

Senate Bill 224
Testimony of Max Behlke
House Ways and Means Committee

May 7, 2024

Chairman Blessing and Members of the Senate Ways and Means Committee,

Thank you for the opportunity to testify before you today in support of Senate Bill 224, legislation that would create a waiver for delivery network companies from the state's marketplace facilitator law. My name is Max Behlke and I am the Deputy Executive Director of the Institute for State Policy Leaders.¹ I have spent my career working on state and local tax issues in various roles in the private and public sectors and I testify today in a personal capacity to provide background of marketplace sales tax collection and the rationale for the proposed legislation. While serving as the Director of Budget and Tax at the National Conference of State Legislatures (NCSL), I coordinated the states' efforts to overturn the U.S. Supreme Court's 1992 *Quill* decision, which ultimately led to the landmark *Wayfair* case in 2018. Importantly, after the Supreme Court granted states remote tax collection authority, I worked to ensure that states implemented their sales tax laws correctly and fairly because efficient tax administration is beneficial to both the state and for taxpayers.

Marketplace Tax Collection after *South Dakota v. Wayfair*

After the U.S. Supreme Court's decision in *South Dakota v. Wayfair* in 2018, states rapidly adopted marketplace facilitator legislation, including Ohio. Ohio's 2019 law required all marketplace facilitators meeting the threshold to collect and remit applicable sales tax, regardless of whether or not the tax was already being collected by the marketplace seller.²

In the years following *Wayfair*, it became quite clear that in the understandable rush to ensure that marketplaces were collecting sales taxes that were legally due, many state marketplace laws had failed to consider alternative business models, such as those of delivery network companies. Therefore, the business community and tax administrators worked with the National Conference of State Legislatures to develop model marketplace legislation that addressed the nuances of different types of marketplaces, which was adopted by NCSL in 2020.³

NCSL Marketplace Model Legislation and Delivery Network Companies

The NCSL approved policy recommendations and model language for states implementing or amending sales tax collection requirements for marketplace facilitators included provisions for delivery network companies, as does the legislation before you today.

- NCSL recommended that states should include definitions for delivery network companies to promote uniformity and clear understanding, such as those provided in Tennessee or Florida law.

¹ The Institute for State Policy Leaders is a 501(c)(3) organization created to assist state policymakers in making informed policy decisions by conducting nonpartisan educational programming. The programming is geared toward state elected leaders and focuses on complex emerging and current issues that are national in scope, but that impact states or are subject to state legislative, executive, and regulatory action — especially in light of federal stagnation.

² <https://dam.assets.ohio.gov/image/upload/tax.ohio.gov/ohiotaxalert/archivedalerts/substantialnexusandmarketplacefacilitatorchanges07232019.pdf>

³ <https://documents.ncsl.org/wwwncsl/Task-Forces/SALT/NCSL%20SALT%20-%20Marketplace%20Facilitator%20Tax%20Collection%20-%20Update%20-%20August%202023.pdf>

- NCSL recommended a provision that allows state tax departments to grant waivers to marketplace facilitators, such as network delivery companies, from sales tax collection requirements if they can demonstrate that substantially all of their marketplace sellers are registered with the state and collecting tax.
 - To ensure waiver provisions are not abused, NCSL recommends that states should require that marketplace sellers be registered to collect and remit tax before a waiver can be granted.⁴

To date, four states (California, Florida, Maryland, and Tennessee) have created exceptions from the state’s Marketplace Facilitator law if the company is a “delivery network company”, and at least five other states have adopted laws or regulations that provide the Department of Revenue the ability to grant waivers to marketplaces that meet certain conditions from tax collection obligations.

S.B. 224 - Sales and Use Taxation of Delivery Network Services

S.B. 224 would modernize Ohio’s marketplace facilitator law by defining “delivery network company” and updating provisions that reflect this type of business model, which was not considered when the state adopted its marketplace law in 2019.

Current Ohio law allows marketplaces that meet certain provisions to apply to the Tax Commissioner for a waiver from the tax collection obligation. S.B. 224 expands upon this provision by also allowing delivery network companies, that meet certain requirements, the ability to request a waiver. The Tax Commissioner would have authority to grant the waiver, and to promulgate rules necessary to administer the waiver. This waiver will relieve qualified delivery network companies from collecting the sales tax on the purchase of the goods, leaving retailers to collect the sales tax and providing a cleaner, single-tax transaction for all parties.

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As a full member of the Streamlined Sales Tax Project (“SSTP”) Ohio has strived to make it easier for those who collect and remit sales taxes and it continues these efforts to modernize the state’s tax structure. The passage of S.B. 224 would comport with Ohio’s commitment to a streamlined sales tax system by simplifying tax collection and administration for both the state and for taxpayers.

Thank you again for the opportunity to appear before you today and I would be happy to answer any questions at this time.

⁴<https://documents.ncsl.org/wwwncsl/Task-Forces/SALT/NCSL%20SALT%20-%20Marketplace%20Facilitator%20Tax%20Collection%20-%20Update%20-%20August%202023.pdf>