February 28, 2018

Senator Jim Scheer
Speaker of the Legislature
Room #2010
P.O. Box 94604
Lincoln, NE 68509

RE: Support If Amended – L 284 (Marketplace Platforms)

Dear Speaker Scheer:

On behalf of the Electronic Transactions Association ("ETA"), we appreciate the opportunity to share our thoughts regarding L 284. ETA appreciates the opportunity to provide comments on behalf of the payments industry and hopes the legislature considers providing an express exclusion for payment processor from the definition of "marketplace platform".

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services, including financial institutions, transaction processors, payments networks, and others. ETA also has members that are engaged in online lending for commercial enterprises, primarily small businesses, either directly or in partnership with other lenders.

Definition of Marketplace Platform

Under the definition of "marketplace platform" it could require payment processors that are passive intermediaries to collect and remit sales taxes on behalf of states or merchants. Payment processors do not have the information or the infrastructure necessary to collect and remit sales taxes. In fact, payment processors have no role in the sale of goods or services other than to facilitate payment between the parties. They do not provide a physical or virtual marketplace, they do not advertise or market the sale of taxable goods or services to customers, and they play no role in setting the seller's terms of sale to their customer.

The drafting of the language suggests that the inclusion of payment processors may be inadvertent. However, given the impossible situation that payment processors would be placed in if they were required to collect sales and use taxes, we believe that the definition should include an express exclusion for payment processors. While not all ETA members support this language, below is one way to provide an express payment processor exemption.

Possible Language
"Marketplace platform" does not include a payment processor business appointed by a merchant to handle payment transactions from various channels, such as credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle transactions between two parties.

Overview of the Issue

The payments ecosystem has been developed over the last 50 years for quickly, safely and accurately processing and settling transactions. The electronic payments industry includes thousands of companies ranging in size from public Fortune 500 companies to small, local sales organization and tech firms. The current payments ecosystem does not contemplate calculating and remitting taxes owed by merchants to the state or any other parties.

Given the inherent complexities of the electronic payments industry, the absence of a statutory exclusion for payment processors may lead to unnecessary and time-consuming controversies for businesses and state tax administrators alike. Among the many reasons this is the case, payment processors do not have and may be prohibited from obtaining the necessary information to collect tax.

Moreover, payment processors are not in privity of contract with the purchaser of the good or service sold in the transaction. In most cases, payment processors do not know what is being sold or the sales price of an item. For example, if a person buys tangible property and a service contract on an on-line marketplace for $100, the processor only knows that the cardholder spent $100. The processor would not know what type of property was purchased, what the prices of the item and the service contract were or when or where the item was delivered.

Actual Impediments to Collection and Remittance by Payment Processors

As a practical matter, payment processors cannot and should not be required to collect and remit sales tax on the transactions for which they process payments for the following reasons:

- Payment processors lack sufficient information to correctly collect tax.
    - Although payment processors know the bill-to location, they do not know ship-to location, which is generally used to determine the jurisdiction in which a sale is taxable.
    - Payment processors do not have information about the item that is sold to determine whether or not the item is taxable in its destination jurisdiction.
    - Payment processors do not have exemption certificate or other acceptable exemption information from the buyer, as that information is provided to the seller rather than the payment processor.
    - Under the current definition, there is a chance that multiple persons could be considered a "marketplace facilitator" with respect to any one transaction. This creates a risk of duplicate collection if the marketplace operator, the seller, and the payment processor are all required to collect tax.
    - Refunds and chargebacks will create further complications for payment processors, especially where the retailer may provide such refund in cash or store credit. If a seller issues a refund or charges back an amount, the full amount will go back to the customer. However, the portion of that amount that was sales tax would have already been remitted to the state. In this case, the seller will effectively owe the

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payment processor the sales tax refund, should the seller pursue a refund (or claim a bad debt deduction from sales). If the seller does not claim a refund or deduction and therefore does not pay it over to the payment processor, then the processor will not be made whole and will bear the tax cost of a transaction that was not taxable.

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Thank you for the opportunity to participate in the discussion on this important issue. If you have any additional questions, you can contact me or ETA Senior Vice President, Scott Talbott at stalbott@electran.org.

Sincerely,

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Cc: Senator John McCollister
        Chairwoman Lou Ann Linehan
        Members of the Legislature