

HOUSE BILL No. 2348

By Committee on Taxation

2-17

9 AN ACT concerning sales taxation; relating to the imposition of tax on
10 rendering or furnishing of services; rate of tax; amending K.S.A. 2008
11 Supp. 79-3602, 79-3603, 79-3620, 79-3703 and 79-3710 and repealing
12 the existing sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2008 Supp. 79-3602 is hereby amended to read as
16 follows: 79-3602. Except as otherwise provided, as used in the Kansas
17 retailers' sales tax act:

18 (a) "Agent" means a person appointed by a seller to represent the
19 seller before the member states.

20 (b) "Agreement" means the multistate agreement entitled the
21 streamlined sales and use tax agreement approved by the streamlined
22 sales tax implementing states at Chicago, Illinois on November 12, 2002.

23 (c) "Alcoholic beverages" means beverages that are suitable for hu-
24 man consumption and contain .05% or more of alcohol by volume.

25 (d) "Certified automated system (CAS)" means software certified un-
26 der the agreement to calculate the tax imposed by each jurisdiction on a
27 transaction, determine the amount of tax to remit to the appropriate state
28 and maintain a record of the transaction.

29 (e) "Certified service provider (CSP)" means an agent certified under
30 the agreement to perform all the seller's sales and use tax functions, other
31 than the seller's obligation to remit tax on its own purchases.

32 (f) "Computer" means an electronic device that accepts information
33 in digital or similar form and manipulates it for a result based on a se-
34 quence of instructions.

35 (g) "Computer software" means a set of coded instructions designed
36 to cause a computer or automatic data processing equipment to perform
37 a task.

38 (h) "Delivered electronically" means delivered to the purchaser by
39 means other than tangible storage media.

40 (i) "Delivery charges" means charges by the seller of personal prop-
41 erty or services for preparation and delivery to a location designated by
42 the purchaser of personal property or services including, but not limited to
43 transportation, shipping, postage, handling, crating and packing. De-

1 livery charges shall not include charges for delivery of direct mail if the
2 charges are separately stated on an invoice or similar billing document
3 given to the purchaser.

4 (j) "Direct mail" means printed material delivered or distributed by
5 United States mail or other delivery services to a mass audience or to
6 addressees on a mailing list provided by the purchaser or at the direction
7 of the purchaser when the cost of the items are not billed directly to the
8 recipients. Direct mail includes tangible personal property supplied di-
9 rectly or indirectly by the purchaser to the direct mail seller for inclusion
10 in the package containing the printed material. Direct mail does not in-
11 clude multiple items of printed material delivered to a single address.

12 (k) "Director" means the state director of taxation.

13 (l) "Educational institution" means any nonprofit school, college and
14 university that offers education at a level above the twelfth grade, and
15 conducts regular classes and courses of study required for accreditation
16 by, or membership in, the North Central Association of Colleges and
17 Schools, the state board of education, or that otherwise qualify as an
18 "educational institution," as defined by K.S.A. 74-50,103, and amend-
19 ments thereto. Such phrase shall include: (1) A group of educational in-
20 stitutions that operates exclusively for an educational purpose; (2) non-
21 profit endowment associations and foundations organized and operated
22 exclusively to receive, hold, invest and administer moneys and property
23 as a permanent fund for the support and sole benefit of an educational
24 institution; (3) nonprofit trusts, foundations and other entities organized
25 and operated principally to hold and own receipts from intercollegiate
26 sporting events and to disburse such receipts, as well as grants and gifts,
27 in the interest of collegiate and intercollegiate athletic programs for the
28 support and sole benefit of an educational institution; and (4) nonprofit
29 trusts, foundations and other entities organized and operated for the pri-
30 mary purpose of encouraging, fostering and conducting scholarly inves-
31 tigations and industrial and other types of research for the support and
32 sole benefit of an educational institution.

33 (m) "Electronic" means relating to technology having electrical, dig-
34 ital, magnetic, wireless, optical, electromagnetic or similar capabilities.

35 (n) "Food and food ingredients" means substances, whether in liquid,
36 concentrated, solid, frozen, dried or dehydrated form, that are sold for
37 ingestion or chewing by humans and are consumed for their taste or
38 nutritional value. "Food and food ingredients" does not include alcoholic
39 beverages or tobacco.

40 (o) "Gross receipts" means the total selling price or the amount re-
41 ceived as defined in this act, in money, credits, property or other consid-
42 eration valued in money from sales at retail within this state; and em-
43 braced within the provisions of this act. The taxpayer, may take credit in

1 the report of gross receipts for: (1) An amount equal to the selling price
2 of property returned by the purchaser when the full sale price thereof,
3 including the tax collected, is refunded in cash or by credit; and (2) an
4 amount equal to the allowance given for the trade-in of property.

5 (p) "Ingredient or component part" means tangible personal property
6 which is necessary or essential to, and which is actually used in and be-
7 comes an integral and material part of tangible personal property or serv-
8 ices produced, manufactured or compounded for sale by the producer,
9 manufacturer or compounder in its regular course of business. The fol-
10 lowing items of tangible personal property are hereby declared to be
11 ingredients or component parts, but the listing of such property shall not
12 be deemed to be exclusive nor shall such listing be construed to be a
13 restriction upon, or an indication of, the type or types of property to be
14 included within the definition of "ingredient or component part" as
15 herein set forth:

16 (1) Containers, labels and shipping cases used in the distribution of
17 property produced, manufactured or compounded for sale which are not
18 to be returned to the producer, manufacturer or compounder for reuse.

19 (2) Containers, labels, shipping cases, paper bags, drinking straws,
20 paper plates, paper cups, twine and wrapping paper used in the distri-
21 bution and sale of property taxable under the provisions of this act by
22 wholesalers and retailers and which is not to be returned to such whole-
23 saler or retailer for reuse.

24 (3) Seeds and seedlings for the production of plants and plant prod-
25 ucts produced for resale.

26 (4) Paper and ink used in the publication of newspapers.

27 (5) Fertilizer used in the production of plants and plant products
28 produced for resale.

29 (6) Feed for animals, fowl and aquatic plants and animals, the primary
30 purpose of which is use in agriculture or aquaculture, as defined in K.S.A.
31 47-1901, and amendments thereto, the production of food for human
32 consumption, the production of animal, dairy, poultry or aquatic plant
33 and animal products, fiber, fur, or the production of offspring for use for
34 any such purpose or purposes.

35 (q) "Isolated or occasional sale" means the nonrecurring sale of tan-
36 gible personal property, or services taxable hereunder by a person not
37 engaged at the time of such sale in the business of selling such property
38 or services. Any religious organization which makes a nonrecurring sale
39 of tangible personal property acquired for the purpose of resale shall be
40 deemed to be not engaged at the time of such sale in the business of
41 selling such property. Such term shall include: (1) Any sale by a bank,
42 savings and loan institution, credit union or any finance company licensed
43 under the provisions of the Kansas uniform consumer credit code of tan-

1 gible personal property which has been repossessed by any such entity;
2 and (2) any sale of tangible personal property made by an auctioneer or
3 agent on behalf of not more than two principals or households if such
4 sale is nonrecurring and any such principal or household is not engaged
5 at the time of such sale in the business of selling tangible personal
6 property.

7 (r) “Lease or rental” means any transfer of possession or control of
8 tangible personal property for a fixed or indeterminate term for consid-
9 eration. A lease or rental may include future options to purchase or
10 extend.

11 (1) Lease or rental does not include: (A) A transfer of possession or
12 control of property under a security agreement or deferred payment plan
13 that requires the transfer of title upon completion of the required
14 payments;

15 (B) a transfer or possession or control of property under an agree-
16 ment that requires the transfer of title upon completion of required pay-
17 ments and payment of an option price does not exceed the greater of
18 \$100 or 1% of the total required payments; or

19 (C) providing tangible personal property along with an operator for
20 a fixed or indeterminate period of time. A condition of this exclusion is
21 that the operator is necessary for the equipment to perform as designed.
22 For the purpose of this subsection, an operator must do more than main-
23 tain, inspect or set-up the tangible personal property.

24 (2) Lease or rental does include agreements covering motor vehicles
25 and trailers where the amount of consideration may be increased or de-
26 creased by reference to the amount realized upon sale or disposition of
27 the property as defined in 26 U.S.C. 7701(h)(1).

28 (3) This definition shall be used for sales and use tax purposes re-
29 gardless if a transaction is characterized as a lease or rental under gen-
30 erally accepted accounting principles, the internal revenue code, the uni-
31 form commercial code, K.S.A. 84-1-101 et seq. and amendments thereto,
32 or other provisions of federal, state or local law.

33 (4) This definition will be applied only prospectively from the effec-
34 tive date of this act and will have no retroactive impact on existing leases
35 or rentals.

36 (s) “Load and leave” means delivery to the purchaser by use of a
37 tangible storage media where the tangible storage media is not physically
38 transferred to the purchaser.

39 (t) “Member state” means a state that has entered in the agreement,
40 pursuant to provisions of article VIII of the agreement.

41 (u) “Model 1 seller” means a seller that has selected a CSP as its
42 agent to perform all the seller’s sales and use tax functions, other than
43 the seller’s obligation to remit tax on its own purchases.

- 1 (v) “Model 2 seller” means a seller that has selected a CAS to perform
2 part of its sales and use tax functions, but retains responsibility for re-
3 mitting the tax.
- 4 (w) “Model 3 seller” means a seller that has sales in at least five
5 member states, has total annual sales revenue of at least \$500,000,000,
6 has a proprietary system that calculates the amount of tax due each jurisdic-
7 tion and has entered into a performance agreement with the member
8 states that establishes a tax performance standard for the seller. As used
9 in this subsection a seller includes an affiliated group of sellers using the
10 same proprietary system.
- 11 (x) “Municipal corporation” means any city incorporated under the
12 laws of Kansas.
- 13 (y) “Nonprofit blood bank” means any nonprofit place, organization,
14 institution or establishment that is operated wholly or in part for the
15 purpose of obtaining, storing, processing, preparing for transfusing, fur-
16 nishing, donating or distributing human blood or parts or fractions of
17 single blood units or products derived from single blood units, whether
18 or not any remuneration is paid therefor, or whether such procedures are
19 done for direct therapeutic use or for storage for future use of such
20 products.
- 21 (z) “Persons” means any individual, firm, copartnership, joint adven-
22 ture, association, corporation, estate or trust, receiver or trustee, or any
23 group or combination acting as a unit, and the plural as well as the singular
24 number; and shall specifically mean any city or other political subdivision
25 of the state of Kansas engaging in a business or providing a service spe-
26 cifically taxable under the provisions of this act.
- 27 (aa) “Political subdivision” means any municipality, agency or sub-
28 division of the state which is, or shall hereafter be, authorized to levy taxes
29 upon tangible property within the state or which certifies a levy to a
30 municipality, agency or subdivision of the state which is, or shall hereafter
31 be, authorized to levy taxes upon tangible property within the state. Such
32 term also shall include any public building commission, housing, airport,
33 port, metropolitan transit or similar authority established pursuant to law.
- 34 (bb) “Prescription” means an order, formula or recipe issued in any
35 form of oral, written, electronic or other means of transmission by a duly
36 licensed practitioner authorized by the laws of this state.
- 37 (cc) “Prewritten computer software” means computer software, in-
38 cluding prewritten upgrades, which is not designed and developed by the
39 author or other creator to the specifications of a specific purchaser. The
40 combining of two or more prewritten computer software programs or
41 prewritten portions thereof does not cause the combination to be other
42 than prewritten computer software. Prewritten computer software in-
43 cludes software designed and developed by the author or other creator

1 to the specifications of a specific purchaser when it is sold to a person
2 other than the purchaser. Where a person modifies or enhances computer
3 software of which the person is not the author or creator, the person shall
4 be deemed to be the author or creator only of such person's modifications
5 or enhancements. Prewritten computer software or a prewritten portion
6 thereof that is modified or enhanced to any degree, where such modifi-
7 cation or enhancement is designed and developed to the specifications of
8 a specific purchaser, remains prewritten computer software, except that
9 where there is a reasonable, separately stated charge or an invoice or
10 other statement of the price given to the purchaser for such modification
11 or enhancement, such modification or enhancement shall not constitute
12 prewritten computer software.

13 (dd) "Property which is consumed" means tangible personal property
14 which is essential or necessary to and which is used in the actual process
15 of and consumed, depleted or dissipated within one year in (1) the pro-
16 duction, manufacture, processing, mining, drilling, refining or compound-
17 ing of tangible personal property, (2) the providing of services, (3) the
18 irrigation of crops, for sale in the regular course of business, or (4) the
19 storage or processing of grain by a public grain warehouse or other grain
20 storage facility, and which is not reusable for such purpose. The following
21 is a listing of tangible personal property, included by way of illustration
22 but not of limitation, which qualifies as property which is consumed:

23 (A) Insecticides, herbicides, germicides, pesticides, fungicides, fu-
24 migants, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals
25 for use in commercial or agricultural production, processing or storage of
26 fruit, vegetables, feeds, seeds, grains, animals or animal products whether
27 fed, injected, applied, combined with or otherwise used;

28 (B) electricity, gas and water; and

29 (C) petroleum products, lubricants, chemicals, solvents, reagents and
30 catalysts.

31 (ee) "Purchase price" applies to the measure subject to use tax and
32 has the same meaning as sales price.

33 (ff) "Purchaser" means a person to whom a sale of personal property
34 is made or to whom a service is furnished.

35 (gg) "Quasi-municipal corporation" means any county, township,
36 school district, drainage district or any other governmental subdivision in
37 the state of Kansas having authority to receive or hold moneys or funds.

38 (hh) "Registered under this agreement" means registration by a seller
39 with the member states under the central registration system provided in
40 article IV of the agreement.

41 (ii) "Retailer" means a seller regularly engaged in the business of
42 selling, leasing or renting tangible personal property at retail or furnishing
43 electrical energy, gas, water, services or entertainment, and selling only

1 to the user or consumer and not for resale.

2 (jj) “Retail sale” or “sale at retail” means any sale, lease or rental for
3 any purpose other than for resale, sublease or subrent.

4 (kk) “Sale” or “sales” means the exchange of tangible personal prop-
5 erty, as well as the sale thereof for money, and every transaction, condi-
6 tional or otherwise, for a consideration, constituting a sale, including the
7 sale or furnishing of electrical energy, gas, water, services or entertain-
8 ment taxable under the terms of this act and including, except as provided
9 in the following provision, the sale of the use of tangible personal property
10 by way of a lease, license to use or the rental thereof regardless of the
11 method by which the title, possession or right to use the tangible personal
12 property is transferred. The term “sale” or “sales” shall not mean the sale
13 of the use of any tangible personal property used as a dwelling by way of
14 a lease or rental thereof for a term of more than 28 consecutive days.

15 (ll) (1) “Sales or selling price” applies to the measure subject to sales
16 tax and means the total amount of consideration, including cash, credit,
17 property and services, for which personal property or services are sold,
18 leased or rented, valued in money, whether received in money or oth-
19 erwise, without any deduction for the following:

20 (A) The seller’s cost of the property sold;

21 (B) the cost of materials used, labor or service cost, interest, losses,
22 all costs of transportation to the seller, all taxes imposed on the seller and
23 any other expense of the seller;

24 (C) charges by the seller for any services necessary to complete the
25 sale, other than delivery and installation charges;

26 (D) delivery charges; and

27 (E) installation charges.

28 (2) “Sales or selling price” includes consideration received by the
29 seller from third parties if:

30 (A) The seller actually receives consideration from a party other than
31 the purchaser and the consideration is directly related to a price reduction
32 or discount on the sale;

33 (B) the seller has an obligation to pass the price reduction or discount
34 through to the purchaser;

35 (C) the amount of the consideration attributable to the sale is fixed
36 and determinable by the seller at the time of the sale of the item to the
37 purchaser; and

38 (D) one of the following criteria is met:

39 (i) The purchaser presents a coupon, certificate or other documen-
40 tation to the seller to claim a price reduction or discount where the cou-
41 pon, certificate or documentation is authorized, distributed or granted by
42 a third party with the understanding that the third party will reimburse
43 any seller to whom the coupon, certificate or documentation is presented;

- 1 (ii) the purchaser identifies to the seller that the purchaser is a mem-
 2 ber of a group or organization entitled to a price reduction or discount.
 3 A preferred customer card that is available to any patron does not con-
 4 stitute membership in such a group; or
- 5 (iii) the price reduction or discount is identified as a third party price
 6 reduction or discount on the invoice received by the purchaser or on a
 7 coupon, certificate or other documentation presented by the purchaser.
- 8 (3) "Sales or selling price" shall not include:
- 9 (A) Discounts, including cash, term or coupons that are not reim-
 10 bursed by a third party that are allowed by a seller and taken by a pur-
 11 chaser on a sale;
- 12 (B) interest, financing and carrying charges from credit extended on
 13 the sale of personal property or services, if the amount is separately stated
 14 on the invoice, bill of sale or similar document given to the purchaser;
- 15 (C) any taxes legally imposed directly on the consumer that are sep-
 16 arately stated on the invoice, bill of sale or similar document given to the
 17 purchaser;
- 18 (D) the amount equal to the allowance given for the trade-in of prop-
 19 erty, if separately stated on the invoice, billing or similar document given
 20 to the purchaser; and
- 21 (E) commencing on July 1, 2006, and ending on June 30, 2009, cash
 22 rebates granted by a manufacturer to a purchaser or lessee of a new motor
 23 vehicle if paid directly to the retailer as a result of the original sale.
- 24 (mm) "Seller" means a person making sales, leases or rentals of per-
 25 sonal property or services.
- 26 ~~(nn) "Service" means those services described in and taxed under the~~
 27 ~~provisions of K.S.A. 79-3603 and amendments thereto.~~
- 28 ~~(oo)~~ (nn) "Sourcing rules" means the rules set forth in K.S.A. 2008
 29 Supp. 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and amend-
 30 ments thereto, which shall apply to identify and determine the state and
 31 local taxing jurisdiction sales or use taxes to pay, or collect and remit on
 32 a particular retail sale.
- 33 ~~(pp)~~ (oo) "Tangible personal property" means personal property that
 34 can be seen, weighed, measured, felt or touched, or that is in any other
 35 manner perceptible to the senses. Tangible personal property includes
 36 electricity, water, gas, steam and prewritten computer software.
- 37 ~~(qq)~~ (pp) "Taxpayer" means any person obligated to account to the
 38 director for taxes collected under the terms of this act.
- 39 ~~(rr)~~ (qq) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco
 40 or any other item that contains tobacco.
- 41 ~~(ss)~~ (rr) "Entity-based exemption" means an exemption based on who
 42 purchases the product or who sells the product. An exemption that is
 43 available to all individuals shall not be considered an entity-based

1 exemption.

2 ~~(tt)~~ (ss) “Over-the-counter” drug means a drug that contains a label
3 that identifies the product as a drug as required by 21 C.F.R. § 201.66.
4 The over-the-counter drug label includes: (1) A drug facts panel; or (2) a
5 statement of the active ingredients with a list of those ingredients con-
6 tained in the compound, substance or preparation. Over-the-counter
7 drugs do not include grooming and hygiene products such as soaps, clean-
8 ing solutions, shampoo, toothpaste, antiperspirants and sun tan lotions
9 and screens.

10 ~~(uu)~~ (tt) “Ancillary services” means services that are associated with
11 or incidental to the provision of telecommunications services, including,
12 but not limited to, detailed telecommunications billing, directory assis-
13 tance, vertical service and voice mail services.

14 ~~(vv)~~ (uu) “Conference bridging service” means an ancillary service
15 that links two or more participants of an audio or video conference call
16 and may include the provision of a telephone number. Conference bridg-
17 ing service does not include the telecommunications services used to
18 reach the conference bridge.

19 ~~(ww)~~ (vv) “Detailed telecommunications billing service” means an
20 ancillary service of separately stating information pertaining to individual
21 calls on a customer’s billing statement.

22 ~~(xx)~~ (ww) “Directory assistance” means an ancillary service of provid-
23 ing telephone number information or address information, or both.

24 ~~(yy)~~ (xx) “Vertical service” means an ancillary service that is offered
25 in connection with one or more telecommunications services, which offers
26 advanced calling features that allow customers to identify callers and to
27 manage multiple calls and call connections, including conference bridging
28 services.

29 ~~(zz)~~ (yy) “Voice mail service” means an ancillary service that enables
30 the customer to store, send or receive recorded messages. Voice mail
31 service does not include any vertical services that the customer may be
32 required to have in order to utilize the voice mail service.

33 ~~(aaa)~~ (zz) “Telecommunications service” means the electronic trans-
34 mission, conveyance or routing of voice, data, audio, video or any other
35 information or signals to a point, or between or among points. The term
36 telecommunications service includes such transmission, conveyance or
37 routing in which computer processing applications are used to act on the
38 form, code or protocol of the content for purposes of transmissions, con-
39 veyance or routing without regard to whether such service is referred to
40 as voice over Internet protocol services or is classified by the federal
41 communications commission as enhanced or value added. Telecommu-
42 nications service does not include:

43 (1) Data processing and information services that allow data to be

1 generated, acquired, stored, processed or retrieved and delivered by an
2 electronic transmission to a purchaser where such purchaser's primary
3 purpose for the underlying transaction is the processed data or
4 information;

5 (2) installation or maintenance of wiring or equipment on a cus-
6 tomer's premises;

7 (3) tangible personal property;

8 (4) advertising, including, but not limited to, directory advertising;

9 (5) billing and collection services provided to third parties;

10 (6) internet access service;

11 (7) radio and television audio and video programming services, re-
12 gardless of the medium, including the furnishing of transmission, con-
13 veyance and routing of such services by the programming service pro-
14 vider. Radio and television audio and video programming services shall
15 include, but not be limited to, cable service as defined in 47 U.S.C. 522(6)
16 and audio and video programming services delivered by commercial mo-
17 bile radio service providers, as defined in 47 C.F.R. 20.3;

18 (8) ancillary services; or

19 (9) digital products delivered electronically, including, but not limited
20 to, software, music, video, reading materials or ring tones.

21 ~~(bbb)~~ (aaa) "800 service" means a telecommunications service that
22 allows a caller to dial a toll-free number without incurring a charge for
23 the call. The service is typically marketed under the name 800, 855, 866,
24 877 and 888 toll-free calling, and any subsequent numbers designated by
25 the federal communications commission.

26 ~~(ccc)~~ (bbb) "900 service" means an inbound toll telecommunications
27 service purchased by a subscriber that allows the subscriber's customers
28 to call in to the subscriber's prerecorded announcement or live service.
29 900 service does not include the charge for collection services provided
30 by the seller of the telecommunications services to the subscriber, or
31 service or product sold by the subscriber to the subscriber's customer.
32 The service is typically marketed under the name 900 service, and any
33 subsequent numbers designated by the federal communications
34 commission.

35 ~~(ddd)~~ (ccc) "Value-added non-voice data service" means a service that
36 otherwise meets the definition of telecommunications services in which
37 computer processing applications are used to act on the form, content,
38 code or protocol of the information or data primarily for a purpose other
39 than transmission, conveyance or routing.

40 ~~(eee)~~ (ddd) "International" means a telecommunications service that
41 originates or terminates in the United States and terminates or originates
42 outside the United States, respectively. United States includes the Dis-
43 trict of Columbia or a U.S. territory or possession.

1 ~~(fff)~~ (eee) “Interstate” means a telecommunications service that orig-
 2 inates in one United States state, or a United States territory or posses-
 3 sion, and terminates in a different United States state or a United States
 4 territory or possession.

5 ~~(eee)~~ (fff) “Intrastate” means a telecommunications service that orig-
 6 inates in one United States state or a United States territory or possession,
 7 and terminates in the same United States state or a United States territory
 8 or possession.

9 Sec. 2. K.S.A. 2008 Supp. 79-3603 is hereby amended to read as
 10 follows: 79-3603. *Unless made exempt from the tax imposed by the Kansas*
 11 *retailers’ sales tax act*, for the privilege of engaging in the business of
 12 selling tangible personal property at retail in this state or rendering or
 13 furnishing any of the services taxable under this act, there is hereby levied
 14 and there shall be collected and paid a tax at the rate of ~~5.3%~~ 4.0%. Within
 15 a redevelopment district established pursuant to K.S.A. 74-8921, and
 16 amendments thereto, there is hereby levied and there shall be collected
 17 and paid an additional tax at the rate of 2% until the earlier of the date
 18 the bonds issued to finance or refinance the redevelopment project have
 19 been paid in full or the final scheduled maturity of the first series of bonds
 20 issued to finance any part of the project upon:

21 (a) The gross receipts received from the sale of tangible personal
 22 property at retail within this state *and the rendering or furnishing of any*
 23 *services within this state*;

24 (b) the gross receipts from intrastate, interstate or international tel-
 25 ecommunications services and any ancillary services sourced to this state
 26 in accordance with K.S.A. 2008 Supp. 79-3673, and amendments thereto;
 27 ~~except that telecommunications service does not include: (1) Any inter-~~
 28 ~~state or international 800 or 900 service, (2) any interstate or international~~
 29 ~~private communications service as defined in K.S.A. 2008 Supp. 79-3673,~~
 30 ~~and amendments thereto; (3) any value added nonvoice data service; (4)~~
 31 ~~any telecommunication service to a provider of telecommunication serv-~~
 32 ~~ices which will be used to render telecommunications services, including~~
 33 ~~carrier access services; or (5) any service or transaction defined in this~~
 34 ~~section among entities classified as members of an affiliated group as~~
 35 ~~provided by section 1504 of the federal internal revenue code of 1986, as~~
 36 ~~in effect on January 1, 2001;~~

37 (c) the gross receipts from the sale or furnishing of gas, water, elec-
 38 tricity and heat, which sale is not otherwise exempt from taxation under
 39 the provisions of this act, and whether furnished by municipally or pri-
 40 vately owned utilities, ~~except that, on and after January 1, 2006, for sales~~
 41 ~~of gas, electricity and heat delivered through mains, lines or pipes to~~
 42 ~~residential premises for noncommercial use by the occupant of such~~
 43 ~~premises, and for agricultural use and also, for such use, all sales of pro-~~

- 1 ~~pane gas, the state rate shall be 0%, and for all sales of propane gas, LP~~
2 ~~gas, coal, wood and other fuel sources for the production of heat or light-~~
3 ~~ing for noncommercial use of an occupant of residential premises, the~~
4 ~~state rate shall be 0%, but such tax shall not be levied and collected upon~~
5 ~~the gross receipts from: (1) The sale of a rural water district benefit unit;~~
6 ~~(2) a water system impact fee, system enhancement fee or similar fee~~
7 ~~collected by a water supplier as a condition for establishing service; or (3)~~
8 ~~connection or reconnection fees collected by a water supplier;~~
- 9 (d) the gross receipts from the sale of meals or drinks furnished at
10 any private club, drinking establishment, catered event, restaurant, eating
11 house, dining car, hotel, drugstore or other place where meals or drinks
12 are regularly sold to the public;
- 13 (e) the gross receipts from the sale of admissions to any place pro-
14 viding amusement, entertainment or recreation services including admis-
15 sions to state, county, district and local fairs, ~~but such tax shall not be~~
16 ~~levied and collected upon the gross receipts received from sales of ad-~~
17 ~~missions to any cultural and historical event which occurs triennially;~~
- 18 (f) the gross receipts from the operation of any coin-operated device
19 dispensing or providing tangible personal property, amusement or other
20 services ~~except laundry services, whether automatic or manually operated;~~
- 21 (g) the gross receipts from the service of renting of rooms by hotels,
22 as defined by K.S.A. 36-501 and amendments thereto, or by accommo-
23 dation brokers, as defined by K.S.A. 12-1692, and amendments thereto
24 ~~but such tax shall not be levied and collected upon the gross receipts~~
25 ~~received from sales of such service to the federal government and any~~
26 ~~agency, officer or employee thereof in association with the performance~~
27 ~~of official government duties;~~
- 28 (h) the gross receipts from the service of renting or leasing of tangible
29 personal property ~~except such tax shall not apply to the renting or leasing~~
30 ~~of machinery, equipment or other personal property owned by a city and~~
31 ~~purchased from the proceeds of industrial revenue bonds issued prior to~~
32 ~~July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through~~
33 ~~12-1749, and amendments thereto, and any city or lessee renting or leas-~~
34 ~~ing such machinery, equipment or other personal property purchased~~
35 ~~with the proceeds of such bonds who shall have paid a tax under the~~
36 ~~provisions of this section upon sales made prior to July 1, 1973, shall be~~
37 ~~entitled to a refund from the sales tax refund fund of all taxes paid~~
38 ~~thereon;~~
- 39 (i) the gross receipts from the rendering of dry cleaning, pressing,
40 dyeing and laundry services ~~except laundry services rendered through a~~
41 ~~coin-operated device whether automatic or manually operated;~~
- 42 (j) the gross receipts from the rendering of the services of washing
43 and washing and waxing of vehicles;

1 (k) the gross receipts from cable, community antennae and other sub-
2 scriber radio and television services;

3 (l) (1) except as otherwise provided by paragraph (2), the gross re-
4 cepts received from the sales of tangible personal property to all con-
5 tractors, subcontractors or repairmen for use by them in erecting struc-
6 tures, or building on, or otherwise improving, altering, or repairing real
7 or personal property.

8 (2) Any such contractor, subcontractor or repairman who maintains
9 an inventory of such property both for sale at retail and for use by them
10 for the purposes described by paragraph (1) shall be deemed a retailer
11 with respect to purchases for and sales from such inventory, except that
12 the gross receipts received from any such sale, other than a sale at retail,
13 shall be equal to the total purchase price paid for such property and the
14 tax imposed thereon shall be paid by the deemed retailer;

15 (m) the gross receipts received from fees and charges by public and
16 private clubs, drinking establishments, organizations and businesses for
17 participation in sports, games and other recreational activities, ~~but such~~
18 ~~tax shall not be levied and collected upon the gross receipts received from:~~
19 ~~(1) Fees and charges by any political subdivision, by any organization~~
20 ~~exempt from property taxation pursuant to paragraph Ninth of K.S.A. 79-~~
21 ~~201, and amendments thereto, or by any youth recreation organization~~
22 ~~exclusively providing services to persons 18 years of age or younger which~~
23 ~~is exempt from federal income taxation pursuant to section 501(c)(3) of~~
24 ~~the federal internal revenue code of 1986, for participation in sports,~~
25 ~~games and other recreational activities; and (2) entry fees and charges for~~
26 ~~participation in a special event or tournament sanctioned by a national~~
27 ~~sporting association to which spectators are charged an admission which~~
28 ~~is taxable pursuant to subsection (e);~~

29 (n) the gross receipts received from dues charged by public and pri-
30 vate clubs, drinking establishments, organizations and businesses, pay-
31 ment of which entitles a member to the use of facilities for recreation or
32 entertainment, ~~but such tax shall not be levied and collected upon the~~
33 ~~gross receipts received from: (1) Dues charged by any organization ex-~~
34 ~~empt from property taxation pursuant to paragraphs Eighth and Ninth of~~
35 ~~K.S.A. 79-201, and amendments thereto, and (2) sales of memberships~~
36 ~~in a nonprofit organization which is exempt from federal income taxation~~
37 ~~pursuant to section 501 (c)(3) of the federal internal revenue code of~~
38 ~~1986, and whose purpose is to support the operation of a nonprofit zoo;~~

39 (o) the gross receipts received from the isolated or occasional sale of
40 motor vehicles or trailers ~~but not including: (1) The transfer of motor~~
41 ~~vehicles or trailers by a person to a corporation or limited liability com-~~
42 ~~pany solely in exchange for stock securities or membership interest in~~
43 ~~such corporation or limited liability company; or (2) the transfer of motor~~

1 ~~vehicles or trailers by one corporation or limited liability company to~~
2 ~~another when all of the assets of such corporation or limited liability~~
3 ~~company are transferred to such other corporation or limited liability~~
4 ~~company; or (3) the sale of motor vehicles or trailers which are subject~~
5 ~~to taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and~~
6 ~~amendments thereto, by an immediate family member to another im-~~
7 ~~mediate family member. For the purposes of clause (3), immediate family~~
8 ~~member means lineal ascendants or descendants, and their spouses. Any~~
9 ~~amount of sales tax paid pursuant to the Kansas retailers sales tax act on~~
10 ~~the isolated or occasional sale of motor vehicles or trailers on and after~~
11 ~~July 1, 2004, which the base for computing the tax was the value pursuant~~
12 ~~to subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105, and amendments~~
13 ~~thereto, when such amount was higher than the amount of sales tax which~~
14 ~~would have been paid under the law as it existed on June 30, 2004, shall~~
15 ~~be refunded to the taxpayer pursuant to the procedure prescribed by this~~
16 ~~section. Such refund shall be in an amount equal to the difference be-~~
17 ~~tween the amount of sales tax paid by the taxpayer and the amount of~~
18 ~~sales tax which would have been paid by the taxpayer under the law as it~~
19 ~~existed on June 30, 2004. Each claim for a sales tax refund shall be verified~~
20 ~~and submitted not later than six months from the effective date of this~~
21 ~~act to the director of taxation upon forms furnished by the director and~~
22 ~~shall be accompanied by any additional documentation required by the~~
23 ~~director. The director shall review each claim and shall refund that~~
24 ~~amount of tax paid as provided by this act. All such refunds shall be paid~~
25 ~~from the sales tax refund fund, upon warrants of the director of accounts~~
26 ~~and reports pursuant to vouchers approved by the director of taxation or~~
27 ~~the director's designee. No refund for an amount less than \$10 shall be~~
28 ~~paid pursuant to this act. In determining the base for computing the tax~~
29 ~~on such isolated or occasional sale, the fair market value of any motor~~
30 ~~vehicle or trailer traded in by the purchaser to the seller may be deducted~~
31 ~~from the selling price;~~

32 (p) ~~the gross receipts received for the service of installing or applying~~
33 ~~tangible personal property which when installed or applied is not being~~
34 ~~held for sale in the regular course of business, and whether or not such~~
35 ~~tangible personal property when installed or applied remains tangible~~
36 ~~personal property or becomes a part of real estate, except that no tax shall~~
37 ~~be imposed upon the service of installing or applying tangible personal~~
38 ~~property in connection with the original construction of a building or~~
39 ~~facility, the original construction, reconstruction, restoration, remodeling,~~
40 ~~renovation, repair or replacement of a residence or the construction, re-~~
41 ~~construction, restoration, replacement or repair of a bridge or highway;~~

42 ~~For the purposes of this subsection:~~

43 ~~(1) "Original construction" shall mean the first or initial construction~~

1 of a new building or facility. The term “original construction” shall include
2 the addition of an entire room or floor to any existing building or facility;
3 the completion of any unfinished portion of any existing building or fa-
4 cility and the restoration, reconstruction or replacement of a building,
5 facility or utility structure damaged or destroyed by fire, flood, tornado,
6 lightning, explosion, windstorm, ice loading and attendant winds, terror-
7 ism or earthquake, but such term, except with regard to a residence, shall
8 not include replacement, remodeling, restoration, renovation or recon-
9 struction under any other circumstances;

10 —(2)— “building” shall mean only those enclosures within which individ-
11 uals customarily are employed, or which are customarily used to house
12 machinery, equipment or other property, and including the land improve-
13 ments immediately surrounding such building;

14 —(3)— “facility” shall mean a mill, plant, refinery, oil or gas well, water
15 well, feedlot or any conveyance, transmission or distribution line of any
16 cooperative, nonprofit, membership corporation organized under or sub-
17 ject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto,
18 or municipal or quasi-municipal corporation, including the land improve-
19 ments immediately surrounding such facility;

20 —(4)— “residence” shall mean only those enclosures within which indi-
21 viduals customarily live;

22 —(5)— “utility structure” shall mean transmission and distribution lines
23 owned by an independent transmission company or cooperative, the Kan-
24 sas electric transmission authority or natural gas or electric public utility;
25 and

26 —(6)— “windstorm” shall mean straight line winds of at least 80 miles
27 per hour as determined by a recognized meteorological reporting agency
28 or organization;

29 (q) the gross receipts received for the service of repairing, servicing,
30 altering or maintaining tangible personal property which when such serv-
31 ices are rendered is not being held for sale in the regular course of busi-
32 ness, and whether or not any tangible personal property is transferred in
33 connection therewith. The tax imposed by this subsection shall be appli-
34 cable to the services of repairing, servicing, altering or maintaining an
35 item of tangible personal property which has been and is fastened to,
36 connected with or built into real property;

37 (r) the gross receipts from fees or charges made under service or
38 maintenance agreement contracts for services, charges for the providing
39 of which are taxable under the provisions of subsection (p) or (q);

40 (s) ~~on and after January 1, 2005,~~ the gross receipts received from the
41 sale of prewritten computer software and the sale of the services of mod-
42 ifying, altering, updating or maintaining prewritten computer software,
43 whether the prewritten computer software is installed or delivered elec-

1 tronically by tangible storage media physically transferred to the pur-
2 chaser or by load and leave;

3 (t) the gross receipts received for telephone answering services;

4 (u) the gross receipts received from the sale of prepaid calling service
5 and prepaid wireless calling service as defined in K.S.A. 2008 Supp. 79-
6 3673, and amendments thereto; and

7 (v) the gross receipts received from the sales of bingo cards, bingo
8 faces and instant bingo tickets by licensees under K.S.A. 79-4701, et seq.,
9 and amendments thereto, ~~shall be taxed at a rate of: (1) 4.9% on July 1,
10 2000, and before July 1, 2001, and (2) 2.5% on July 1, 2001, and before
11 July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo
12 faces and instant bingo tickets by licensees under K.S.A. 79-4701 et seq.,
13 and amendments thereto, shall be exempt from taxes imposed pursuant
14 to this section.~~

15 Sec. 3. K.S.A. 2008 Supp. 79-3620 is hereby amended to read as
16 follows: 79-3620. (a) All revenue collected or received by the director of
17 taxation from the taxes imposed by this act shall be remitted to the state
18 treasurer in accordance with the provisions of K.S.A. 75-4215, and
19 amendments thereto. Upon receipt of each such remittance, the state
20 treasurer shall deposit the entire amount in the state treasury, less
21 amounts withheld as provided in subsection (b) and amounts credited as
22 provided in subsection (c) and (d), to the credit of the state general fund.

23 (b) A refund fund, designated as "sales tax refund fund" not to exceed
24 \$100,000 shall be set apart and maintained by the director from sales tax
25 collections and estimated tax collections and held by the state treasurer
26 for prompt payment of all sales tax refunds including refunds authorized
27 under the provisions of K.S.A. 79-3635, and amendments thereto. Such
28 fund shall be in such amount, within the limit set by this section, as the
29 director shall determine is necessary to meet current refunding require-
30 ments under this act. In the event such fund as established by this section
31 is, at any time, insufficient to provide for the payment of refunds due
32 claimants thereof, the director shall certify the amount of additional funds
33 required to the director of accounts and reports who shall promptly trans-
34 fer the required amount from the state general fund to the sales tax refund
35 fund, and notify the state treasurer, who shall make proper entry in the
36 records.

37 (c) (1) The state treasurer shall credit $\frac{5}{98}$ s of the revenue collected
38 or received from the tax imposed by K.S.A. 79-3603, and amendments
39 thereto, at the rate of 4.9%, and deposited as provided in subsection (a),
40 exclusive of amounts credited pursuant to subsection (d), in the state
41 highway fund.

42 (2) The state treasurer shall credit $\frac{5}{106}$ of the revenue collected or
43 received from the tax imposed by K.S.A. 79-3603, and amendments

1 thereto, at the rate of 5.3%, and deposited as provided in subsection (a),
2 exclusive of amounts credited pursuant to subsection (d), in the state
3 highway fund.

4 (3) On July 1, 2006, the state treasurer shall credit $\frac{19}{265}$ of the rev-
5 enue collected and received from the tax imposed by K.S.A. 79-3603, and
6 amendments thereto, at the rate of 5.3%, and deposited as provided by
7 subsection (a), exclusive of amounts credited pursuant to subsection (d),
8 in the state highway fund.

9 (4) On July 1, 2007, the state treasurer shall credit $\frac{13}{106}$ of the rev-
10 enue collected and received from the tax imposed by K.S.A. 79-3603, and
11 amendments thereto, at the rate of 5.3%, and deposited as provided by
12 subsection (a), exclusive of amounts credited pursuant to subsection (d),
13 in the state highway fund.

14 (5) *On July 1, 2009, and each July 1 thereafter, the state treasurer*
15 *shall credit $\frac{13}{106}$ of the revenue collected or received from the tax imposed*
16 *by K.S.A. 79-3603, and amendments thereto, at the rate of 4.0%, and*
17 *deposited as provided by subsection (a), exclusive of amounts credited*
18 *pursuant to subsection (d), in the state highway fund.*

19 (d) The state treasurer shall credit all revenue collected or received
20 from the tax imposed by K.S.A. 79-3603, and amendments thereto, as
21 certified by the director, from taxpayers doing business within that por-
22 tion of a redevelopment district occupied by a redevelopment project or
23 taxpayers doing business with such entity financed by a special bond pro-
24 ject as defined in K.S.A. 12-1770a, and amendments thereto, that was
25 determined by the secretary of commerce to be of statewide as well as
26 local importance or will create a major tourism area for the state or the
27 project was designated as a special bond project as defined in K.S.A. 12-
28 1770a, and amendments thereto, to the city bond finance fund, which
29 fund is hereby created. The provisions of this subsection shall expire when
30 the total of all amounts credited hereunder and under subsection (d) of
31 K.S.A. 79-3710, and amendments thereto, is sufficient to retire the special
32 obligation bonds issued for the purpose of financing all or a portion of
33 the costs of such redevelopment or special bond project.

34 Sec. 4. K.S.A. 2008 Supp. 79-3703 is hereby amended to read as
35 follows: 79-3703. There is hereby levied and there shall be collected from
36 every person in this state a tax or excise for the privilege of using, storing,
37 or consuming within this state any article of tangible personal property.
38 Such tax shall be levied and collected in an amount equal to the consid-
39 eration paid by the taxpayer multiplied by the rate of ~~5.3%~~ 4.0%. Within
40 a redevelopment district established pursuant to K.S.A. 74-8921, and
41 amendments thereto, there is hereby levied and there shall be collected
42 and paid an additional tax of 2% until the earlier of: (1) The date the
43 bonds issued to finance or refinance the redevelopment project under-

1 taken in the district have been paid in full; or (2) the final scheduled
2 maturity of the first series of bonds issued to finance the redevelopment
3 project. All property purchased or leased within or without this state and
4 subsequently used, stored or consumed in this state shall be subject to
5 the compensating tax if the same property or transaction would have been
6 subject to the Kansas retailers' sales tax had the transaction been wholly
7 within this state.

8 Sec. 5. K.S.A. 2008 Supp. 79-3710 is hereby amended to read as
9 follows: 79-3710. (a) All revenue collected or received by the director
10 under the provisions of this act shall be remitted to the state treasurer in
11 accordance with the provisions of K.S.A. 75-4215, and amendments
12 thereto. Upon receipt of each such remittance, the state treasurer shall
13 deposit the entire amount in the state treasury, less amounts set apart as
14 provided in subsection (b) and amounts credited as provided in subsection
15 (c) and (d), to the credit of the state general fund.

16 (b) A revolving fund, designated as "compensating tax refund fund"
17 not to exceed \$10,000 shall be set apart and maintained by the director
18 from compensating tax collections and estimated tax collections and held
19 by the state treasurer for prompt payment of all compensating tax refunds.
20 Such fund shall be in such amount, within the limit set by this section,
21 as the director shall determine is necessary to meet current refunding
22 requirements under this act.

23 (c) (1) The state treasurer shall credit $\frac{5}{98}$ of the revenue collected
24 or received from the tax imposed by K.S.A. 79-3703, and amendments
25 thereto, at the rate of 4.9%, and deposited as provided in subsection (a),
26 exclusive of amounts credited pursuant to subsection (d), in the state
27 highway fund.

28 (2) The state treasurer shall credit $\frac{5}{106}$ of the revenue collected or
29 received from the tax imposed by K.S.A. 79-3703, and amendments
30 thereto, at the rate of 5.3%, and deposited as provided in subsection (a),
31 exclusive of amounts credited pursuant to subsection (d), in the state
32 highway fund.

33 (3) On July 1, 2006, the state treasurer shall credit $\frac{19}{265}$ of the rev-
34 enue collected or received from the tax imposed by K.S.A. 79-3703, and
35 amendments thereto, at the rate of 5.3%, and deposited as provided by
36 subsection (a), exclusive of amounts credited pursuant to subsection (d),
37 in the state highway fund.

38 (4) On July 1, 2007, the state treasurer shall credit $\frac{13}{106}$ of the rev-
39 enue collected or received from the tax imposed by K.S.A. 79-3703, and
40 amendments thereto, at the rate of 5.3%, and deposited as provided by
41 subsection (a), exclusive of amounts credited pursuant to subsection (d),
42 in the state highway fund.

43 (5) *On July 1, 2009, and each July 1 thereafter, the state treasurer*

1 *shall credit ^{13/106} of the revenue collected or received from the tax imposed*
2 *by K.S.A. 79-3603, and amendments thereto, at the rate of 4.0%, and*
3 *deposited as provided by subsection (a), exclusive of amounts credited*
4 *pursuant to subsection (d), in the state highway fund.*

5 (d) The state treasurer shall credit all revenue collected or received
6 from the tax imposed by K.S.A. 79-3703, and amendments thereto, as
7 certified by the director, from taxpayers doing business within that por-
8 tion of a redevelopment district occupied by a redevelopment project that
9 was determined by the secretary of commerce to be of statewide as well
10 as local importance or will create a major tourism area for the state as
11 defined in K.S.A. 12-1770a, and amendments thereto, to the city bond
12 finance fund created by subsection (d) of K.S.A. 79-3620, and amend-
13 ments thereto. The provisions of this subsection shall expire when the
14 total of all amounts credited hereunder and under subsection (d) of K.S.A.
15 79-3620, and amendments thereto, is sufficient to retire the special ob-
16 ligation bonds issued for the purpose of financing all or a portion of the
17 costs of such redevelopment project.

18 This subsection shall not apply to a project designated as a special bond
19 project as defined in subsection (z) of K.S.A. 12-1770a, and amendments
20 thereto.

21 Sec. 6. K.S.A. 2008 Supp. 79-3602, 79-3603, 79-3620, 79-3703 and
22 79-3710 are hereby repealed.

23 Sec. 7. This act shall take effect and be in force from and after its
24 publication in the statute book.