SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2990

STATE OF NEW JERSEY

DATED: SEPTEMBER 24, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2990.

This bill imposes collection of sales tax requirements on marketplace facilitators and certain sellers who do not have a physical presence in the State, and clarifies that travel agencies are not required to collect sales tax or various hotel taxes.

Under the bill, if a seller does not have a physical presence in the State but has revenue from sales into the State in the calendar year, or prior year, in excess of $100,000, the seller must collect sales tax. The same applies to a seller with 200 or more separate transactions into the State in a calendar year or in the prior year.

These provisions of the bill reflect the 2018 decision of the U.S. Supreme Court in South Dakota v. Wayfair, in which the Court determined that physical presence within a state was not a prerequisite for the collection of sales tax. In that case, the Court held that imposing sales tax on a seller that delivers more than $100,000 worth of sales into a state or delivers 200 or more separate transactions into a state has a sufficient nexus with the state for the state to impose sales tax on the seller.

The bill also provides that marketplace facilitators must collect tax on sales they facilitate for marketplace sellers. However, in order to ensure the accurate and timely collection of taxes due, the Director of Taxation has the discretion to temporarily suspend or delay the collection of a marketplace facilitator for a period not to exceed 180 days.

Finally, the bill clarifies that travel agencies and online travel agencies, as defined by the Division of Taxation by regulations, are not transient space marketplaces. This clarification is intended to ensure that these businesses will not be required to collect and pay sales tax or various hotel taxes for sales on their platforms.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot independently quantify the bill’s net impact on State revenue collections; however, the bill should produce a recurring net revenue gain to the State General Fund and Property Tax Relief Fund. The recurring net revenue gain is attributable to the State having the authority to impose and collect sales tax from certain sellers with no physical presence in
this State, less any additional resources required to carry out the provisions of the bill. Informal information provided by the Executive for similar legislation (A-4261 (2R) of 2018) indicates that they anticipate an increase in sales tax revenue of $212 million as a result of the U.S. Supreme Court’s decision in South Dakota v. Wayfair.

The OLS notes that the Division of Taxation in the Department of the Treasury may experience an increase in expenditures for costs associated with administrations of the bill’s provisions. Specifically, the division would be tasked with registering new businesses, processing additional returns and refunds, conducting audits, and enforcing compliance. The OLS cannot conclude that the current operating budget for the division is sufficient enough to implement and administer the provisions of the bill.