively, we know that from the-- from the Wayfair decision. That was one of the-- one of their main points there also, that retroactive application would cause a problem.

**FRIESEN:** OK. Thank you.

**LINEHAN:** Thank you, Senator Friesen. Are there other questions? Senator Groene.

**GROENE:** Thank you, Chairman. I've never read the Quill decision or even seen it. But doesn't it basically say, the federal government says the Internet's-- people who sell Amazon or whatever will have to pay the state sales taxes? So why do we

need a law? I mean, if we have a law now that says, you do business in the state of Nebraska, if you purchase something in the state of Nebraska, they don't pay the tax, I do, that I have to pay a sales tax. So why do we need a law and then everybody would have to pay, charge that sales tax and collect it-- collect it is the problem? We need a mechanism to make them collect it.

**BRIESE:** Well, I think one of the most important considerations is that we have to outline what-- what sellers are subject to this. And Quill-- excuse me, the Wayfair court made-- made it clear that we shouldn't be subjecting the small sellers. And they approved of the South Dakota statute, the scheme that required-- or allowed collection only on those meeting a minimum threshold of, what, 200 transactions or \$100,000 a year. But essentially, I think we need to have in place in statute, a provision that protects the small sellers. Otherwise, you know, using the reasoning of the court, it could be considered a burden on interstate commerce if we apply this to small sellers. I think we need-- the statute needs to make that clear, that small sellers are essentially exempt from that.

**GROENE:** But everybody says, the Quill case was on South Dakota's law. They said, South Dakota's law is constitutional.

**BRIESE:** Yes.

**GROENE:** Why don't we just copy South Dakota's law? When we start tweaking South Dakota's existing statute, aren't we getting outside the bounds of the court case?

**BRIESE:** Well, and that's what LB18 tries to do, to mirror the South Dakota statute. And we're going to see that with some other-- other provisions, other bills that go a little beyond that, in my view. And that's one of the things I'm a little concerned about. Are we treading on thin ice as we try to expand beyond what the South Dakota statute provides?

**GROENE:** Thank you.

**BRIESE:** And so we'll hear more about that today, and, you know, why-- why we should or shouldn't be concerned about other mechanisms that don't really mirror South Dakota's scheme.

**LINEHAN:** Thank you, Senator Groene. Senator Kolterman.

**KOLTERMAN:** Thank you, Senator Linehan. The other reason, doesn't this also spell out how you want the money spent that we do collect?

**BRIESE:** Well, to me that's very important, you know, not-- not to everybody, but to me, it is. In my view, well, we all know

it, that, you know Nebraskans. That's the top issue around here. And if we have a new revenue source, we should direct it towards that issue in my view.

**KOLTERMAN:** Yeah. Thank you.

**LINEHAN:** Other questions from the committee? Does your bill say how to direct it to a property tax credit relief? Is it specific like it needs to go into the refund or is it just it needs to go to property tax relief?

**BRIESE:** To the Property Tax Credit Fund.

**LINEHAN:** To the Credit Fund.

**BRIESE:** Yeah.

**LINEHAN:** OK. Thank you.

**BRIESE:** Yeah. And I'm not extremely clear about what's going in here. Like I said, my intent would be any increase in on-line collection post-Wayfair, I think is what we should try to target. And again, you know, that number is not going to be easy to-- to really pin down. But, you know, an educated guess on the-- on the part of Department of Revenue would suit me just fine. I have a lot of confidence in them that they can come up with the number we need.

**LINEHAN:** Thank you. Other questions? Will you remain to close?

**BRIESE:** Yes, I'll certainly be here.

**LINEHAN:** All right. Thank you very much.

**BRIESE:** Thank you.

**LINEHAN:** So proponents for LB18? Again, if you're going to testify, if you move up close, that was-- that's very helpful, much appreciated.

**SARAH CURRY:** Hello. My name is Sarah Curry, S-a-r-a-h C-u-r-r-y, and I'm the policy director for the Platte Institute. We support LB18. I'm just going to give a little bit of background of why we do. All of the bills that--, well, the next three bills that we'll be discussing strongly suggest they-- they have provisions that are strongly suggested by the U.S. Supreme Court following the South Dakota v. Wayfair case decided last June. This case set new legal as well as tax precedent for the states which is why Nebraska needs this legislation. Historically, states were only allowed to levy a sales tax if the retailer had a physical presence in that state. This decision was made by the U.S. Supreme Court in the Quill decision in 1992. And the case specifically stated that the lack of physical nexus in a state is sufficient grounds to exempt a corporation from having to pay

sales and use taxes to a state. So the Supreme Court's decision in South Dakota v. Wayfair overturned the physical presence requirement. And, Senator Groene, this is going to get to the question that you had earlier. While the Supreme Court's decision does allow sales tax on e-commerce and remote sales, Nebraska still has to update its statutes with provisions of the court in order to protect itself from future legal challenges. And so there you can see that there's seven-- a checklist, if you will, that the Supreme Court laid out. Nebraska's already completed items three through seven of the checklist because we're a member of the Streamlined Sales Tax and Use Agreement. It's number one and number two that we don't currently have in our statutes, and that's what we would need to avoid litigation. And there I have-- show you that South Dakota has \$100,00 in sales or 200 transactions which are the provisions presented in these bills. So in order to complete this, again, it's the de minimis threshold and the opposition to any retroactive collection. The Nebraska Department of Revenue has already issued a statement that they interpret the current statute to apply to all remote sellers that meet these thresholds. And it's been effective since January 1. But because it's not in statute, they can't legally protect it. It's just as a regulation. So only voluntary collections have begun because of those two

missing provisions. And the legislation needed for the state to legally require remote sellers to remit their tax is in LB18 and the next two bills we'll be discussing today. As of December 15, 2018, 34 states have adopted laws or regulations to tax remote sales, with legislation or administrative action pending in several others. Twelve of these states are clearly compliant with the Wayfair checklist, and many others are undertaking improvements to shore up the remote sales tax regimes. Legal experts at the Tax Foundation have stated that they anticipate litigation in states which take too many shortcuts in their efforts to capture the remote seller revenue. They recommend for states to avoid this by modeling their legislation on the South Dakota law that was upheld by the Supreme Court. So we support LB18 because it avoids any unnecessary litigation and also allows the state to enforce the remote-- remote seller Internet sales tax. Specifically, regarding LB18, we don't support the redirection of the funds to the Property Tax Credit Relief Fund. We believe that any property tax relief should be spent directly out of the General Fund. It shouldn't already be directed there. However, we do like the idea of having the Department of Revenue separate out how much revenue comes from remote or Internet sales versus traditional brick-and-mortar sales because I believe in the next 10 to 20 years that's going to be a valuable



piece of information in future public policy and tax policy discussions. And with that, I'm happy to take any questions.

**LINEHAN:** Questions from the committee? Seeing none, thank you very much.

**SARAH CURRY:** Thank you.

**LINEHAN:** Next proponent?

**ANSLEY MICK:** Hello. Thank you, Chairwoman Linehan and members of the Revenue Committee. My name is Ansley Mick, A-n-s-l-e-y M-i-c-k, and I'm here to read into the record a letter you should have in front of you from the Agriculture Leaders Working Group which is comprised of the Nebraska Cattlemen, Nebraska Corn Growers Association, Nebraska Farm Bureau, Nebraska Pork Producers Association, Nebraska Soybean Association, Nebraska State Dairy Association, and Nebraska Wheat Growers Association. We support LB18, Senator Briese's bill to require remote retailers to remit sales tax and place the estimated revenue generated into the Property Tax Credit Fund. In 2018, the U.S. Supreme Court cleared the way for states to collect tax from on-line retailers. But without explicitly mandating collection, Nebraska could leave room for on-line sellers to avoid collecting the tax. Passing LB18 could lead to an additional \$30

to \$60 million in property tax relief in coming years and would mean more fairness for our Main Street businesses. Over the last decade, property taxes have taken on a greater role in supporting government services throughout Nebraska, paying for close to 50 percent of our state's priorities such as education, while income and sales taxes combined account for the other half. It's time for the Legislature to address the billion dollar tax imbalance in our tax system and create more equity when it comes to paying for our state's priorities. We're not asking for the state to correct this imbalance overnight and are willing to work with this committee and policymakers to find workable solutions. We believe LB18 and efforts to bring more sales tax dollars to the table as a means of offsetting property taxes is a fair and reasonable place to start. We encourage the committee to advance LB18. Thank you for your time. I'd be happy to answer questions.

**LINEHAN:** Are there questions from the committee? Seeing none, thank you.

**ANSLEY MICK:** Thank you.

**LINEHAN:** Good afternoon.

**SCOTT LAUTENBAUGH:** Good afternoon, Chairwoman Linehan and members of the committee. My name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h, and I'm here on behalf of the Nebraska Premium Tobacco Association. We're here in support of this bill and the one to follow. Rather than having you hear the same relatively brief testimony twice, just imagine that I'm also going to say the next-- the same thing when Senator McCollister's bill is up. This has been a very important issue, if you will, towards my-- for my clients. Premium Tobacco Association is basically cigar bars. There's probably ten of them in the state, give or take. They lose a lot of sales to on-line, large cigar retailers, if you will, that don't pay the property tax-- I'm sorry, don't pay the sales tax, don't pay the excise tax either. I actually raised that issue with Senator McCollister as well. While we're here, and if there is not a constitutional problem with tacking it on, we're not collecting the excise tax from the out-of-state sellers either. It's a huge burden. It's a huge swing for my clients, and they are losing sales hand over fist to the larger out-of-state cigar sellers. This would be a way to just level the playing field as far as applying it to property tax relief. I'm not even sure you can do that with the excise tax. You probably can if you choose to. My client doesn't really have a position on what you do with the money. I mean, we trust you to

spend it wisely as I'm sure we always do. But as long as we're just leveling the playing fields, they can compete with the-- their out-of-state competitors. That's all we're asking. So we wholeheartedly support this bill and the next one to follow. I'd be happy to answer any questions you might have.

**LINEHAN:** Thank you. Are there any questions from the committee? Seeing none, thank you very much, Mr. Lautenbaugh.

**SCOTT LAUTENBAUGH:** Thank you.

**LINEHAN:** Next proponent.

**JOHN HANSEN:** Good afternoon, Chairman Linehan, members of the committee. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. And for all of the reasons that have been stated before and especially, I thought, the-- the excellent opening by Senator Briese, we support both the mechanism that's used to gather the money and also where it is that the money would go. I'd be glad to answer any questions if you have any.

**LINEHAN:** Thank you. Are there questions from the committee? Seeing none, thank you very much. Other proponents? Are there any opponents? Is there anybody wishing to testify in the neutral position? Senator Briese, would you like to close?

**BRIESE:** Thank you, Chairman Linehan. I don't really have anything to add other than what's been said in my opening and what some of the others have added to it. And I'd be happy to answer any questions if you have questions. But I think it's a-- again, I think this is a good approach. I'm anxious to hear testimony on the other approaches and see-- learn a little more about them. And but from my standpoint, this is a good approach. And the dedication of those dollars to property tax relief, I think, is an important aspect of what we all should be trying to do here. Thank you.

**LINEHAN:** Thank you. Are there questions for Senator Briese? Senator Groene.

**GROENE:** Thank you. If I remember from the Department of Revenue and in your-- and in your fiscal note, it's always called an estimate, so how does the Department of Revenue know when the-- when the receipts come in if they need to go into this account or another account? I mean, because it's always estimates, like Amazon's estimated at \$32.9 million, because the Department of Revenue cannot identify, it's privacy what any business pays. So how do you expect the Department of Revenue to identify which sales tax receipts go into the property tax [INAUDIBLE]?

**BRIESE:** Come up with their best estimate is all I can say because it will be difficult. Everybody said that. It will be difficult trying to identify what's what. And so you do your best, and if not, get your best estimate on it [INAUDIBLE].

**GROENE:** And then the minute Amazon builds a warehouse in my garage and we ship a couple of things out and then we just put Amazon on there, then it no longer becomes a remote seller because they have a place.

**BRIESE:** Tech-- technically-- technically true. Yeah. Yeah.

**GROENE:** I'm just wondering how we're going to track it, you know. I'm with you. Let's estimate it high and put it in the property taxes there.

**BRIESE:** Sure.

**LINEHAN:** Thank you, Senator Groene. Other questions? OK.

**BRIESE:** And if I may, going back to your question, Senator Friesen, the more I think about it, perhaps as soon as this becomes law, if they met those thresholds-- threshold, they should start collecting instead of waiting for January 1. But that would be my thought.

**LINEHAN:** Thank you. We have letters for the record:--

**BRIESE:** Thank you.

**LINEHAN:** --proponent, Steve Nelson, Nebraska Farm Bureau; this is the right one, I guess, Mike Drinnin, Nebraska Cattlemen; Dan Nerud, Nebraska Corn Growers Association; Mike Guenther, Nebraska Dairy Association; Robert Johnson-- Johnston, Nebraska Soybean Association; Darin Uhlir, Nebraska Pork Producers Association; Mark Spurgin, Nebraska Wheat Growers Association; Michael Sothan, Main Street Nebraska [SIC], Inc.; opponents, Lynn Rex, League of Nebraska Municipalities; Brandon Kauffman, City of Lincoln; neutral, Wendy Birdsall, Lincoln Chamber of Commerce; Bryan Slone, Nebraska Chamber of Commerce; and David Brown, Greater Omaha Chamber of Commerce. And with that, we'll call-- ends the committee hearing on LB18. And we will move to LB291-- LB284, I'm sorry. LB284. Senator McCollister.

**McCOLLISTER:** Good afternoon, Madam Chair and members of the committee. I am John, J-o-h-n, McCollister M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. I'm here today to introduce LB284. This proposal would amend the sales tax and use tax to improve the Department of Revenue's ability to enforce current law. States are enacting Internet sales tax provisions in the wake of the U.S. Supreme Court's decision in the Wayfair case. I provided a list of states that

have already adopted marketplace facilitator-- facilitator sales tax policies. All three proposals that you are hearing today include two features that the Supreme Court approved of. Before an Internet seller is required to collect sales tax, it must have made sales in the amount of \$100,000 or completed 200 separate sales transactions in a particular state. One major difference among the bills is the approach taken to collect the sales tax when the sales are made through an entity known as a market facilitator. Amazon is an example of a marketplace facilitator. LB284 acknowledges the role that a marketplace facilitator plays in a large proportion of sales on the Internet. Since the marketplace facilitator is in the best position to compute, collect, and remit the sales tax on those sales, under LB284, it will have a duty to do so. LB18 would place the duty to collect and remit the sales tax solely on the marketplace seller, whereas it sells directly through its own Web site or through a facilitator platform. LB291 would appear to allow a direct seller to claim credit for any sales tax collected by a marketplace facilitator. I believe that the approach in LB284 is the best choice among the three proposals. It reflects the reality that many sellers are using marketplace facilitators instead of developed-- developing and managing their own Web sites. LB284 contains the clearest and most



specific definition of marketplace facilitator. Marketplace facilitators process an enormous proportion of Internet sales and are readily able to comply with the sales tax laws. I would note that the minor difference in the fiscal impact between LB291 and LB284 is due to the difference operating-- the different operative dates. You may recall that I introduced a bill last year called the Marketplace Fairness Act. Both LB284 and LB291 would level the playing field for brick-and-mortar facilities in the state of Nebraska, and I think this is the only fair way for us to deal with these Internet sales which here before have given those sellers, the Internet sellers, an advantage. Thank you.

**LINEHAN:** Thank you, Senator McCollister. Are there questions from the committee? Will you stick around to close?

**McCOLLISTER:** I certainly will.

**LINEHAN:** OK.

**McCOLLISTER:** I'm going to be here.

**LINEHAN:** All right. Thank you very much.

**McCOLLISTER:** Yeah.

**LINEHAN:** Do we have proponents?

**JIM OTTO:** Senator Linehan, members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o. I'm president of the Nebraska Retail Federation, and I'm here to testify in favor of LB284 and also have been given the permission to share this same support by the Nebraska Grocery Industry Association. First of all, I want to acknowledge and thank all of the members of the committee as all of you have demonstrated from your past votes in previous sessions the support of collecting on-line sales tax. You're familiar with the long, I guess I would call it, battle we had been through to try to get this done. It looks like we're very close to the end, but we want to really thank you all for your past support. And a very big thank you for Senator McCollister for his ongoing and aggressive support in the past and for introducing this bill. It's our position that the Nebraska statute needs a minimum of two editions as a result of the Supreme Court of the United States's decision in the South Dakota v. Wayfair case. They are, number one, establish the threshold for economic nexus. We believe this should be the same as South Dakota's which is \$100,000 in sales or 200 independent sales transactions in Nebraska. Number two, require the marketplace to collect and remit for third-party sellers. If we do only the first one I mentioned, we will not have leveled the playing field for Nebraska businesses as Nebraska sellers

must collect on dollar one of sales and out-of-state sellers will not have to collect until they exceed \$100,000 in sales or 200 transactions. Amazon, eBay, Jet, Alibaba, are all examples of marketplaces, and they enable third-party sellers. Amazon alone has over 2 million third-party sellers of which approximately 20 percent are foreign. It is unrealistic to expect the Nebraska Department of Revenue to police such a huge volume of sellers and enforce collection based on their individual sales levels. Nebraska statute should state that the economic nexus also applies to the marketplace itself and require the marketplace to collect and remit for their third-party sellers. This would very nearly level the playing field as most small sellers go through a marketplace. And as Senator McCollister has already pointed out, at least ten other states have passed marketplace legislation. I have two members that are going to follow me, individual retailers here in Nebraska, in Lincoln. And with that, we just support its advancement and we'd be glad to try to answer any questions.

**LINEHAN:** Thank you, Mr. Otto. Are there question from the committee? Thank you.

**RON ROMERO:** Senator Linehan, committee, thank you for the opportunity to come before you today. I am a retailer here in

Lincoln, Nebraska. My name is Ron Romero, it's R-o-n R-o-m-e-r-o. The name of my company is Schaefer's. We're an appliance and electronics store. Electronics and appliances are high-ticket items that are sold on the Internet and give the people that are selling them an unfair advantage. If they're not collecting the sales tax, it's anywhere from 7 to 7.5 percent. So if you're talking about a \$1,000 or \$2,000 product, that is considerable. So that is money that is not being realized coming into the state. It puts the local retailer at an unfair advantage. We can compete with anyone, but when it comes down to-- to a sales tax issue, that-- that is a very unfair advantage. I'm excited about the fact that we're finally making some headway. And again, I applaud the state for what they have done and Senator McCollister with his bills because you recognize how important it is to independent business people to have a very competitive playing field. And with that, I'll take any questions.

**LINEHAN:** Thank you very much. Mr. Romero. Questions from the committee? Seeing none, thank you very much.

**RON ROMERO:** Thank you.

**LINEHAN:** Next proponent?

**JAMES PLUCKNETT:** Thank you for the opportunity to speak today. I am James Plucknett, J-a-m-e-s, last name Plucknett, P as in Paul-l-u-c-k-n-e-t-t. I'm a CPA who, along with my wife Kris, own and operate Four Star Card and Gift Gallery retail shop here in Lincoln. Four Star Card and Gift Gallery is an 8,000-square-foot destination gift and fashion store selling everything from Pandora jewelry to Vera Bradley and Yankee candles and everything in-between. That store has been in business for 24 years and employs approximately 20 people. But along with my father, we have owned and operated several retail businesses here in Lincoln and Waverly since 1961, employing up to 100 people at that time. I'm also part of buying groups that represent over 500 gift and fashion stores across the country as well as, in the past, a drugstore group that represented over 1,700 pharmacies. I'm very proud to say for nearly 60 years we have paid local taxes, local wages, local rent, local utilities, local service fees, and supplies. And in general, we have gone to great lengths to support the great community we live and work to make better. But without question, the single biggest issue that we have faced for decades as a Nebraska retailer is the unfairness of having on-line, out-of-state retailers selling the same or similar products to Nebraska customers without having to charge and remit sales tax. Those on-line, out-of-- out-of-state

retailers have been getting a seven-plus percentage advantage over Four Star and other Nebraska retailers. This is absolutely an issue of fairness, and it is critical. I can't stress enough that it is critical that we pass one of the two bills, LB284 or LB291, and it is critical that we do it correctly. By correctly, I mean implement a fair threshold for the economic nexus which I believe is the level set by South Dakota and is the most common of \$100,000 in sales and 200 transactions. But maybe even more importantly is to require the marketplace precision-- provision as discussed earlier, marketplace meaning Amazon, eBay, other third-party sellers like that, to collect and remit, the third-party resellers, the Nebraska sales tax. Like I said, I've been in the retail business and networked with other retailers across the country for over 40 years. Most of the people that are selling on-line, those other shops are going through a third-party seller, they're expecting to pay the sales tax. Amazon and those people are set up-- they're already set up to do it that way. It's a computer thing. It's a fairly easy thing for them to do and a very efficient way to-- both to-- to collect it and to remit it. So I believe that's the most efficient and best way for everyone involved, and failure to implement it in one of these two critical elements, I think, puts at real risk that the bill would be ineffective to a large extent. Two days ago, the

Nebraska Department of Revenue had a team of auditors spend the entire day in my office auditing all of our records and sales transactions for the last three years. We were collecting and paying all the sales and use taxes due from sales in our store, and they found this to be true as it has been since 1961. But forever, no one has required the same from on-line, out-of-state retailers selling to Nebraskans. Four Star can and does deliver equal or better value to our customers than any on-line, out-of-state retailer does, if-- if-- if they-- if they had to charge the same and remit the same sales taxes that we do. It's a significant advantage, as Ron Romero pointed out. This sales tax has been owed for decades, and yet up to this point, has only been required by Nebraska retailers to collect and remit, giving them a distinct advantage. In fact, I was very disappointed that this wasn't remedied last year. And if it had, the tens of millions of dollars in sales tax that would have come in, could have benefited in so many ways. Maybe the city of Lincoln would not be asking to raise city sales taxes to pay for roads. Maybe some of the property relief-- tax relief that is so needed would have had a better chance. So this issue is way past due, and it needs to be done as soon as possible and be done correctly to eliminate this unfair sales taxes. I can't stress enough that we must do this now, and we must do it right, excuse me, out of

fairness to Nebraska retailers and most importantly, for the goodness of all Nebraskans. Thank you for the opportunity to talk to you today, and I'm available for any questions.

**LINEHAN:** Thank you very much. Are there questions from the committee? Seeing none, thank you very much. Are there other proponents?

**LYNN REX:** Good afternoon.

**LINEHAN:** Thank you.

**LYNN REX:** Senator Linehan, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We really appreciate Senator McCollister and Senator Linehan introducing these important measures for your consideration today. The only reason we opposed Senator Brieese's proposal, LB18, was because it does not provide for the collection and remittance of local auction sales tax and nor does it help the marketplace. And I think Senator McCollister's opening outlined some of the critical reasons why those are important. With that, what I'm handing out to you are two things that I think are-- tie into this. There are 228 municipalities in the state of Nebraska that have voter-approved local option sales tax. And you'll note here what the rates are. And again,



these are voter-approved. Almost all of them identify, when they went on the ballot, the purpose for which those funds would be used. Was it going to be for a library? Was it going to be for streets and roads? Was it going to be for some other major-- major program, for example, if they had to do to address a state or federal mandate? In addition, what you have is the Local Option Municipal Economic Development Act in the 71 municipalities, who again went to a vote of the people to say, we-- these are projects that we want to do in order to move forward our community. And as many of you know, especially Senator Crawford after her years of work on these issues with us, that back in 1990, LR11CA was placed on the ballot as a constitutional amendment to basically provide for an exception to the prohibition against lending the credit of the state. That passed overwhelmingly to allow the Legislature to have the authority to allow municipalities to enact local sources of revenue-- using local sources of revenue, economic or industrial projects and programs, subject to a vote of the people. These are the 71 municipalities that have done it thus far. These are really important to allow them to be able to help shape the destiny of their communities. How does this fit in? Because of the amount of money that's being lost by not collecting and having the funds remitted for local action sales tax. This bill

is critically important. You have the other bill obviously today, too, that's extremely important, Senator Linehan's bill. So with that, I'm happy to answer any questions. The League of Nebraska Municipalities has identified this as one of our top priorities. I mean, let me rephrase that. This is our first priority, and as someone that we work with indicated, this is our second priority, and this is our third priority. On-line sales tax collection is that important because of the amount of money the localities across the state are losing and voters that voted for the local option sales tax, and of these municipalities, those that then voted to apply a local option sales tax and, but for one municipality, they're all funded with sales tax. LB840 programs are always funded with local option sales tax so you get a double vote. And they're losing money. They don't have the kind of money that they thought they would have because of, I think, the proposition of what's occurring with an increased number of on-line sales. In addition, our board feels it's extremely important to help level the playing field for brick-and-mortar because the stores and two of the people you heard here today in support of this bill outline the fact that, they didn't actually say this, but I'll say it for them, they're the ones that are involved in their local communities. They're the ones that go contribute when-- when

people need to have funds whether or not they're going to approve the ball field or do other sorts of things. They're community leaders. They care about their communities, and they contribute greatly. And I'm sure it is very frustrating to know someone's coming in to basically try on a pair of shoes or whatever it may be and then go on-line and buy it someplace else. So we just think it's extremely important. It's important for the state of Nebraska. It's important for localities, and it's important for the 200-and-some municipalities, 228, that have adopted a local option sales tax. With that, I'd be happy to respond to any questions you might have.

**LINEHAN:** Thank you, Ms. Rex. Are there questions from the committee? Senator Friesen.

**FRIESEN:** Thank you, Senator Linehan. So we've heard numerous times and I've-- I've always supported this, we're leveling the playing field, and we're protecting our hometown brick and mortar. And so this bill here does allow for the local sales tax collection. And what we're saying is, it comes back to the buyer. So following that principle, do you-- would you advocate for all local option sales tax purchases made go back to the buyer?

**LYNN REX:** I'm not sure what you mean, go back to the buyer. It goes-- I mean, the--

**FRIESEN:** It follows the buyer. What you're saying here is, we collect this, but it's going to the-- to the address of the purchaser. If I come to Lincoln to purchase something, local option sales tax stays in Lincoln.

**LYNN REX:** Right. I'm sorry, yes. OK. Sorry, now I understand what you're saying.

**FRIESEN:** So at the level that I'm trying to protect my local businesses, should this local option money also travel back to the location of the buyer?

**LYNN REX:** We're happy to talk to the Department of Revenue or work with this committee on what's the best way to do it. I think you have to take into consideration constitutional issues. And I'm not an expert on that, but I know you've got a legal counsel that is.

**FRIESEN:** OK. Thank you.

**LYNN REX:** You're welcome. Thank you for the question.

**LINEHAN:** Thank you, Senator Friesen. Senator Briese.

**BRIESE:** Thank you, Chairman. Thank you for being here, Ms. Rex.

**LYNN REX:** Yes. And thank you for the introduction of LB18. I hope you understand why we couldn't support it.

**BRIESE:** Sure. Sure. I understand. A couple of questions for you, though. Is there any way we can assure ourselves that a local option sales tax collection by remote sellers, collection and remittance, can yield tax relief for our citizens?

**LYNN REX:** Well, to the extent that we have a number of municipalities, if you look at this sheet, the 228 of them, a number of them dedicate a lot of that, if not-- some of them are 50 percent, some are higher, to property tax relief. And they've done that for decades. Others of them have dedicated a lot of those funds, whether it's a half cent whatever it may be, I don't know of any city that's dedicated all of their sales tax revenue, Senator, to LB840 programs, but a great many have. I will tell you that local option sales tax is the single most important way in which-- in which municipalities have kept the tax rate as low as they have and as low as they've been able to. We're in the process of just finalizing numbers for you. Of the 529 cities and villages in the state, over half of them were up against the maximum level limit of 45 plus 5, 45 cents per \$100 valuation. Half of those can't even raise the money to get to

the 2.5 percent. We limit our restricted funds to pay-- to pay for that. And those are the very small ones that don't have local option sales tax. So the answer to your question is, it depends. These are all programs that are voted on, the local option sales tax itself, in addition to the LB840 programs, voted on by the people for projects that they felt were that critically important. And frankly, a lot of them across the state were done because of mandates on the federal or state level, things that basically had to happen. And the local option sales tax itself is a recognition of the fact that back when the time-- when this was first beginning, it started with a half cent that the city of Omaha needed because of a crisis and some other things along the way. And as it was expanded-- it was expanded because of the recognition that folks living in municipalities pay for county taxes. And this is a way to kind of offset, if you will, the fact that when you live within the city, you pay city taxes, county taxes. Obviously, when you live in the county, you don't. But this is another way to deal with that. So in many, many cities this is very important. I will tell you that if you didn't have local option sales tax in our first-class cities and some of the other cities, I-- there-- probably they'd be-- they'd be right up against the 45 cents.

**BRIESE:** OK.

**LYNN REX:** Almost everybody would be.

**BRIESE:** OK. But there's no way to ensure that these dollars go towards tax relief?

**LYNN REX:** Well, let me-- let me suggest this. My concern is that these folks and our-- the board-- the concern of our board and our members across the state, is that these were voter-approved programs. They're folks that are wondering why they're not able to basically complete some of these, pay some bonds, do some other things that they're supposed to do because of projections of what they're going to raise. And of course, what's happened is that on-line sales have taken a lot of those dollars. So I guess, that's the other side of this. I just-- we-- we really believe in local control. We believe in that.

**BRIESE:** Sure. You bet. Appreciate that.

**LYNN REX:** And I know you do too.

**BRIESE:** Yeah. And shifting gears just a little bit, are you aware of any post-Wayfair judicial appellate decisions dealing with these ten-or-so states that have adopted marketplace statutes?

**LYNN REX:** I am not.

**BRIESE:** OK.

**LYNN REX:** We-- we get three or four mailings a day from the National League of Cities. I have not seen anything in there. That doesn't mean there isn't. I'm just saying I'm not aware of anything.

**BRIESE:** OK. Thank you.

**LYNN REX:** Thank you.

**LINEHAN:** Any questions? Thank you, Senator Briese. Senator Groene.

**GROENE:** Thank you, Chairman. Amazon is now paying? Are they paying local option?

**LYNN REX:** Yeah, well yes, I mean they're collect-- they're collecting and remitting. And then through the Department of Revenue-- and I know Tax Commissioner Fulton is here, and we had a meeting with him, a couple of meetings. But I'm sure he can address that more specifically than I, but they are doing both. So they're collecting and remitting to the state of Nebraska. In essence, as the state of Nebraska then, the Department of Revenue decides that they're, you know, sending those funds forward. But again, that's just Amazon. My recollection is that



it was a couple of years ago that Amazon voluntarily decided to do this. That 52 percent, and I get this number from [INAUDIBLE].

**GROENE:** But you don't know, from the Department of Revenue, when they it split out the taxes and send it to Omaha, Lincoln, North Platte, how much is coming from Amazon. It's not-- it's-- you don't know.

**LYNN REX:** How much they're getting? I'll defer to them to tell you that. But my understanding from talking to their staff is that they obviously are also collecting-- Amazon's also collecting state and local option sales tax.

**GROENE:** All right.

**LYNN REX:** That's my understanding from staff.

**GROENE:** Department of Revenue says their estimate is 20 million. So if that's-- I'm assuming that's 20 million to the state because we do fiscal notes for the state. So the local option is what, 1.5 at 7 percent, 20 percent or so of taxes. So you're telling me if we collect this, another \$4 million in sales tax and local options spread across the state is going to build a lot of bridges and fix a lot of potholes?

**LYNN REX:** Well, first of all, I-- I would not-- I'm not prepared to state how much money it's going to bring in or how much money it isn't. I frankly don't know. I'm going to defer to the Department of Revenue and others, and you have a fiscal note as well. I don't know. I mean, there-- I will tell you that, I mean, we've been told and I'm sure it's true that a lot, because of Amazon and the fact that Amazon has 52 percent of marketplace, but the rest of it, they're doing. That's a lot of money. And I know the state has built that into its budget for the last couple of years. So I'm sure that municipalities are getting-- those municipalities, the 228 that have it, are getting some-- some bump. I just don't know what that is. I'm just not in a position to tell you, Senator. I would-- I'd be happy to tell you if I knew, but I don't know.

**GROENE:** Thank you.

**LYNN REX:** You're welcome.

**LINEHAN:** Thank you, Senator Groene. Are there other questions from the committee? I have one. On these vote of the people to enable sales tax collection, are any-- were any of these, out of 240 I think you said, any of them under our sunset? Is that part of this agreement?

**LYNN REX:** Oh, sure. Yes, they do. This is just updated. I mean for example, yes, they do. I mean, there are a number of them over the years that have done that. And in fact, for those that go to 2 percent, due to passage of LB357 which is a Brad Ashford bill, when that enabled municipalities to go from 1.5 to 2, there is a provision in there that unless it ties into an interlocal agreement and a number of other provisions, then it has to have a sunset on it. So from going from 1.5 to 2, it would have to have a sunset unless they meet all the provisions that say that they don't have to because they've done some long-term sorts of things. But many of them have. Yes.

**LINEHAN:** OK.

**LYNN REX:** Yes, they have.

**LINEHAN:** Thank you. Thank you. Any questions? OK.

**LYNN REX:** Thank you.

**LINEHAN:** Thank you very much. Other proponents for LB284?

**SARAH CURRY:** Sarah Curry with the Platte Institute, the testimony I handed out for LB18 will satisfy for this one as well. We support this bill because it also includes the

marketplace provision. And in the essence of time, I'll take any questions, but it's the same thing.

**LINEHAN:** Questions from the committee?

**BRIESE:** Yeah.

**LINEHAN:** Senator Briese.

**BRIESE:** Thank you, Chairman. Thank you, Ms. Curry, for being here. Did I hear your testimony earlier suggesting that a deviation from the South Dakota statute is a recipe for potential issues?

**SARAH CURRY:** No, according to the Tax Foundation, they said that states that take shortcuts and don't update their statute to match the South Dakota law are inviting litigation and problems.

**BRIESE:** OK. OK. And the South Dakota statute deal-- that Wayfair court dealt with, it wasn't a marketplace-type statute, correct?

**SARAH CURRY:** That's not part of the Wayfair checklist. That was included by the Supreme Court. I don't know if South Dakota has a marketplace provision, but that's not what the Supreme Court mandated. No.

**BRIESE:** OK. OK. Thank you.

**SARAH CURRY:** Thanks.

**LINEHAN:** Thank you, Senator Briese. Are there other questions?  
Other proponents?

**RENEE FRY:** Good afternoon, Chairwoman Linehan and members of the Revenue Committee. My name's Renee Fry, R-e-n-e-e F-r-y, and I'm the executive director of OpenSky Policy Institute. And we're here today to support LB284, and we'll support LB291 as well. We see these bills as a way to close a loophole, a loophole that creates a fairness issue for Nebraska retailers and that narrows our tax base requiring us to rely more heavily on other taxes to pay our bills. Advances in information technology have greatly enhanced the ability of remote sellers to collect sales taxes in the states which-- in which they do not operate. GIS technology has improved the ability of Internet retailers to collect taxes by linking local option tax rates to their applicable street addresses and databases made available to remote sellers free of charge. Furthermore, the Streamlined Sales and Use Tax Agreement has simplified and modernized sales tax collection by remote sellers by minimizing the differences in the state sales tax codes across member states. Currently, many remote sellers who do not operate a storefront in Nebraska do not collect and remit sales tax on taxable purchases, and one can safely assume that

most consumers are not aware that use tax is due on their on-line purchases, let alone are generally knowledgeable of the process for remitting that. Collection and remittance of sales tax through marketplaces can reduce the costs for small sellers. Having marketplace facilitators collect on behalf of their third-party sellers streamlines the process. Marketplace facilitators often provide infrastructure, marketing, payment processing, and distribution. So it's logical and efficient to have them collect and remit sales tax. States' tax modernization is moving in the direction of marketplace taxation. We're aware of 12 states and the Washington-- and Washington D.C. that currently tax marketplace facilitators, including neighboring states Iowa and South Dakota. Finally, sales tax collections from remote sellers are already incorporated into this biennium's budget, so not passing legislation to require collection and remittance could put us-- could put us in a budget shortfall larger than what is currently projected. So with that, I would be happy to answer questions.

**LINEHAN:** Are there questions from the committee? Senator Friesen.

**FRIESEN:** Thank you, Chairman Linehan. I don't want to put you on the spot with the wording of the legislation but have you-- have you read through the bill really carefully and could you--

**RENEE FRY:** I have looked at it. I am not an expert in Dormant Commerce Clause though.

**FRIESEN:** OK. Then I won't-- I'm-- I'm curious about the marketplace or the sellers and how it's worded that-- is it the marketplace seller-- when the marketplace facilitator has 200 or more sales, then they start collecting sales tax?

**RENEE FRY:** Yes.

**FRIESEN:** But it's not each individual company or person that they're selling for.

**RENEE FRY:** Correct. Yes. Correct. That's my understanding.

**FRIESEN:** So now we've subjected a small business that may be selling only 50 things into the state to the sales tax.

**RENEE FRY:** Correct. Right.

**FRIESEN:** Got you. Thank you.

**LINEHAN:** Thank you. Are there other questions from the committee? Oh, excuse me, Senator McCollister.

**McCOLLISTER:** Yeah. Thank you, Madam Chair. Mrs. Fry, weren't you involved in the development of LB284?

**RENEE FRY:** To a certain extent, not with the exact language, but certainly we are very supportive of this concept and-- and have reviewed drafts then.

**McCOLLISTER:** Yeah. As I recall, LB284 was vetted by the law college, is that correct?

**RENEE FRY:** Professor Thimmesch at the law college and it's-- he has personal expertise in Dormant Commerce Clause, and so he did give advice and input on the legislation, yes.

**McCOLLISTER:** Thank you.

**LINEHAN:** Other questions? Thank you, Senator McCollister. Other questions from committee? Just a point of clarification, too, I'm just-- I think this was what Senator Friesen was asking. When you say currently taxed marketplace facilitators--

**RENEE FRY:** Yes.

**LINEHAN:** --what's the definition of a marketplace facilitator?

**RENEE FRY:** So that would be someone who operates a marketplace, like Amazon or eBay.



**LINEHAN:** So are you taxing Amazon? Is that what--

**RENEE FRY:** So Amazon would be taxed with collecting that-- I shouldn't have used that word.

**LINEHAN:** Right. That's what I'm trying to--

**RENEE FRY:** Amazon would have to--

**LINEHAN:** Uh-huh.

**RENEE FRY:** --collect that tax on behalf of their affiliate, yes.

**LINEHAN:** OK. Thank you very much.

**RENEE FRY:** Yeah.

**LINEHAN:** Other questions? Thank you.

**RENEE FRY:** Thank you.

**LINEHAN:** Other proponents?

**JOHN HANSEN:** Good afternoon, again, Madam Chairman and members of the committee. Again, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union. We have been on this effort for some time. And with just more for background purposes say that though, the reasons that we have been on this issue as long as we have is

that, in our view, the law of the state has been fairly clear. And the failure to collect sales taxes has been primarily an enforcement issue and that if you're going to have a law, then you ought to enforce it. And so we supported Senator McCollister's efforts previously and Senator Watermeier because if we're going to pass laws, we need to be serious about enforcing them. And this was clearly a law that was not getting enforced. And it creates in our mind an unfairness in that our organization represents family farmers, ranchers, and members of the rural community. And those folks in rural communities really do depend on their brick-and-mortar stores to be the folks who step up and help fund band uniforms and all of those other things. And because of the unfairness issue, we felt that it was important for us to be as visible as we have been. And so that is my explanation of why our interest in this, in these series of bills. And we thank Senator McCollister and Briese and others for bringing bills forward.

**LINEHAN:** Thank you. Is there anything-- other questions?

**JOHN HANSEN:** Thank you.

**LINEHAN:** Thank you very much. Other proponents?

**BRANDON KAUFFMAN:** Good afternoon, Chairman Linehan and members of the Revenue Committee. My name is Brandon Kauffman, B-r-a-n-d-o-n K-a-u-f-f-m-a-n. I'm the finance director for the city of Lincoln, and I'm providing testimony on LB284 which proposes the Remote Seller and Marketplace Facilitator Act. Thank you for the opportunity to testify. The city supports LB284, and we want to thank Senator McCollister for introducing the bill. Here in Lincoln, we often hear from our local retailers regarding this important issue. In essence, it's about equity more than anything. LB284 will assist the state and local governments in levelling out-- leveling the playing field between local merchants throughout Nebraska and out-of-state merchants that sell via the Internet, telephone, and catalog mail order. The current system which requires purchasers to calculate and submit taxes on their on-line purchases simply is not working effectively. This tax loophole under current law has given remote sellers a significant competitive advantage over our local businesses. LB284 would effectively close that loophole. Sales tax is the largest revenue source for the city of Lincoln, comprising 47 percent of our general fund revenues. Sales tax revenue from remote sellers is needed to offset the loss of revenue from local retail sales as on-line purchases continue to increase. The city of Lincoln did not realize a notable increase

in sales tax receipts as anticipated when Amazon began collecting and remitting sales tax in 2017. This is possible because of the revenue from the Amazon sales offset reduction in local retail sales. We estimate that LB284 would increase the city of Lincoln's local option sales tax by approximately \$938,000 to \$1.2 million. Here in Lincoln, that equates to about a one half cent of property tax levy. The city based this estimate on information from the state Department of Revenue that was estimated statewide between \$30 to \$40 million. This revenue is needed to provide services to the growing population and service area. Like the state, the city of Lincoln has faced economic challenges over the years. During the downturns, we delayed maintenance, cut staff, and reorganized. At the same time, we dealt with restrictions on and reductions of different funding streams. To balance our budgets, we, too, have made some tough choices. We figured out how to do more with less. We ultimately streamlined our opera-- operations. In fact, our nonpublic safety employees in the city of Lincoln are about equal to the number funded in 2008. In short, local governments have tried to do their part as we collaborate with the state-- state to grow our economy. Now LB284 is particularly important. It will assist the state of Nebra-- Nebraska and communities across the state as we deal with challenges including emerald

ash borer which is expected to cost the city of Lincoln approximately \$30 million over the next 15 years. Ultimately, LB284 will reduce pressure on property tax which along with sales tax makes up 74 percent of tax-funded revenues for the city of Lincoln. For these reason, I urge the committee to advance LB284 to the full Legislature. Please enact remote sales tax collection legislation that will protect this valuable revenue source, allowing Lincoln to fund services necessary to maintain our thriving community. Thank you for the opportunity to comment and I'll stand for any questions.

**LINEHAN:** Thank you. Questions from the committee? Seeing none, thank you very much. Good afternoon.

**DON WESELY:** Excuse me. Chairman Linehan, members of the Revenue Committee, for the record, my name is Don Wesely, D-o-n W-e-s-e-l-y. I am here representing GNC, the Greater Nebraska Cities, here to emphasize that cities across the state are very concerned and-- and very supportive of this legislation. Want to thank Senator McCollister, Senator Briese, Senator Linehan, for introducing legislation to move forward with this. We also want to thank Tax Commissioner Fulton and the Governor for implementing this at the start of the year. We appreciate everybody's cooperation, a little different than last year or

the year before which was a huge fight. But we're all here pretty much in agreement, and the goal is to try and get this moving and as successful as possible as soon as possible. Dang, Senator Briese left, and actually he was who I wanted to address if-- if that's OK.

**LINEHAN:** You can. He had a committee hearing. He had to introduce another bill.

**DON WESELY:** Well, he raised an interesting question, and his question was, how do we know that we're going to see a reduction in property taxes from this? And I had a couple of examples of first, my own, when I came in as mayor in 1999. The 1990s had been good to Lincoln in sales tax revenues. They had been increased significantly year after year, and they reduced the mill levy from about 45 cents down to about 30 cents. And we've pretty much held it at about that level ever since, as sales tax revenues didn't increase as much as they once did. But we saw a mill levy reduction of significance. That's about a third of the mill levy that we once had. So you-- we've actually seen that happen in Lincoln. And I can tell you, that's also the case out in Kearney. Whenever I was trying to find a way to-- to get that mill levy reduced, we would look at Kearney. Kearney has got, I think, the lowest first-class city mill levy. They're-- they're

down below 20 cents. And that's, again, in part because they have a really good sales tax and they were-- they were doing quite well. But a couple of years ago, they got really concerned. And that's why they and the Greater Nebraska Cities have been so supportive of this, is that they were looking at property tax increases. They don't want to raise property taxes. They like having the lowest property taxes of any city in first-class cities. But when the revenues start falling on sales tax or flattening out as they were there, that's what they look at. So they're very supportive of this in the hope that they won't have to raise property taxes. So you reduce mill levies if possible, and you certainly don't raise the levies if at all avoidable. And I can tell you, the political pressures really high to not do that. So I think it will reduce property taxes, is what I'm saying. And thank you.

**LINEHAN:** Thank you. Are there questions from the committee?  
Seeing none, thank you.

**JOE KOHOUT:** Chairwoman Linehan and members of the Revenue Committee, my name is Joe Kohout, K-o-h-o-u-t. And I appear before you today on behalf of the United Cities of Sarpy County, a coalition of the mayors of Bellevue, Gretna, Papillion, Springfield, and La Vista, in support of not just LB284, but

LB291 as well. And appreciate the opportunity to do so. Madam Chair, I'd ask that part of this also be carried over to LB291 so that you don't-- we don't have multiple testifiers on LB291 as well.

**LINEHAN:** We are thankful.

**JOE KOHOUT:** On many occasions, in previous sessions, the committee has heard from Mayor Doug Kindig of La Vista talking about the fact that brick-and-mortar retailers are the cornerstone of communities and are essential to economic develop-- health and vitality. Further, that those brick-and-mortar businesses operate at a distinct disadvantage to certain on-line retailers who are not collecting sales tax at the point of purchase. The mayors of the United Cities firmly believe that whether a sales tax takes place on-line or at a local business, sales tax which is owed should be collected. The same tax rules should apply to all retailers. Therefore, on behalf of the United Cities, I would ask that the committee advance either LB284 or LB291 for passage by the entire Legislature. Thank you, Chairwoman Linehan and members of the committee, for your attention. I will try to answer any questions that you might have.

**LINEHAN:** Thank you, sir. Are there questions from the committee?



**JOE KOHOUT:** Madam Chair, if I could, Senator Groene did ask a question before, and I know he's gone. But-- but one of the issues that we have faced in this committee a few years ago did advance legislation that got to this point. But one of the issues that has-- that Cities have worked with the Department of Revenue on, is the ability to send an individual from that city down to the Department of Revenue to obtain sales tax information on individual remitters of those sales tax dollars. I will tell you-- or those of the sales tax. I will tell you, those individuals who are authorized by their individual cities to go, are held under the same penalties as an employee of the Department of Revenue should they disclose any of that information as well. So really, it's one individual at every city that can have this information, and they can't disclose it to anyone even if the mayor directs them to. So I would just tell you that is information, but it is information that is typically held very closely by one individual at that city.

**LINEHAN:** OK, that's very good to know. Thank you much. Other questions from the committee? Seeing none, thank you.

**JOE KOHOUT:** Thank you.

**JACK CHELOHA:** Good afternoon, Chair Linehan and members of the Revenue Committee. My name is Jack Cheloha, that's J-a-c-k, last

name is spelled C-h-e-l-o-h-a. I'm the lobbyist for the city of Omaha, and I would like to testify, at this point, in favor of LB284. First, I'd like to thank the three members of this committee for showing leadership by introducing the three bills that we're taking testimony on this afternoon. Of course, we would prefer LB284 and LB291 due to the local option sales tax which is explicitly recognized within them. The city of Omaha does have a local option sales tax. It's 1.5 percent of sales. That's been that same rate since 1978. The amount of money it brings in is roughly 42 percent of our general fund budget. So it's important for us to make sure that all sales that are subject to sales and use tax be collected on. We see this as closing that loophole, and we think they're both good bills, LB284, LB291, and for those reasons, we are supportive. But I'll try to answer any questions.

**LINEHAN:** Thank you. Are there questions from the committee?  
Seeing none, thank you very much.

**JACK CHELOHA:** Thank you.

**LINEHAN:** Oh, I'm sorry.

**CRAWFORD:** No, thank you.

**JACK CHELOHA:** Thank you.

**LINEHAN:** Other proponents? Are there any opponents? Is there anyone wishing to testify in a neutral position?

**KIM ROBAK:** Good afternoon, Senator Linehan and members of the committee. My name is Kim Robak, K-i-m R-o-b-a-k. I'm here today in a neutral capacity on both LB284 and LB291. I'm going to follow Mr. Kohout's lead, and testify on both bills at the same time, so you don't have to listen to me again. And anyone-- you might wonder, how could you possibly be neutral on a bill like this? This is apple pie and the-- and the-- and the girl next door. This is a bill everybody wants to love. The reason that we are neutral-- this is, I'm here today on behalf of both Pay Pal and First Data, because this bill doesn't actually affect us. We don't sell products that-- on-- in the marketplace. But what we do is, we do facilitate those sales. And that term is used in both bills. Marketplace facilitators are used, and in fact, I've got LB284 in front of me. And on page 2 it says, on line 13, a marketplace "facilitator" means a person who, and then you go down to the bottom line, 31, it says, engages in any of the following activities, line 2(i), payment processing services. And that's what both of these companies do. They do payment processing services. If you read at the bottom of page three, it says, notwithstanding any of the provision of law, a marketplace facilitator-- facilitator, which would be PayPal and First Data,

shall be subject to the Nebraska Revenue Act. And you go down to line two, and shall collect and remit the sales tax due under such acts and-- and sessions-- sections if-- if the following requirements of law are met. And that would be the thresholds that we talked about earlier, that you've talked about. I don't think that-- and in talking with several of you about this, I don't think that that's the intent of this bill, that payment processors are subject to paying that tax. And so passed out to you are some proposed words that could be used to make sure that payment processors aren't collecting the tax. So let me just tell you that in the United States, there are 10 million merchant locations, little mom-and-pop stores and big stores. There are dozens-- there are a dozen payment networks like Visa and Star. There are hundreds of processors, and there are 8,000 card-issuing financial institutions. And they all make up this payment network. And as a result they would be subject to this-- this law. So I don't-- what happens is-- and it would be difficult for them to do it because what happens is, you have-- you have your credit card and it goes through the little machine. And now with the chip, it takes a little bit longer. What happens is, they send a little note off to the credit card company to say, is this a legitimate credit card? And it comes back and says, yes. And then it sends a second note and says,

and if it's a debit card, it will say, is there money in the account? And it will come back, and it'll say, yes. And so now you can pull your card out, and it says, it's a valid transaction. We don't know what the transaction is as card processors, and we would not be able to submit the tax as payment card processor. So I'm just asking for a little language that would clarify that. I made a suggestion, and I will leave it to legal counsel if this is the best place. And if there are more than one bill that are being put together, clearly, legal counsel will have the best-- committee counsel will have the best ideas of where to put that. But we would ask that you add that language and then pass the bill quickly. I would be happy to answer any questions.

**LINEHAN:** OK. Are there questions from the committee? I just have one. So with PayPal, which I've used before, they do sell products, don't they sometimes?

**KIM ROBAK:** No, eBay does. And eBay is PayPal. They used to be one company--

**LINEHAN:** OK.

**KIM ROBAK:** --and so that's where there's the confusion. And then they split recently. So PayPal does the transactions.

**LINEHAN:** OK.

**KIM ROBAK:** They do-- they're the payment processor. They're--  
they're--

**LINEHAN:** All right.

**KIM ROBAK:** --like a credit card, but not.

**LINEHAN:** OK.

**KIM ROBAK:** OK?

**LINEHAN:** OK. Thank you.

**KIM ROBAK:** They'll shoot me for that. That's not-- that was not  
a very technical explanation of what they do. Sorry. Apologize.

**LINEHAN:** Other questions? Thank you very much.

**KIM ROBAK:** Thank you.

**LINEHAN:** Is anyone else wishing to testify in the neutral  
position? Letters for the record, proponents, LB284: Michael  
Sothan, Main Street Beatrice Inc.; Mayor Jean Stothert, Mayor of  
Omaha; Pat Haverty, Nebraska Economic Developers Association.  
There were no records in opposition. We have four who are  
neutral: Wendy Birdsall, Lincoln Chamber of Commerce; Bryan

Slone, Nebraska Chamber of Commerce; David Brown, Greater Omaha Chamber; Michael Mattmiller, Microsoft. Yes. Senator McCollister, would you like to close?

**McCOLLISTER:** Thank you, Madam Chair. I want to thank all the proponents that spoke this morning-- this afternoon. I think we've got a pretty good background on the three bills. And we can certainly tune up the legislation to reflect the previous testifier's concerns about the bill. I would guess what we'll-- what we'll likely do is compare LB281 [SIC] and LB291, take the good features of each bill, and-- and move this bill forward as quickly as we can. Time is of the essence. As the fiscal notes for the two bills would indicate, that's LB284 and LB291, there is some incentive to getting these bills out of committee, onto the floor, pass it to the Governor as soon as possible because of the difference in the fiscal notes. This whole effort, with regard to the remote sales tax bill, is near and dear to me. My wife owned two toy stores in Omaha, and she would frequently have customers come in, look at the merchandise in her stores, and then go back home and buy the product on-line. And she could actually see that difference over the long period of time she was in business. So this is a good thing for us to enact. It's going to help the state of Nebraska. And so I would hope that we could move this bill forward quickly. Thank you.

**LINEHAN:** Thank you, Senator. Are there any questions from the committee? Senator Friesen.

**FRIESEN:** Thank you, Chairman Linehan. So I just want to clarify I guess the market facilitator part of it. So the way I read the bill, if the market facilitator, which let's say it's Amazon, they're selling tens of thousands of products. So anyone who uses Amazon, whether they're selling 5 or 10 or 200 items into Nebraska, would now be subject to the sales tax?

**McCOLLISTER:** No, sir, not everyone. I mean, you've got to meet the threshold requirements.

**FRIESEN:** Is Amazon going to attract that threshold?

**McCOLLISTER:** I would presume so. I-- I--

**FRIESEN:** They're going to have to-- it just says if the marketplace facilitator reaches the threshold. It doesn't say individual sellers reach the threshold, is the way I read it. And so when marketplace reaches that threshold of 200 sales, everyone who uses them would now be subject to it. That's the way I read the bill. So that-- it's a question I have, and I think it needs to be clarified.



**McCOLLISTER:** Well, I'm not certain of my answer, but I think it's related to the seller rather than Amazon.

**FRIESEN:** OK. Thank you.

**McCOLLISTER:** But you know, that's a significant amount of money. These-- these-- these--

**FRIESEN:** I-- I'm not-- I'm just saying that if we're going to meet the requirements--

**McCOLLISTER:** Right.

**FRIESEN:** --of the South Dakota law of 200 or less-- or more sales in the-- from each small seller, I think we have now broken that. And now we are subject to them if they sell ten items, they're not going to be subject to sales tax and that makes this different than South Dakota.

**McCOLLISTER:** Well, I think LB284 and LB291 are-- are the bills for us to work on--

**FRIESEN:** Yes.

**McCOLLISTER:** --because I think that they amount to as much as \$20 million that is currently not in the budget.

**FRIESEN:** I'm-- I'm totally in favor it.

**McCOLLISTER:** Yeah.

**FRIESEN:** I'm just saying the wording, we need to look at, and for the record, I wanted to make everyone aware of that.

**McCOLLISTER:** OK. Thank you, Senator.

**LINEHAN:** Thank you, Senator Friesen. Are there other questions from the committee? Seeing none, thank you very much, Senator McCollister. And the hearing on LB284 now comes to a close. So now we're going to go to LB291 which is my bill, so I will turn the committee for the rest of the afternoon over to Vice Chairman Friesen. So he will-- because I've got the next two bills. He will be in charge.

**FRIESEN:** Thank you, Chairman Linehan. We will now open the hearing on LB291. Welcome, Senator Linehan.

**LINEHAN:** Good afternoon, fellow committee members, and thank you, Senator Friesen. For the record, my name is Senator Lou Ann Linehan, and I represent District 39. Linehan, Lou Ann Linehan is spelled L-o-u, capital A-n-n L-i-n-e-h-a-n. I'm introducing LB291. You've already heard lots of discussion about the remote sellers issue. I'm not going to repeat a lot of what you heard. I'm just going to tell you why I introduced LB291. This bill was brought to me by the Department of Revenue. LB291 does more than

Senator Briese's bill, but doesn't go quite as far as Senator McCollister's bill. So we're hoping to find the middle ground here that everyone can agree to. It implements the U.S. Supreme Court ruling, the Wayfair decision, which held that states are allowed to require sellers without a physical presence to collect and remit tax on sales into the states. It clarifies the definition of engaged in business which determines whether you are required to collect and remit tax. It provides the small seller exception that was approved by the U.S. Supreme Court, just as the other bills do, of \$100,000 in sales or more than 200 separate transactions in a calendar year. It makes clear when a seller must register and begin filing returns, on or before the first day of the second calendar month after the small seller exception is exceeded. I think that addresses one of Senator Friesen's questions. It addresses the issue marketplace facilitators and requires that they collect and remit, but the tax the seller is still-- but the tax for the seller-- but is-- is still required to file-- the seller is still required to file and return and claim credit for what the facilitator remit. This is an important requirement that is not addressed in the other bills. It gives the department a method to match actual sellers with the money being remitted. The Tax

Commissioner will be testifying behind me, and I hope we can move this bill to the floor. So with that, any questions?

**FRIESEN:** Thank you, Senator Linehan. Any questions from the committee? Senator Crawford.

**CRAWFORD:** Thank you. Thank you, Vice Chair Friesen, and thank you, Senator Linehan. Is-- is the fact that they're putting in a claim, does that help with the fact that maybe they only sold-- they sold under the threshold, they would get their money back?

**LINEHAN:** I don't-- I think-- no, I don't think so. I think it's just a matter of-- well, let's-- I'll let the Tax Commissioner answer that question. My guess is that they're just trying to make sure that the people-- because they don't have-- I wouldn't think they'd have to do anything if they didn't meet the thresholds. But I don't know for certain, so I will let the Tax Commissioner answer the question.

**CRAWFORD:** OK. Thank you.

**FRIESEN:** Thank you, Senator Crawford. Any other questions from the committee? Seeing none, thank you. Proponents? Welcome, Commissioner Fulton.

**TONY FULTON:** Thank you, Vice Chairman Friesen, and thank you, members of the committee. My name-- for the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I'm Tax Commissioner here in support of LB291. This bill adopts language on economic nexus that is consistent with guidance already published by the department and imposes a collection responsibility on marketplace facilitators. As I testify, the Department of Revenue is actively listening and speaking with multiple stakeholders on LB291 and the impact to businesses it would make going forward. I just want to make you aware of that. We've been contacted, and we're-- we're listening. Today's retail process from seller to buyer is not as simple as it seems, and is becoming increasingly more complex, global, and in constant change, as it mirrors technology and delivery of products that move rapidly from delivery right-- from delivery by drones to multiple transit modes. There have already been many sellers becoming licensed to collect Nebraska and local sales taxes, even before the guidance we released giving them until January 1 to comply with the requirements to become licensed and collect sales taxes. The October forecast that the Appropriations Committee is using already reflects the increased revenue expected from the change in nexus standards for collecting sales taxes in Nebraska. As you know, LFO has estimated an \$8.4

million and \$9.6 million revenue increase in fiscal years '20 and '21 for LB291. The Revenue Department respectfully disagrees, and in doing so I want to note to you that this is exceptionally rare that the agency would disagree with LFO. When I was on your side of it, I griped about fiscal notes often. And as irony would have it, I griped about-- I griped about fiscal notes that came from that Department of Revenue. So fiscal-- I'm sensitive to these fiscal notes. But what I think I probably failed to realize as a senator is that the fiscal note process is ultimately decided by LFO, but it's done collaboratively with the executive branch. And I-- since I've been the tax commissioner, I can think of maybe two times where we had any disagreement. So I say this with the benefit of just experiential knowledge of the interplay between the branches. So I want you to know that I don't do this lightly. I've been watching new retailers become licensed in Nebraska in the months since the Wayfair decision was announced and in the years before the Wayfair decision was announced. In fact, I've watched it occur-- if we get into questions, I can give you more specificity. This has been occurring gradually over the course of at least the past two years. Yeah, I'm convinced that all or nearly all of the revenues from remote sellers will come into Nebraska regardless of this or any of the other bills. Any

additional revenue is either minimal or can't be estimated with any precision. So I am putting this out before you. Part of that-- part of the responsibility of the Tax Commissioner is-- is the revenues coming into the state. I also have that history on the Appropriations Committee. They're working off of a projection, and I'm here to tell you that we included in our projection the whole enchilada. When we said \$30 to \$40 million back in, you know, whenever it was, June or July, after-- June, after Wayfair was decided, our forecast at the October meeting of the Nebraska Economic Forecasting Advisory Board including-- included all potential sales due to Internet sales. Again, that's an estimate. Another frustration is that we have not-- we can't be precise about what the number is, but we put forward an estimate. And I just-- I feel compelled-- I have to communicate to you that even if this bill passes, that's why we put the fiscal note on it that we did. We do not anticipate this influx of revenue, and that's important as you guys are setting your budget. The bill itself is-- is still needed to provide clarity and protections for sellers who may reach the nexus threshold during the year. It's also necessary, in my opinion, to enhance the department's implementation and enforcement duties. I fielded a call earlier from a member of the media who asked why we had a change. And in returning the call, the member was

gracious to point out that, well, I went back and looked at what you actually said. And the department, we did not believe there needed to be a special session at the time, but we still maintain that after the decision is made, that it would be appropriate to put into statute those decisions made at the Supreme Court level. And that's why we've come to you with this bill. I have been contacted by others who have offered amendments to provide definitions or to provide other liability relief or otherwise clarify other aspects of the bill. Discussion regarding liability and timeline questions have been brought to attention for compliance. And in receiving these questions, I just want to get across to you that we stand ready to work with you. You'll probably be getting questions also, and you probably already have. We stand ready to work with you to determine and draft whatever clarification is necessary. We ask for your favorable-- favorable consideration of LB291, and I would be pleased to try to answer your questions.

**FRIESEN:** Thank you, Commissioner Fulton. Any questions? Senator Kolterman.

**KOLTERMAN:** Thank you, Senator Friesen. Mr. Fulton, I'm going to put you on the spot.

**TONY FULTON:** OK.



**KOLTERMAN:** Do you have any preference where the revenue should go once we receive it?

**TONY FULTON:** Do I have any preference?

**KOLTERMAN:** Yeah.

**TONY FULTON:** I per-- well, I know what the Governor-- I know what the Governor said and of course, I--

**KOLTERMAN:** I didn't ask you what the Governor said.

**TONY FULTON:** I know what the Governor-- but if you're asking if I have a preference, no.

**KOLTERMAN:** All right. Thank you.

**FRIESEN:** Thank you, Senator Kolterman. Senator Groene.

**GROENE:** Maybe I've overlooked it over time, but I'm looking at the General Fund forecast budget and the sales and use tax, of let's say next year, would be \$1.8 billion, a little over.

**TONY FULTON:** OK.

**GROENE:** Can you give me a breakdown? Trying to figure out, \$20 million seems small as sales tax. But the \$1.8 billion we collect, how much is that automobile? How much is that at

industry? How much is-- do you know how much is attributed at retail? Because Internet commerce is usually just retail.

**TONY FULTON:** Yeah. Well, I think-- I think we can probably get a breakdown for you but a couple of things. Number one, I want to reiterate, we do not believe that there will be extra revenue. That is baked into your forecast already that you're working off of.

**GROENE:** \$20 million.

**TONY FULTON:** Whatever. We-- we-- we did not say \$20 million. That was-- that was LFO.

**GROENE:** Oh.

**TONY FULTON:** Yeah. Our fiscal note, we are saying is no fiscal impact because it's already baked into the forecast that you have. That-- that's our position. And just to be-- I think we just have a disagreement. I mean I did reach out to LFO on this, and I-- we just disagree. So I want to clarify that. It doesn't get exactly to your question. Your question has-- has to do with the breakdown of those sales taxes. I believe we can-- I'm positive we can get you some breakdown, but with respect to specifically Internet sales, it's not possible. And I can explain-- if you'd like, I can explain why.

**GROENE:** I-- another question then.

**TONY FULTON:** Yeah.

**GROENE:** You said it was already baked into your estimates, budget estimates of sales tax receipts. Was that before? Did you imply any additional forecasts because of that Supreme Court case or you just don't think that it has minimal effect?

**TONY FULTON:** It was in response to the Supreme Court case. So the Supreme Court-- SCOTUS spoke on this on June-- June 21. We took some time in the department to digest that and it was July 27 when we provided our guidance. That meeting of the Forecasting Advisory Board, at which the Department of Revenue is obligated, required to present our forecast, that included the entirety of-- of that Wayfair impact.

**GROENE:** And what was your addition?

**TONY FULTON:** We said-- we said this for quite a while; \$30 to \$40 million is what we attribute to Wayfair. Yeah.

**GROENE:** All right. And you have it in there already, and the Fiscal Office is estimating another \$29 million or \$17 million.

**TONY FULTON:** Yeah. That's where we have the disagreement.

**GROENE:** All right. And because my assumption is when you made that estimate, you knew estimated retail sales as a portion of your total sales tax receipts and then estimated that how many retail sales are not being collected because of-- because that would be the only thing. It wouldn't be automobiles or industrial purchases or.

**TONY FULTON:** I see what you're saying. The answer to your question is, yes. It was. It was an estimate.

**GROENE:** Thank you.

**FRIESEN:** Thank you, Senator Groene. Any other questions from the committee? Senator McCollister.

**McCOLLISTER:** Yeah. Thank you, Senator Friesen. Just to make sure I understand, Director Fulton, with the passage of LB284, LB291, you won't see an additional effect or any additional monies coming into the Treasury?

**TONY FULTON:** We don't believe so.

**McCOLLISTER:** Already baked into the numbers, huh?

**TONY FULTON:** That's-- that is-- yes, it is. That-- and that-- and during the Forecasting Advisory Board meeting, our economists-- our-- yeah, our economists, I'm positive, said that

also. So that forecast, from which the Appropriations Committee and the Legislature, all of us are working off of, we believe that this has been baked in. We included it in our-- in our forecast.

**McCOLLISTER:** How do you intend to enforce, you know, these, 280-- LB291, LB284, and also your previous obligation to start collecting these monies? What-- what enforcement mechanisms will you employ?

**TONY FULTON:** Well, I probably won't be able to share all of them with you, but as you can imagine, there are going to be sellers from all across the country that we're going to have to, you know, and we will have-- that-- that will have to come into compliance. We have one of our-- I'll give you an example. Here's an anecdote, I think, that will answer your question. We have been able to get a-- a-- a list of what we believe are the top 100 retailers on the Internet. And so those who are engaged in business in Nebraska, and this is-- this goes back to our guidance in July, those who are engaged in business in Nebraska, we're-- we're in touch with. And so that's how-- that's how you go about taking a bite of a great big apple. You take small bites. And so that's something that we have-- we've done already. Or we're-- actually I should say, it's-- we're doing

that now. So that would be-- anyway, there are other-- other mechanisms, but that's what we think is the most fruitful, the quickest.

**McCOLLISTER:** Don't you think long-term even some of these-- these sellers, these-- are going to be incentivized to pay the tax even though they may be low-- be below the \$100,000--

**TONY FULTON:** Threshold.

**McCOLLISTER:** --100 transactions because it's going to be so easy for them to remit the sales tax that way?

**TONY FULTON:** I think so. And this-- this gets to Senator Briese's question, so I'm going to go ahead and get it into the record. And he can check it out later when he's introducing a bill. When I first came here, this was one of my charges was to try to get as much compliance as possible with respect to Internet sales. This was before Wayfair passed. So it's pretty big-- pretty big challenge. So I've watched this pretty closely. I'm going to give you a, you know, on the one hand, on the other hand. On the one hand, we have-- it's not possible to be precise about what's coming into the state that's just related to Internet sales. And that is-- if you think about a company who has a nexus in Nebraska who's remitting to Nebraska already who

also is conducting Internet sales, they are remitting on a single sales tax permit. And it's not broken out, what comes in on the Internet and what doesn't. So that would be one challenge for the department if we were to be precise to the penny what's coming in on the Internet. We'd have to talk to every single, you know, sales tax permit holder who's remitting who we have reason to believe is remitting on the Internet and determine how much of that is on the Internet. And we simply don't have-- we can't do that. I don't think the businesses would appreciate it either. So that's on the one hand. On the other hand, I do want to have an idea of what's happening, and so we came up with our own metric. And here's where I'll-- I'll share with you what I-- it's just we thought creatively, how can we come up with this? We-- we talked, and I asked my staff to come up with a listing of all the new sales tax permits that occurred in that calendar year, OK? So 2016, 2017, 2018, is what we did this for. And then I said, OK, can we break out those who have a non-Nebraska address? We did that. I can tell you, in 2016, the number, I just checked is, the number was about \$6 million. Twenty-seventeen, the number was \$36 million. And in 2018, the number was \$18 million, OK? So we had put an estimate out of \$30 to \$40 million, you know, as long as I've been here. And just from those rough estimates that I just gave you, those-- that-- that

little metric that we put together, you think it's probably, it looks like it's in the ballpark. Now, I go back to the other hand and caution you, we went back and checked 2018, and I was going through some of the names and recognized that a lot of those sales were due to projects in Nebraska. And so this is where the frustration sets in, OK? Those were not done on the Internet. If there's a building project that gets done in Nebraska and there's a contractor from outside of Nebraska who's making say-- or making purchases inside of Nebraska, he or she, that contractor's remitting the sales tax. That's not an Internet sale. So when I pulled that out of 2018, the number went down to, I think it was \$10 million , something like that. We didn't do the same for 2017, but we do think a lot of that is probably on the Internet. So I-- just-- I'm-- I'm letting you live in my shoes for a little bit. It's-- it's frustratingly impossible to come up with precision for the reasons I've articulated already. But we think we're in the ballpark with respect to our original estimate because of that metric that we developed.

**McCOLLISTER:** Thank you.

**FRIESEN:** Thank you, Senator McCollister. Senator Crawford.



**CRAWFORD:** Thank you, Vice Chair Friesen. Thank you, Commissioner. I'm trying to understand what the obligations of a small seller would be who's selling on one of these-- on a marketplace platform. Is-- is the marketplace responsible for gathering-- for collecting and submitting their revenues but then are they still responsible for having a license and keeping track of sales tax or their sales as well? I'm trying to understand, in part, the language on page 15.

**TONY FULTON:** OK. You mean the facilitator, the multivendor marketplace facilitator?

**CRAWFORD:** Right. Right. Like if I'm selling everything I sell on a facilitator, am I free of all worries, and I don't have to worry about Nebraska's forms or requirements?

**TONY FULTON:** Yeah. I think I can answer the question here. Let's see. On page three of the bill, the green copy, the very top of the page, subsection two, line five, a retailer who lacks a physical presence, and going forward. Then it's line seven at the end, or who operates or uses a multivendor marketplace platform, etcetera. So in essence, that which is true or that-- that which is required for a retailer would be required for a multivendor marketplace platform.

**CRAWFORD:** And so one question, just to go back to the question Senator Friesen asked on the previous bill, if a multivendor platform gets to the thresholds, then they are required to collect and remit those sales, regardless of whether the individual retailers met those thresholds?

**TONY FULTON:** Correct. That-- that which would apply to the retailer would apply to the multivendor marketplace platform.

**CRAWFORD:** Now how do we then prevent--but if I'm selling only on a multivendor platform and the multivendor platform is already required to remit the sales tax, is there any obligation-- do I have any obligations to the state of Nebraska? Because I'm selling everything on a multivendor platform. If I only sell through Amazon, say, and they're already collecting and remitting sales tax--

**TONY FULTON:** Yeah.

**CRAWFORD:** --then what's my obligation as a vendor?

**TONY FULTON:** Well, the obligation will have been met by the marketplace-- or the multivendor marketplace platform.

**CRAWFORD:** So I wouldn't have to-- have any obligation?

**TONY FULTON:** Right? Yeah, that's correct. Now I-- so my answer-- so what you're saying is if there is a remote seller who's under the thresholds and they're selling on a multivendor marketplace platform, is there an obligation to collect and remit the sales tax on the part of that under-the-threshold, remote seller?

**CRAWFORD:** Right.

**TONY FULTON:** And the answer is no because that obligation will have been required for the multiplace-- the multivendor marketplace platform on which they're selling.

**CRAWFORD:** So just going back to, then, page 15, the retailer that makes sales using a multivendor marketplace platform, they're relieved of their obligation to commit-- to collect and remit sales tax. But then later-- later it says, such a retailer must include all sales into Nebraska in its gross receipts in its return, which makes it look like even if I sell everything on a multi--

**TONY FULTON:** OK.

**CRAWFORD:** --vendor platform, I'm still having to turn in some form or report some revenue.

**TONY FULTON:** Yeah. Well, that's not-- yeah, that's not the intent--

**CRAWFORD:** OK.

**TONY FULTON:** --and this is something that I-- I, to be 100 percent accurate, I should probably make certain and get back to you.

**CRAWFORD:** OK.

**TONY FULTON:** But I'm pretty sure I'm accurate about this. That which is true for-- so if you go back to page three, that which is true for the retailer is true for the multivendor marketplace platform. So when you see the word retailer, that would be a-- with-- above the threshold, the multivendor marketplace platform.

**CRAWFORD:** OK.

**TONY FULTON:** So and if we need to have language that clarifies that, that's-- glad to work with you. That--

**CRAWFORD:** Sure.

**TONY FULTON:** --that's-- you know, that's what we're after. If I may interject, there are marketplace facilitators today who are

voluntarily signing up to collect and remit the sales tax in Nebraska. Another thing that perhaps is not known, that's occurring today. We had-- again, it's occurring today. We had another one just signed up voluntarily just-- just last week. So that also is occurring today. And to give you a sense, there are also-- and we-- and we had a sense that this might happen. There are also sellers, remote sellers who are under the threshold who have voluntarily remitted. And I'll tell you, last year in 2018, there was a retailer, I can't say who, there was a retailer who remitted 20 cents to the state of Nebraska in 2018. And I can tell you, there were literally hundreds, I think the number was about 200, who were remitting under \$100-- so in the tens of dollars. So a lot of these who are under the threshold, I'm sure they're, going to go out on a limb, they're probably under the threshold if they only collected 20 cents in sales taxes. But if-- even in tens of dollars, they're probably under the threshold. We have had, I think it was 2017 that I saw, there were 200 of those that had taken out sales tax remits for the state of Nebraska. So I just-- I know it-- I think people are believing that this is a binary thing, that we got to pass this bill and then, boom, these guys will start collecting and remitting. But I'm telling you that this has happened gradually since I've been here over the course of the past couple of

years, and literally several hundreds have signed up voluntarily, yeah, to date. So, you know, I don't know how that affects anything, but you've got to know that. I mean that's what I'm seeing.

**FRIESEN:** Thank you, Senator Crawford. Senator Kolterman.

**KOLTERMAN:** Thank you, Senator Friesen. I want to go back a little bit. I wasn't trying to put you on the spot a little bit ago, but I want--

**TONY FULTON:** Yeah, you were.

**KOLTERMAN:** --want to make a couple of points clear. So number one, I'm hearing you say this is not a panacea of extra money coming into our state.

**TONY FULTON:** Yes that is-- that's an accurate portrayal.

**KOLTERMAN:** Number two, if I heard you correctly, you have no way of coming out with exact amounts of money that's as a result of Internet sales tax--

**TONY FULTON:** Yeah.

**KOLTERMAN:** --and so for us to come up with a figure and try and direct that towards one expenditure or another is not going to be completely accurate.

**TONY FULTON:** That's correct. We-- we cannot, again, great frustration but we can't. We-- we cannot tell you precisely what is due to the Internet. I gave you one example of a retailer who has both Internet and non-Internet, bricks-and-mortar sales. The other example I gave you of one who's remitting the sales tax, would-- would ostensibly appears to be a remote seller, but as it turns out, was for a project that was-- so that's another one. You just-- we just can't break it out. We can get an estimate and, you know, that's all it is is an estimate.

**KOLTERMAN:** Let me take one step further. If we were to ask you to try to break that out, wouldn't that create a tremendous more work in your department?

**TONY FULTON:** Well, it certainly would create a tremendous amount of work, but I'm telling you it's not possible.

**KOLTERMAN:** OK. Thanks.

**FRIESEN:** Thank you, Sen--

**TONY FULTON:** That's all right.

**FRIESEN:** Go ahead. Thank you, Senator Kolterman. Senator Lindstrom.

**LINDSTROM:** Thank you, Vice Chairman. I was just kind of looking through here real quick. I didn't notice a definition of multivendor marketplace. Is there-- am I-- am I missing that or?

**TONY FULTON:** Well, yeah, this was-- this was a concern that was brought to us by-- contacted by a company who asked that same question. If you go to page three, there is a definition of what a multivendor marketplace platform is, but it's not in the traditional sense. I think the Bill Drafters probably would have a conniption if they-- if I answered that way. What's George doing over there? It's not broken out as a definition per se, but it is defined in the bill what a multivendor marketplace platform is. It's on page three.

**LINDSTROM:** OK. Would you be open to, maybe, working on that?  
[INAUDIBLE]

**TONY FULTON:** Oh, of course. Yeah.

**FRIESEN:** Thank you, Senator Lindstrom. Any other questions from the committee? I have a couple so and some of the questions that were going around. So a remote seller that has met the threshold



of 200 or more sales, are they required to file any forms with the state of Nebraska?

**TONY FULTON:** A remote seller who--

**FRIESEN:** If they're working through a marketplace facilitator or any other, when are they required to file a form or get a permit, a license?

**TONY FULTON:** Under this bill or today?

**FRIESEN:** Under this bill.

**TONY FULTON:** Under this bill if they go over the threshold.

**FRIESEN:** So then they would file with the state of Nebraska.

**TONY FULTON:** They should have a sales tax permit then.

**FRIESEN:** And if they're working with a marketplace facilitator, do they need to get a sales tax permit?

**TONY FULTON:** I, again, I want to check on that to be certain, but I don't believe so because the marketplace facilitator will have taken that obligation as a-- as a retailer who is over the threshold.

**FRIESEN:** OK. And the marketplace facilitator the one [SIC] track those individual sellers and when they reached the threshold they would notify them that they're subject to the tax?

**TONY FULTON:** Say it again.

**FRIESEN:** Well, if a small seller is working with a marketplace facilitator and they reach the threshold--

**TONY FULTON:** The small seller reaches the threshold?

**FRIESEN:** -- the small seller reaches that threshold, who's keeping track? Or is it the marketplace facilitator or the small seller?

**TONY FULTON:** Well, yeah, as to who's keeping track, the money's being remitted by the marketplace facilitator already, or it would be as envisioned under this bill--

**FRIESEN:** If they reach the threshold.

**TONY FULTON:** --if the marketplace facilitator reaches the threshold.

**FRIESEN:** OK, so is there-- if there's a small business person selling ten items into the state through a marketplace facilitator, are they subject to sales tax?

**TONY FULTON:** The seller, the remote seller, would not be. It's the marketplace facilitator. If they're selling through a marketplace facilitator that does meet the threshold, then the tax will have been collected by the marketplace facilitator. The obligation falls on-- on the retailer who is above the threshold. Am I-- if at-- am I not clear?

**FRIESEN:** I don't think I'm quite clear on that. But I mean, we-- we were saying that a small seller is not subject to sales tax collection. And if you're below the threshold, then those items should not pay a sales tax?

**TONY FULTON:** Ah. The-- if it's a marketplace facilitator on which you're selling, the marketplace facilitator is going to collect and remit the tax. The tax-- I'll just-- here's a-- maybe from \$30,000

**FRIESEN:** But then, doesn't that have an impact on that small seller? You've now raised his price.

**TONY FULTON:** Well--

**FRIESEN:** Isn't that what the Supreme Court was after? We weren't supposed to.

**TONY FULTON:** No. Uh-uh.

**FRIESEN:** OK.

**TONY FULTON:** No. The argument can be made-- well, the argument should be made, today, if I buy something on the Internet-- well, let me go back further to make this more clear. If I purchased something on the Internet last year, before Wayfair was passed, there is a tax owed, OK? The question is, who is collecting and remitting the tax Our current statute has that on the purchaser, on Joe Smith down the street who just purchased something on the Internet. No one collected sales tax on it. Well, Joe Smith is supposed to remit the sales tax on this. And as we know, that-- the compliance rate pretty low, like 1 percent, pretty low. But the tax is still owed. And so to get to your question, it's not raising any, you know, cost of doing-- the tax is still low. It's just who's collecting it.

**FRIESEN:** So it's the burden of reporting that we've taken off the small seller, so to speak.

**TONY FULTON:** I suppose. Yeah. I suppose you can look at it that way. Yeah.

**FRIESEN:** Thank you. Another question. Does this bill include the local option sales tax?

**TONY FULTON:** Yes.

**FRIESEN:** OK. Assumed it did. So if I'm living outside of the city limits. And I've had this happen to me numerous times. I suddenly get charged a city sales tax, and I can't seem to get them to rebate it to me. And my only option then would be to go to the state to ask for a refund of that 7.5?

**TONY FULTON:** Yeah. Well, it-- if you are erroneously charged a sales tax, then your recourse is to the state. You could--

**FRIESEN:** Because I think what they're using is just zip codes, and so if you live in a zip code--

**TONY FULTON:** Yeah.

**FRIESEN:** --but yet you're living outside the city limits, you're suddenly being subjected to the local option sales tax.

**TONY FULTON:** Yeah. Yeah. And I've experienced-- this-- this-- this happens. And I said it in my opening, this is happening at the speed of-- of today. This is all happening very quickly, and models are changing. And so those certified service providers and companies who collect the sales tax, now they're struggling to keep up with the changes. And so this happens from time to time, but in the end, the recourse is to the state. If you are charged erroneously a sales tax, then you can request that receipt through the state-- or refund through the state.

**FRIESEN:** So the burden is put back on me to ask for that collection back and--

**TONY FULTON:** That's right.

**FRIESEN:** --that's the only recourse I have.

**TONY FULTON:** It is now. Yes.

**FRIESEN:** OK. And so I mean, we've talked a lot about measuring the increase in the sales tax because of Internet sales and I know we've always thrown out the \$40 million.

**TONY FULTON:** Yeah.

**FRIESEN:** And you've explained it very well, how it's very difficult to track and as time goes on and more and more sales are done over the Internet just because of the ease of doing business. Whether or not it has any effect on sales tax, I don't know. I mean, I think people were doing it for convenience, not to avoid sales tax. But so as those collections increase, it's going to be even more difficult because it's just a change in business and how we do things.

**TONY FULTON:** Yeah.

**FRIESEN:** So if I would say to you, you know, I mean, we'll use that \$40-million estimate. And then we'll just increase it by a percentage, and we'll say that that's Internet sales tax collections. And-- and when you take it off the table and spend it for property tax relief, that be a proper way of doing it?

**TONY FULTON:** Well, I don't know that I'm-- I don't know it'd be wise for me to comment on that one way or the other, Senator.

**FRIESEN:** Probably not. That's all right.

**TONY FULTON:** Not my first rodeo.

**FRIESEN:** Thank you. Senator McCollister.

**McCOLLISTER:** Yeah. Thank you, Senator Friesen. Just to clear up that last question. Sales tax is owed where the buyer takes possession of the product, isn't that correct?

**TONY FULTON:** Yes.

**McCOLLISTER:** And so if I bought a product from Omaha, I'm paying, you know, the Omaha tax. Or if I go to La Vista, I'll pay another half-- half a percent. But it's the location of purchase.

**TONY FULTON:** Point of the-- yeah, that's right, the point of the sale.

**McCOLLISTER:** Thank you.

**FRIESEN:** So I guess I want to clarify a question there, too, because it's-- I can purchase something in Omaha, but if they deliver it to my location, then I don't pay it at the point of sale, correct? I don't pay the 7.5 sales tax--

**TONY FULTON:** OK. I see what you're saying.

**FRIESEN:** --it's point of delivery. So it's not necessarily the point of purchase always it's-- it's--

**TONY FULTON:** Yeah. That's right. That's more accurate.

**FRIESEN:** Senator Groene.

**GROENE:** Clarify something. I think if you put your full zip code, the nine-digit one or whatever, I think you won't have to pay it when you order if you live in rural Nebraska. Don't put the city one down. Anyway, I ran some numbers. Well first, I made a statement earlier to another testifier. When the Fiscal Office does their estimates, that's only the 5.5 percent, right? When they say-- when you say Amazon were, you're not the fiscal officer, but Amazon were 32.9 million in 1920 [SIC] and 34.6



million in 2021 [SIC], that's only 5.5 for the state, right?  
Because the fiscal doesn't do an estimate for local. I need a  
state budget.

**TONY FULTON:** A couple of things. Number one, those are not my--

**GROENE:** All right.

**TONY FULTON:** --figures for Amazon, so it must be the Fiscal  
Office. I'm not going to reveal-- I can't reveal individual  
companies. But well, I think I-- yes, Fiscal Office is making  
your fiscal note based on general funds to the state.

**GROENE:** All right. So not the state. So I ran some numbers here.  
I think put it in perspective, looking for hundreds of millions  
of tax dollars. If you took that \$35 million divided by 5.5  
percent, that's \$636 million of sales by Amazon. Divide--  
divided by 1.9 million people. Put two less than that. My wife  
don't-- and I don't buy anything on the Internet. But that's  
\$335 every man, woman, and child purchasing from Amazon. I don't  
see a panacea here where we're going to pick up a hundreds and  
two-hundred millions of dollars. I think we've got an awful lot  
of that covered already, as you're saying.

**TONY FULTON:** Well, again, I just want to be clear. I'm not-- I  
don't know. I'm not saying how much that Amazon or any other is

remitting. That's something-- that's probably an estimate from LFO. And number two, I'll double down on this. That's why I put it in my testimony. We included it in our forecast, and that forecast was made in October, the Forecasting Advisory Board. Great respect for the folks at LFO. We just have a disagreement. It doesn't happen very often.

**GROENE:** But there's not hundreds of millions of dollars of tax dollars out there to be collected.

**TONY FULTON:** I-- we don't think so. And that's what we said in our fiscal note.

**GROENE:** Thank you.

**FRIESEN:** Thank you, Senator Groene. Any other questions from the committee? Seeing none, thank you, Commissioner Fulton.

**JIM OTTO:** Senator Friesen, members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o, president of the Nebraska Retail Federation here to testify in favor of LB291, both on behalf of the Nebraska Retail Federation and the Nebraska Grocery Industry. I don't need to repeat every-- we want to thank Senator Linehan for introducing it and thank for-- thank the Department of Revenue and commissioner for working closely with us on some of our suggestions. But I don't need to dwell on and

repeat my testimony. I would like to try to, I think, clarify your question, Senator Friesen. As I understand the intent of the bill, and once again maybe the language needs to be specified. But if I'm selling-- if I am a small seller and I'm selling everything through a marketplace like Amazon or eBay, I have no-- if I'm selling everything through them, I have no requirement to get a sales tax permit or anything with the state of Nebraska even if I surpass the threshold. That is my understanding of the intent of the bill. Now I don't know for sure if the language says that specifically. However, if I'm selling a small-- if I'm a seller, I'm selling through Amazon and I'm also selling off my own Web site, the part-- the portion that I am selling on my own Web site, I do need-- and if-- and if I surpassed the threshold with my total sales, I do need to remit to the state of Nebraska the portion that is not going through the marketplace. That's my understanding. I'm sure that's the intent. I don't know exactly if that's how it says it, so. The other thing I don't know if there's concern over impacting small businesses. If someone is selling \$100,000 in Nebraska and they're a nationwide seller, if you interpolate the population of the United States, the population of Nebraska, I'm thinking they're selling over \$19 million nationwide to sell \$100,000 in Nebraska. So we're not necessarily talking about

small business. And 12 other states have already implemented marketplace which means all of the Nebraska small sellers going through the marketplace will have to do it for every other state. So it's, we think, fair. Glad to answer any other questions if there are any.

**FRIESEN:** Thank you, Mr. Otto. Any other questions from the committee? Seeing none, thank you for your testimony.

**RON ROMERO:** Good afternoon once again. I'm Ron Romero, R-o-n R-o-m-e-r-o, from Schaefer's in Lincoln, Nebraska, a local retailer. I'm not going to sit here and reiterate everything that I said before. I believe that this Internet sales tax collection is very important to the state of Nebraska, as it is to-- to other states, for revenue. I think that there needs to be some clarification. And, you know, I hate to see this get all hung up. I think that there needs to be an understanding between, you know, who is the seller. And if-- and if you're reselling through Amazon, Amazon is the facilitator. But you're actually buying from that small retailer. And that small retailer is shipping to you, and it gets invoiced through Amazon's billing system. So there needs to be, you know, a big clarification here with a-- with this small retailer, when they go to use one of these facilitators, that they register because

this small facilitator is also selling on his own. Like-- like Mr. Otto just said, there really needs to be a clarification. But I think that this is such an important thing that we get this sales tax thing passed, that we need to, number one, look at, you know, passing that and then how we're going to collect this money. Before we even say where it's going to go, you have to have-- and yes, there's going to be people that are going to go around the system. There's no question about it. There's no way of telling exactly how much is being sold on the Internet because nobody is really policing it, but there is a lot of business being done day in and day out. As-- I know that as a retailer and working with other retailers around the country in-- in my buying group, we know that this is very, very important and this business is being done. So it's just how do we get a handle on this and get what is the fair share? And is it going to be pie in the sky? There is no way of telling. But there is a lot of business out there that is being done. Sales tax is not being collected, and it's not going to the states. So any questions?

**FRIESEN:** Thank you, Mr. Romero. Senator Groene.

**GROENE:** Thank you. I'll make this short by that look. But the reality is these businesses aren't going to be paying this tax. It's going to be Nebraskans paying more taxes.

**RON ROMERO:** It's going to be-- the end-- end result is going to be the consumer.

**GROENE:** Nebraskans will have a tax.

**RON ROMERO:** Nebraskans will be paying it. And-- and that's the way it should be.

**GROENE:** I understand, but the reality is--

**RON ROMERO:** The consumers should pay it. In my company, if I buy something on the Internet-- and we do some-- like our software that runs our company and so forth comes from an out-of-state. And every month, when we remit our sales tax, we remit the tax on what we've done over the Internet.

**GROENE:** Around 300 percent. It's a disadvantage to main street.

**RON ROMERO:** Right.

**GROENE:** But Internet sellers aren't the ones that are going to be paying the tax. It's going to be Nebraskans.

**RON ROMERO:** It's-- it's going to be the Nebraskans. And unfortunately, there's-- there's people that are going to get around it. And I had customers come in the store and tell me, well, I don't care, you know, it's 7 percent less. And I've even told them, well, you know, if you have a fire, don't you want the fire department to come and put out your fire. You know, where do you-- where do you think that-- that money goes. You know, your kids are going to school and all this stuff. But people will flat out say, well, I don't care. I'm saving 7 per-- 7 percent. Yet they're living the good life in Nebraska.

**GROENE:** Driving our streets.

**RON ROMERO:** Yeah.

**GROENE:** Sending their kids to our schools.

**RON ROMERO:** Right.

**GROENE:** I understand that.

**RON ROMERO:** But that is-- that is not the majority. The majority of the people want to pay the tax. You know, it's an obligation. If they come into my store and buy it across the counter, they're paying me the sales tax.

**GROENE:** Thank you.

**FRIESEN:** Thank you, Senator Groene. I think most of the questions here are just directed to making sure we get it right, so we don't get involved in a lawsuit and then we can't collect it.

**RON ROMERO:** Right.

**FRIESEN:** So I think we just have to make sure that we do it right the first time. It's not the importance of how fast we get it done, but we need it done right.

**RON ROMERO:** Exactly.

**FRIESEN:** Any other questions from the committee? Seeing none, thank you for your testimony.

**RON ROMERO:** Thank you.

**JAMES PLUCKNETT:** I'm James Plucknett, J-a-m-e-s, Plucknett, P-l-u-c-k-n-e-t-t. And as Ron and Jim said, I'm not going to reiterate everything I said on the previous bill. It applies equally to-- to this bill. The only thing I would say is-- is maybe I might offer a little insight as-- as a small merchant. And I think Senator Friesen and some of the others have wondered, you know, there's a clause in there, you know, that if you're under a certain threshold or whatever. And I think it



also kind of relates to what Senator Fulton would say. We are not four-star. My current business is not currently selling e-commerce on the Web site, but we have in the previous. And networking with as many businesses that we do, pharmacy and otherwise, a vast majority of those are, an increasing amount of them are. And point-of-sale system that we have has an e-commerce thing that I've looked at. When you have a Web site, you know, in order to have it really work, you can't just say, well, it's going to charge sales tax on this one but not that one or whatever. So you have the sophistication of a computer running an e-commerce Web site, and it has to be fairly robust in order to meet the standards that are required if you're going to collect credit cards and debit card information over the thing to be secure and meet those standards and stuff like that. So your software is going to generate that information. It's going to know if it's in Warrensburg, wherever you put the zip code in, Warrensburg, Missouri, or Bunkport [SIC], Maine, wherever the case may be. That will be able to generate the thing for most people that have-- that have-- if they're doing any kind of Web site information or not. So they're going to have that information. They're going to collect that money. And like you say, the business isn't paying it. The consumer that made the purchase is. So it seems crazy to send 20 cents to-- to

Fulton and to the state of Nebraska because you're under the threshold. But they collected it because it's also problematic for them to-- to have on their Web site a different sales tax until they get to a certain level. And if they're in the vast majority of the merchants that I know, at least are doing a significant portion of their business through a third-party facilitator. And obviously the third-party facilitator is already taking that technological obligation off of them for collecting and processing and-- and filing the permits and everything else. But I would agree with-- with Ron Romero that most people, even if they're selling on a third party, they have a separate Web site that they're also selling on. And so the amount of sales may be mostly on Amazon or eBay or whatever, but they're probably also collecting other sales on their own Web site. So I understand the challenge that you have. I'm glad to hear you say we want to do this, we just want to make sure that we get it right. And you got my full support on that. That's all I have to say.

**FRIESEN:** Thank you. Are there questions from the committee? Now I-- part of my-- I live in the country and I've used my nine-digit zip code. And I still get paid-- or charged that 7.5 sales tax. It's frustrating that it puts the burden on me to go get it

back. That's the part I don't like. But otherwise we owe it. I don't have a question of that. Thank you.

**JAMES PLUCKNETT:** You bet.

**FRIESEN:** Welcome.

**RON SEDLACEK:** Good afternoon, members of the Revenue Committee. For the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce and also been authorized in respect of the committee's time to include in my testimony and have signed in for the Greater Omaha Chamber of Commerce, the Lincoln Chamber of Commerce, and then the Nebraska Economic Developers Association who all wished to be on record in support of the concepts of this bill, LB291. Previously we-- the organizations had sent letters of support to Senator McCollister's LB284. And so both of those bills we recognize as-- as good measures to see if we can implement and as we were supportive in the past of this type of legislation. And I think, Senator Friesen, you said it best. He took away my testimony. And that's, when we're going to do it, let's get it done right in the first-- get it done right the first time. And we've had some feedback from-- from particular entities or members that have said, take a look at this definition and see what can be done for an improvement here. This, I think is a

little bit overbroad. It's not the intent, and it's in both bills. There's a lack of definition, we feel, in LB291, as far as what is a multivendor marketplace platform. We got a pretty good idea, but I think maybe a definition might-- might be best in that regard so, again, we get it right. We did have issues with-- with LB18 which you heard earlier today. And our policy has always been that to let-- you know, not to earmark when we don't have to and that the Legislature should exercise its judgment, its authority and-- and-- and to-- and to allocate the funding of the government which they see fit in that particular year, that budget year they're working with, and not to have something locked in always in that respect. So with that, we are supportive of the legislation, and if we can be of assistance in helping to see this advance in the right way, we'd be happy to do so.

**FRIESEN:** Thank you, Mr. Sedlacek. Any questions from the committee? Seeing none--

**RON SEDLACEK:** Thanks.

**FRIESEN:** --thank you for your testimony. Welcome.

**RENEE FRY:** Thank you. Good afternoon, members of the Revenue Committee. My name's Renee Fry, R-e-n-e-e F-r-y. I'm the

executive director of OpenSky Policy Institute. I don't have much to say in addition to my testimony from previous. I would just quickly address Senator Groene's point about Nebraskans paying this tax. That is true. But this is a tax that Nebraskans owe now, and so for us, we do not view this as a new tax but a way to clean up-- clean up our tax code and eliminate tax expenditure which I know Senator Groene, at least generally, agrees with. And that is our position as well. So with that, I'd be happy to answer any questions.

**FRIESEN:** Thank you, Ms. Fry. Any questions from the committee? Senator Groene.

**GROENE:** Thank you, Vice Chair. They're famous for running estimates and forecasts. Have you done anything on the sales tax?

**RENEE FRY:** We haven't-- we haven't independently. We've looked at other reports. The estimates are all over the board. GAO puts out a report. Their estimate is actually quite a bit higher. We have talked with Fiscal Analyst Tom Bergquist. I think generally we would agree with where Legislative Fiscal Office is on this. In terms of the fiscal note, the marketplace affiliate piece, maybe eventually, once enough states pass legislation that they would start to collect and remit for all states. But I think, at

least in the near term, that wouldn't be automatic. Again, there are states-- lots of states are looking at this. Lots of states are starting to implement the marketplace piece of this. So eventually, I think that they'll just as a matter of business would start to collect. But it may take some time to do that. So-- so I don't have any reason to not-- to not agree with the Department of Revenue on this, but I understand where the Legislative Fiscal Office is coming from. And certainly when we hear that GAO's estimates are quite a bit higher.

**GROENE:** Thank you.

**FRIESEN:** Thank you, Senator Groene. Any other questions from the committee? Seeing none, thank you for your testimony.

**RENEE FRY:** Thank you.

**BRANDON KAUFFMAN:** Members of the Revenue Committee, my name's Brandon Kauffman, B-r-a-n-d-o-n K-a-u-f-f-m-a-n. I'm not going to relate what I said earlier but just want to state that the city of Lincoln is also supportive of LB291. In regards to a question that was brought up in regards to how much of a percent retail sales tax, for the city of Lincoln that's about 51 percent of our sales tax.

**FRIESEN:** OK. Thank you.

**BRANDON KAUFFMAN:** Thank you.

**FRIESEN:** Any questions from the committee? Seeing none, thank you for your testimony.

**JACK CHELOHA:** Good afternoon, Senator Friesen, members of the Revenue Committee. My name is Jack Cheloha, that's J-a-c-k, last name spelled C-h-e-l-o-h-a. I'm the lobbyist for the city of Omaha and I want to testify in support of LB291 this afternoon. Just a couple of things. We support the bill for the reasons already stated by the previous testifiers. A couple of things that-- that I thought about as the testimony was going on is, you know, we're already 19 years into the 21st century, people talking about a 21st century economy. So I think it's good that we keep up our revenue statutes to coincide with the time that we're living in, the 21st century, especially if packages are going to be delivered by drones. Some other things I've thought about, too, is in Omaha, we've lost some major brick-and-mortar retailers in the past year. Younkers department stores have left. Sears and Roebuck stores have left. I don't know if you can attribute those to on-line sales in total, but maybe some of it's, you know, due to management and other issues. But nevertheless, we're losing brick-and-mortar. So if we have the on-line sales make up the difference, we need to be able to

collect that sales tax. So that's why this is a good bill. And finally, I wanted to make the record on LB291 because I-- I saw in front of me that the Tax Commissioner testified, and I figured he's a smart guy. And if he's in favor of this, I probably should be too. So that's why I'm here.

**FRIESEN:** Thank you, Mr. Cheloha. Any questions from the committee?

**JACK CHELOHA:** I'll try to answer any questions.

**FRIESEN:** Seeing none, thank you for your testimony.

**JACK CHELOHA:** Thank you.

**SARAH CURRY:** Sarah Curry with the Platte Institute. I'm just going to reiterate the same things that I said earlier. One thing I do want to point out, we support this bill. But, Senator Friesen, I understand your concern, and I'm confused about the marketplace as well. If my grandmother knits scarves and she only sells 20 scarves in a year but she uses Etsy because Etsy is going to meet the threshold, is my grandmother going to be required to collect sales tax? I don't know the answer to that, but I appreciate you asking those questions because it's a question I had as well.



**FRIESEN:** Thank you. Any questions from the committee? Senator Groene.

**GROENE:** Thank you. I should have asked the commissioner this. How does your grandma get caught? I call your grandma and I order two scarfs. And she ships it by U.S. postal mail, and I send her a check. How does anybody know your grandma sold me two scarves?

**SARAH CURRY:** I don't know. And you know it's interesting. I went to my town and was talking to the bakery, and I could be messing this up. But they do chocolate-covered strawberries, and she said, we're required to collect sales tax on the strawberries because it's a prepared good. But then they make truffles, and she said, we don't have to collect sales tax on the truffles because that's a bakery good. She said, we just collect it on all of it because I don't want to get sued or get in trouble with the state. So I think there is some confusion there, so I don't know. My grandma would collect the tax on every scarf because she's that way. I personally wouldn't if I only sold 10 scarves.

**GROENE:** A lot of paperwork.

**SARAH CURRY:** Yeah. Exactly. So that was my question, especially with Etsy because you have all these arts and crafts. Or if we do cottage food and you're selling, you know, 50 jars of jam but you don't meet that dollar threshold, how would that affect those people? I don't know. And I-- I'd be happy to explore that, and I appreciate you doing that.

**GROENE:** Thank you.

**FRIESEN:** Thank you, Senator Groene. I think those are-- those are some of the things that we're going to have to look at as to how that-- how that operates. And there are so many different methods there of market facilitators out there and trying to get the right description is going to be tough but.

**SARAH CURRY:** And I also have to pay the city tax. I live in the county, but because my zip code encompasses the city, I'm in the same situation as you are.

**FRIESEN:** I think we need to-- we need to work on that. Thank you. Any questions from the committee? Seeing none, thank you for your testimony.

**SARAH CURRY:** Thanks.

**LYNN REX:** Senator Friesen, members of the committee, my name is Lynn Rex, L-y-n-n- R-e-x, representing the League of Nebraska Municipalities. We'd like to thank Senator Linehan for introducing this bill as we did Senator McCollister and also Senator Briese for their efforts. I would like to apply my testimony from LB284 and apply that testimony to this measure as well so as to basically relieve you of the burden of listening to all of that again. But I do want to underscore the importance of passing the legislation notwithstanding whatever the dollar amounts may be. And the reason for this is because the reason why you're having voluntary compliance, and what Tony-- Tax Commissioner Tony Fulton was telling you, is and incrementally folks have been paying, is because of anticipation of what happened with Wayfair. What hap-- I mean, as soon as that case hap-- happened, we heard from-- I've heard from my colleagues in other states that not only Nebraska, but all across the country, folks started just voluntarily paying. Just like Amazon-- when Amazon started doing it, others did as well. So incrementally I can see how that can happen. But I just think the importance of getting this passed, and I really appreciate, Senator Friesen, what you said, and doing it right. And I really appreciate all the time and effort that staff, committee counsel, George Kilpatrick, Tax Commissioner Tony Fulton and others have made to

try to make sure that this is done right. I know, Senator McCollister, you've been at your bill, and it's just been a really big effort over a period of years to get this done. So again, we really appreciate everybody's efforts to do so. And the one thing I would underscore that I think would be very helpful for everybody is that as committee council and George Kilpatrick, former committee counsel of this committee and now over at the Department of Revenue, and so many others with Tax Commissioner Fulton work on this and, I know, you as well, I just think it's going to be so important to put together some examples on the floor of, if this happens, then what-- what's the outcome. Because I know our cities are going-- going to want that too. So it's not just the words in the bill but the application of it that I think folks are most concerned about. So with that, I'd be happy to answer any questions you have. And any questions you have that are difficult, I will defer those to George Kilpatrick because he's here and he hasn't been called up yet. So with that, I'm happy to answer any questions you have.

**FRIESEN:** Thank you, Ms. Rex. Any questions from the committee? Seeing none, thank you for your testimony.

**LYNN REX:** Thank you guys.

**FRIESEN:** Any other proponents who wish to testify on LB291?

Seeing none, anyone wish to testify in opposition? Seeing none, does anyone wish to testify in a neutral capacity? Seeing none, we do have some letters, proponents: Michael Sothan, Main Street Beatrice, Incorporated; Mayor Jean Stothert, Mayor of Omaha; Pat Haverty, Nebraska Economic Developers Association. And the neutral capacity: Michael Mattmiller of Microsoft. With that, we'll close the hearing on LB291-- or do you want to close, Senator Linehan?

**LINEHAN:** I'll waive.

**FRIESEN:** Waive closing? OK, waive closing on LB291. We'll now open the hearing on LB512.

**LINEHAN:** If I hurry, it can be good afternoon instead of good evening. Good afternoon, fellow committee members. For the record, my name is Lou Ann Linehan, I represent Legislative District 39, spelled L-o-u, capital A-n-n L-i-n-e-h-a-n. I'm introducing LB512. This bill was brought to me by the Department of Revenue. It is what they call their annual housekeeping bill. As you can see, by its fairly long-- it's a fairly long bill, and covers many different areas of the law. It covers motor-- motor fuel taxes, homestead exemptions, it clarifies several reporting requirements, and a number of other topics. The Tax

Commissioner will be testifying next, and will walk you through the details of the bill. I'm sure he'll be happy to answer all your questions.

**FRIESEN:** Thank you, Senator Linehan. Any questions from the committee? Seeing none, thank you. Proponents? Welcome, Commissioner Fulton.

**TONY FULTON:** Thank you, Vice Chairman Friesen, members of the committee. My name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I'm Tax Commissioner in support of LB527[SIC], thank you, the department's annual administrative bill to better administer the tax pro-- tax programs that are within their responsibility. LB512 covers multiple programs that are essential for continuous and uninterrupted delivery of services that are required for compliance. Sections 1 to 9 and 30 repeal Nebraska Revised Statute 77-738, and harmonize 9 sections within the motor fuels tax statutes to reflect this outright repeal. Section 77-738 creates the Motor Fuel Tax Enforcement and Collection Division within the Department of Revenue. Repeal of the section would allow our auditors and collections personnel to work on more than one tax program at a time and therefore creates efficiencies within-- within the department. Section ten requires the list of real property exemptions to be submitted to

the department electronically. Section 11 provides that contingency fee contracts with collection agencies to collect delinq-- delinquent taxes do not need to meet the requirements of Nebraska Revised Statute 73-203 or 204. These contracts are already required by statute to be extended on a contingent fee basis. Sections 12 and 13 amend two sections in the property assessment statutes that require rather than permit the department to adopt and promulgate rules and regulations. Sections-- Section 14 strikes unnecessary certifications by the Property Tax Administrator to the Department of Administrative Services. Section 15 provides property tax relief to those whose property is damaged or destroyed due to a natural disaster that occurs after the January 1 assessment date. Property owners who have experienced a loss of or damage to their property due to a major calamity may petition the county assessor by July 15 for a reassessment of the property's value for that tax year. Section 17 clarifies how the personal exemption credit applies with regard to who are-- those who are married-- married but file separately. It also clarifies the treatment of qualifying widows or widowers. Sections 17 through 19 amend 3 statutes that provide the filing requirements for pass-through entities. Section 20 provides that when notices of deficiency are issued to a pass-through entity, the actions taken by the pass-through

entity on the deficient-- on the deficiency bind the owners, also like the IRC. Section 21 amends the homestead exemption program. Section 22 clarifies the definition of prosthesis for purposes of the disabled homestead exemption. Section 23 allows homestead exemption claimants who are denied the exemption amount or the exemption amount is reduced because of home value to appeal the value by June 30. Section 24 eliminates the requirement to adopt regulations governing the Employment and Investment Growth Act. Section 25 eliminates the mandate to adopt regulations governing the nameplate capacity tax. And I ask for advancements-- advancement of the bill and will try to answer any questions the committee may have.

**FRIESEN:** Thank you, Commissioner Fulton. Senator Crawford.

**CRAWFORD:** Thank you, Vice Chair Friesen, and thank you, Commissioner, for being here. I really appreciate you coming to answer questions. I want to ask about-- a few questions about the Section 20--12-- Section 12 and yeah, Section 12. So this is the section where we have a Property Tax Administrator who has duties, 12 and 13, who has-- right now, it's duties to promulgate rules and regulations. And we're taking that responsibility away in section-- so in Section 12, the Tax Commissioner is-- is required to establish the educational



standards and criteria for certification and recertification of all holders of-- of county assessor certificates. What mechanism is the Property Tax Administrator going to use to establish or review those if he's not doing them through the Administrative Procedures Act?

**TONY FULTON:** Say-- your-- say it again. Your question has to do with the teaching responsibility?

**CRAWFORD:** Well, with setting those standards and criteria so--

**TONY FULTON:** And where-- just where?

**CRAWFORD:** --Line 24, 25, 26. So and what we're-- we're striking, and starting on line 27, is we're striking the fact that he has-- that the Tax Commissioner has to, you know, adopt these and amend them through the rules-- through the rules and regs which would be through the administrative procedures process. So one, would the Property Tax Administrator still have authority? Because there is no "may." There's not replacing a "may" with a "shall." But there's just striking there, this-- the language about adopting and promulgating rules and regulations. So this question one is what-- don't we need to make sure that they have authority to do that? And two, I guess, when-- what are the circumstances when it's appropriate to take one of the tasks,

like setting these standards, out of the APA, out of the-- out of the rules and regulations process.

**TONY FULTON:** OK, yeah, that's a good question. I am not able to answer this question, but I have brought someone who will be able to answer the question.

**CRAWFORD:** OK. OK.

**TONY FULTON:** I believe this. I believe the answer is-- is that this appears-- this authority appears in another part of the statute, but I'm not positive about that. So I'll get-- I'll give you an answer at a later time.

**CRAWFORD:** Yeah. OK. Thank you.

**FRIESEN:** Thank you, Senator Crawford. Any other questions from the committee? Senator Groene.

**GROENE:** Where does-- what process do you have in your department that-- who sits around and went through all the old statutes and then, let's do this?

**TONY FULTON:** Yeah. So we have-- so the department is broken down into divisions. We have different divisions. And each division as the year goes on if there's something that comes up that they'd like to do or that they don't believe they should do that

is a requirement of the statute, then what we-- what they're instructed to do is to come up with their list. And then that gets submitted to, well, George, our policy section. And then near the end of the calendar year, before your guys' legislative session begins, we sit down and we prioritize them which we-- we literally assign a one, two, three, four, or five. Those that are, you know, high priority, we try to get it-- try to get done. Those that aren't a high priority, we don't put these before you. So yeah, each of the divisions comes forward with those things in the statute that they believe need to be changed in order to help them do their jobs.

**GROENE:** That's to help them do their job. There's no lobby coming in and saying, we want this change. It gives us a tax. There's no tax breaks--

**TONY FULTON:** No.

**GROENE:** --here, changes in revenue or any intent of the--

**TONY FULTON:** No.

**GROENE:** --of the statutes that were originally brought by senators in the past.

**TONY FULTON:** No. Uh-uh. No. This is-- this is an internal process that we've developed. We try to make these part of the decision making that goes-- I'm-- ultimately, I'm the one that puts these forward. I have a team that helps me to decide which of these should be high-- you know, priority one, two, three, or four, or five. The idea is that these are indeed technical bills. They shouldn't be controversial. They should be cleanup. We have, in the past, put forward ideas that we didn't think would be controversial, and then some party comes in and says, my God, you can't do that. And that's fine. We don't want that to hamper, you know, the work of the department, so we're willing to work with you [INAUDIBLE].

**GROENE:** And this doesn't give any of the people we tax or expect to tax or that report to us any place where they can hide or disappear--

**TONY FULTON:** No. No.

**GROENE:** --and not pay a tax.

**TONY FULTON:** No, nothing slipped in here. This is-- this, again, that process is for each of our divisions to communicate to the Legislature those statutes which we believe can be changed without controversy that would enable us to do our job better.

**GROENE:** Just cleanup [INAUDIBLE].

**TONY FULTON:** Well, that's what we think. But I just-- I want to be clear that there-- there could be a party out there that doesn't think it's something that we're proposing is cleanup. So I want to be sensitive to that. But we, you know, that's-- that's what we put in front of you. We think this is cleanup.

**GROENE:** I just noticed the one about the nameplate, and I'm real friendly to wind, you know.

**TONY FULTON:** I actually know the story on that one.

**GROENE:** All right. Yeah. Could you just give me an example of why you did that one?

**TONY FULTON:** Yeah. And I believe this is the one that-- this is direct current versus alternating current, isn't that right? No, that's not it. Well, never mind.

**GROENE:** So you can't give me that example then?

**TONY FULTON:** No.

**GROENE:** Thank you.

**TONY FULTON:** Maybe if we're really nice to George Kilpatrick, he might come up and testify.

**FRIESEN:** Thank you, Senator Groene. Any other questions from the committee? So basically, what this bill is is it's cleanup language.

**TONY FULTON:** Yes.

**FRIESEN:** There's no major tax or policy changes, it's just cleanup language and allows you to operate a little different.

**TONY FULTON:** We believe so. Again, I want to be sensitive to whoever's out there, and we'll work with the committee. But yes, it's cleanup language. So we-- and we owe you a response, and then-- and I will get you a response also.

**GROENE:** Section 25.

**TONY FULTON:** OK.

**FRIESEN:** Thank you, Commissioner Fulton. Any other proponents? Seeing none, anyone who wants to testify in opposition? Welcome.

**JON CANNON:** Thank you, Vice Chair Friesen, distinguished members of the Revenue Committee. My name is Jon Cannon, J-o-n C-a-n-n-o-n. I am the deputy director of the Nebraska Association of County Officials, and we are here today in opposition conditionally to LB512. First, I want to thank Senator Linehan for bringing this legislation. I think it's vitally important to

make sure that we do take care of those housekeeping issues of the Department of Revenue has from time to time. It's been my experience that the department runs smoother when-- when those things are able to move out of committee and go onto the floor, hopefully on consent calendar. However, I do want to focus on one section of this bill and that's Section 15 which describes disaster relief for properties that have been destroyed by natural disaster or major calamity. And I wanted to write that Nebraska Association of County Officials is opposed to this sort of mechanism that would essentially take this sort of property off the rolls. Right now, we have a very intricate and a very elegant calendar that we have for assessing property in our state. It begins on January 1. Currently, if you live in Lancaster, Douglas, or Sarpy counties, you have the opportunity to, you know, conditionally discuss with-- with the county assessor what your property valuation is. On March 19, the assessor certifies those values. The TERC meets in April and May and they discuss statewide equalization. We have protests in June, and then we certify values at the beginning of August. And then we set budgets. That's-- that's essentially the property tax cycle in a nutshell. And again, it's-- it's-- it's not a haphazard arrangement that we have as far as that calendar is concerned. This is well thought out. It has-- it's a very

systematic approach to assess the assessment of real property in the state. And what this does is it says, well, you know, if anything happens on or before a particular date in the middle of the year, and I know that the reason that we pick that particular date is because that's when tornado season starts to wind down, then we're going to compress all the steps the assessor has to take. And that seems a-- what is not a haphazard arrangement is going to make it a haphazard arrangement. You know, certainly our sympathies are for those persons that have had their properties, you know, destroyed or damaged by a major calamity. And practically speaking, that's usually going to be recognized the following January 1 unless they rebuilt. But the other-- the other thing that I want to mention, however, is that you're going to wipe out a tax base for an area that's probably going to be struggling at that point. Although I'll just draw my own experience that once upon a time I had the sad but necessary duty to attend the town hall in Pilger, Nebraska, after that town had been-- about 50 percent of the town had been wiped out by a tornado, an F4 tornado, in 2014. And everyone that was up there, they said, well, you know, gosh, you know, we really don't want to have to pay property taxes on this property that's not there, that we're not able to enjoy. But by the same token, they recognized that there were going to be essential services



that they would not be able to have available to them if their tax bases was eroded by roughly 50 percent. And it's for that reason that we're in opposition to this sort of bill. We've got a calendar that works very, very well, has for many, many years. We have an assessment date of January 1 that we've had for time out of mind. However, if-- to the extent that we do have sympathy for those persons that have had their properties wiped out, there is a mechanism that we could use. Right now, what we have for targeted property tax relief, probably the best program we have for that, is the homestead exemption program. And that is a mechanism by which we're able to grant exemptions to certain properties if it's, you know, age 65, you're disabled or a disabled vet. If we wanted to do something like that where the state reimburses the counties for that lost tax-- tax base, then we would have no opposition to what's in this bill. Again, thank you, Senator Linehan, for bringing this bill forward. I think these policy discussions are very important for all of us to have from time to time. And with that, I would be happy to take any questions you might have.

**FRIESEN:** Thank you, Mr. Cannon. Any questions from the committee? Senator Crawford.

**CRAWFORD:** Thank you. Thank you, Vice Chair. And thank you for being here to share your opposition. You're talking about using homestead exemption. There's-- that would have to be something that we craft newly. There's not a homestead exemption for damage like this. Is that correct?

**JON CANNON:** There is not, Senator.

**CRAWFORD:** OK.

**JON CANNON:** What I'm-- what I'm suggesting is that we have a mechanism that's in place. That machinery could probably be used if this is what the Legislature wants to accomplish that machinery would be available.

**CRAWFORD:** Thank you.

**JON CANNON:** Yes, ma'am.

**FRIESEN:** Thank you, Senator Crawford. Any other questions?  
Senator Groene.

**GROENE:** So my house gets blown away and I never rebuilt. How long does it take you before it's off the tax roll?

**JON CANNON:** The following January 1. That'll-- it'll be recognized as that property no longer being on the-- on the parcel, Senator.

**GROENE:** But property tax is a year behind. I'm still paying that April?

**JON CANNON:** Yes, sir. You will.

**GROENE:** And I moved away and bought another house?

**JON CANNON:** If you moved away and you've bought-- bought another house, you'll be paying, the following-- following year, you'll be paying property taxes on that house.

**GROENE:** So it would be-- it would be a swap?

**JON CANNON:** Yes, sir. But that-- that intervening-- the following year, the recognition of the loss would be [INAUDIBLE].

**GROENE:** I wouldn't be paying both taxes.

**JON CANNON:** Depending on how you structured it, yes, sir.

**FRIESEN:** Thank you, Senator Groene. Any other questions from the committee? Seeing none, thank you for your testimony.

**JON CANNON:** Thank you.

**TOM PLACZEK:** Good afternoon, Vice Chairman Friesen and members of the Revenue Committee. My name is Tom Placzek, T-o-m P-l-a-c-z-e-k. I'm the Platte County Assessor. Columbus is the county seat. And I am the legislative representative for the Nebraska Association of County Assessors. I won't go double up on what Mr. Cannon just said, but I will add a couple things.

Commissioner Fulton stated that this is a-- just a cleanup bill. This section is not a cleanup bill. This is brand new, nothing in statute, nothing like it. This is not a cleanup. This is brand new. This is also attempted to get through last year. Basically the same language, it was taken out to get the bill passed last year. This-- from an assessor's standpoint, in most cases because of our calendar and dependent upon timing, this bill could be very unworkable. I'm thinking in case of something major happens late June, early July. Let's say the tornado that hit Omaha many, many years ago would hit. I can't even imagine how long it would take to do this. They're talking about filing. And part of that is the homeowner or the business owners would have to file. But it says the assessor may file on behalf of them. I can think of no assessor that's going to take that liability and try and file on behalf of somebody. We may miss somebody, and then I could just imagine what's going to happen

with that. The assessors are taking advantage of the poor old taxpayer. They also have-- it states in there, the damages to be determined by a professional appraiser. Who pays for that? County certainly doesn't want to pay for it. So it doesn't state who, so that would have to be cleared up. And it talks about they file a report. And there are many cases where if the assessor has to go out and do all this, especially a lot of western counties, they may struggle trying to find somebody to do the appraisals for them to get this done. There aren't a lot of appraisers out there doing this kind of work so that would be difficult. I can only imagine what it would be like to-- we have a large ethanol plant in Platte County, ADM. Tornado came there and destroyed a portion of that plant. I mean, that's millions of dollars in value. There is-- we-- I know of one person that does ethanol plant appraisals, there may be somebody else I'm not aware of them, when he would get to it. We're having it revalued this year. And I shouldn't say what it is, but it's quite a bit. And that's having all the information with him from doing it previously. He'd have to go through and start all over. That bill would be extraordinary. Who's going to pay for that? So there are some sections there that are, I think, unworkable. And I think Mr. Cannon covered about the calamities for some of the small towns. You know, he spoke of Pilger. But I can-- can't

even imagine what it would be like if it hit Lincoln and Omaha. It would be an unbelievable task. And I imagine Omaha and Lincoln would be up-- up to the Legislature and begging and begging and begging big time. I don't know how much pull Pilger has or Hallam has. They just don't. And they're just as-- and that-- that's a case where they were just as-- should be treated equally. And but I just don't see this-- this current section as workable as it is currently written. Calendar's too tight. And the amount of work that has to go in to get this done on top of everything else that we have to do, I don't-- I don't want to go off like-- I know we're civil servants and we have to do it, but, my gosh, sometimes this could be a task that is just impossible to do. So with that, I would take any questions.

**FRIESEN:** Thank you, Mr. Placzek. Any questions from the committee? Senator Groene.

**GROENE:** So what governs you now, a regulation set out by the Tax Commissioner or, I mean--

**TOM PLACZEK:** As far as--

**GROENE:** --or by Ruth Sorensen? I mean, what governs what you do now, a Department of Revenue regulation, a statute somewhere?

**TOM PLACZEK:** The statute, well, it sets as to an assessor is in charge of setting valuations. And that is in statute. And we have to pass certifications, that sort of thing, and that is-- that is in the statutes, I believe it's 77.

**GROENE:** Just-- just an accepted-- accepted practice, the way you do it now or is it in statute that--

**TOM PLACZEK:** As to how we-- how we do--

**GROENE:** Well, if somebody gets blow-- blown away and they-- and you-- a certain day you come back out and reappraise it so nothing--

**TOM PLACZEK:** Oh, OK. Let's say you have-- you lose your barn on March 3, OK?

**GROENE:** Yeah.

**TOM PLACZEK:** I would come out there and at some point-- well, number one, I'd verify that it was gone. And I'd probably wait until towards the end of the year. And just see-- OK, it's after the first. I'm not concerned for that year anymore. I come back say in October, and say, oh, Mr. Groene, I see your barn's gone. We're going to take that off the tax roll. You haven't replaced it. That's fine. Or another scenario--

**GROENE:** It goes on my new evaluation statement.

**TOM PLACZEK:** It goes on the new evaluation. The other one removed. Or you lost your machine shed. Fine, we take that off, and you do replace it but with a lot-- just say a detached garage, OK? We would add the detached garage, take off the machine shed. Maybe it's a wash. Maybe it's a little bit more. Maybe it's a little bit less than what it is. But that would be-- go on to the next year.

**GROENE:** But that's just practice?

**TOM PLACZEK:** Yes, that's standard operating procedure.

**GROENE:** But nothing in statute?

**TOM PLACZEK:** Well, I mean--

**GROENE:** This puts it in statute.

**TOM PLACZEK:** Right. And what I'm saying is, yes, you can put this in statute. I'm just saying that--

**GROENE:** No, this puts it in-- in Section 15. Now it puts it in statute, what used to be just normal assessor practice.

**TOM PLACZEK:** Right. Right. That's my understanding.



**GROENE:** All right. That's what I want to know. Thank you.

**FRIESEN:** Thank you, Senator--

**TOM PLACZEK:** That's why I say it's not a cleanup-- cleanup bill.

**GROENE:** That's what trying to get--

**FRIESEN:** Any other questions from the committee? Seeing none,  
thank you for your testimony.

**TOM PLACZEK:** Thank you.

**FRIESEN:** Any others who wish to testify in opposition? Seeing  
none, anyone wish to testify in a neutral capacity? Seeing none,  
we do have no letters. Senator Linehan, close? Senator Linehan  
waives closing. We close the hearing on LB512. We close the  
hearing for the day.