

## HOUSE BILL No. 2352

By Committee on Taxation

2-19

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9 AN ACT concerning sales taxation; relating to exemptions; certain non-  
10 profit organizations; amending K.S.A. 2008 Supp. 79-3603 and re-  
11 pealing the existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2008 Supp. 79-3603 is hereby amended to read as  
15 follows: 79-3603. For the privilege of engaging in the business of selling  
16 tangible personal property at retail in this state or rendering or furnishing  
17 any of the services taxable under this act, there is hereby levied and there  
18 shall be collected and paid a tax at the rate of 5.3%. Within a redevelop-  
19 ment district established pursuant to K.S.A. 74-8921, and amendments  
20 thereto, there is hereby levied and there shall be collected and paid an  
21 additional tax at the rate of 2% until the earlier of the date the bonds  
22 issued to finance or refinance the redevelopment project have been paid  
23 in full or the final scheduled maturity of the first series of bonds issued  
24 to finance any part of the project upon:

25 (a) The gross receipts received from the sale of tangible personal  
26 property at retail within this state;

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

40 (c) the gross receipts from the sale or furnishing of gas, water, elec-  
41 tricity and heat, which sale is not otherwise exempt from taxation under  
42 the provisions of this act, and whether furnished by municipally or pri-  
43 vately owned utilities, except that, on and after January 1, 2006, for sales

1 of gas, electricity and heat delivered through mains, lines or pipes to  
2 residential premises for noncommercial use by the occupant of such  
3 premises, and for agricultural use and also, for such use, all sales of pro-  
4 pane gas, the state rate shall be 0%; and for all sales of propane gas, LP  
5 gas, coal, wood and other fuel sources for the production of heat or light-  
6 ing for noncommercial use of an occupant of residential premises, the  
7 state rate shall be 0%, but such tax shall not be levied and collected upon  
8 the gross receipts from: (1) The sale of a rural water district benefit unit;  
9 (2) a water system impact fee, system enhancement fee or similar fee  
10 collected by a water supplier as a condition for establishing service; or (3)  
11 connection or reconnection fees collected by a water supplier;

12 (d) the gross receipts from the sale of meals or drinks furnished at  
13 any private club, drinking establishment, catered event, restaurant, eating  
14 house, dining car, hotel, drugstore or other place where meals or drinks  
15 are regularly sold to the public;

16 (e) the gross receipts from the sale of admissions to any place pro-  
17 viding amusement, entertainment or recreation services including admis-  
18 sions to state, county, district and local fairs, but such tax shall not be  
19 levied and collected upon the gross receipts received from sales of ad-  
20 missions to any cultural and historical event which occurs triennially;

21 (f) the gross receipts from the operation of any coin-operated device  
22 dispensing or providing tangible personal property, amusement or other  
23 services except laundry services, whether automatic or manually operated;

24 (g) the gross receipts from the service of renting of rooms by hotels,  
25 as defined by K.S.A. 36-501 and amendments thereto, or by accommo-  
26 dation brokers, as defined by K.S.A. 12-1692, and amendments thereto  
27 but such tax shall not be levied and collected upon the gross receipts  
28 received from sales of such service to the federal government and any  
29 agency, officer or employee thereof in association with the performance  
30 of official government duties;

31 (h) the gross receipts from the service of renting or leasing of tangible  
32 personal property except such tax shall not apply to the renting or leasing  
33 of machinery, equipment or other personal property owned by a city and  
34 purchased from the proceeds of industrial revenue bonds issued prior to  
35 July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through  
36 12-1749, and amendments thereto, and any city or lessee renting or leas-  
37 ing such machinery, equipment or other personal property purchased  
38 with the proceeds of such bonds who shall have paid a tax under the  
39 provisions of this section upon sales made prior to July 1, 1973, shall be  
40 entitled to a refund from the sales tax refund fund of all taxes paid  
41 thereon;

42 (i) the gross receipts from the rendering of dry cleaning, pressing,  
43 dyeing and laundry services except laundry services rendered through a

- 1 coin-operated device whether automatic or manually operated;
- 2 (j) the gross receipts from the rendering of the services of washing  
3 and washing and waxing of vehicles;
- 4 (k) the gross receipts from cable, community antennae and other sub-  
5 scriber radio and television services;
- 6 (l) (1) except as otherwise provided by paragraph (2), the gross re-  
7 cepts received from the sales of tangible personal property to all con-  
8 tractors, subcontractors or repairmen for use by them in erecting struc-  
9 tures, or building on, or otherwise improving, altering, or repairing real  
10 or personal property.
- 11 (2) Any such contractor, subcontractor or repairman who maintains  
12 an inventory of such property both for sale at retail and for use by them  
13 for the purposes described by paragraph (1) shall be deemed a retailer  
14 with respect to purchases for and sales from such inventory, except that  
15 the gross receipts received from any such sale, other than a sale at retail,  
16 shall be equal to the total purchase price paid for such property and the  
17 tax imposed thereon shall be paid by the deemed retailer;
- 18 (m) the gross receipts received from fees and charges by public and  
19 private clubs, drinking establishments, organizations and businesses for  
20 participation in sports, games and other recreational activities, but such  
21 tax shall not be levied and collected upon the gross receipts received from:
- 22 (1) Fees and charges by any political subdivision, ~~by any organization~~  
23 ~~exempt from property taxation pursuant to paragraph Ninth of K.S.A. 79-~~  
24 ~~201, and amendments thereto,~~ or by any youth recreation organization  
25 exclusively providing services to persons 18 years of age or younger which  
26 is exempt from federal income taxation pursuant to section 501(c)(3) of  
27 the federal internal revenue code of 1986, for participation in sports,  
28 games and other recreational activities; and (2) entry fees and charges for  
29 participation in a special event or tournament sanctioned by a national  
30 sporting association to which spectators are charged an admission which  
31 is taxable pursuant to subsection (e);
- 32 (n) the gross receipts received from dues charged by public and pri-  
33 vate clubs, drinking establishments, organizations and businesses, pay-  
34 ment of which entitles a member to the use of facilities for recreation or  
35 entertainment, ~~but such tax shall not be levied and collected upon the~~  
36 ~~gross receipts received from: (1) Dues charged by any organization ex-~~  
37 ~~empt from property taxation pursuant to paragraphs Eighth and Ninth of~~  
38 ~~K.S.A. 79-201, and amendments thereto; and (2) sales of memberships~~  
39 ~~in a nonprofit organization which is exempt from federal income taxation~~  
40 ~~pursuant to section 501 (c)(3) of the federal internal revenue code of~~  
41 ~~1986, and whose purpose is to support the operation of a nonprofit zoo;~~
- 42 (o) the gross receipts received from the isolated or occasional sale of  
43 motor vehicles or trailers but not including: (1) The transfer of motor

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

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

1 construction, restoration, replacement or repair of a bridge or highway.

2 For the purposes of this subsection:

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

13 (2) "building" shall mean only those enclosures within which individ-  
14 uals customarily are employed, or which are customarily used to house  
15 machinery, equipment or other property, and including the land improve-  
16 ments immediately surrounding such building;

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

23 (4) "residence" shall mean only those enclosures within which indi-  
24 viduals customarily live;

25 (5) "utility structure" shall mean transmission and distribution lines  
26 owned by an independent transmission company or cooperative, the Kan-  
27 sas electric transmission authority or natural gas or electric public utility;  
28 and

29 (6) "windstorm" shall mean straight line winds of at least 80 miles  
30 per hour as determined by a recognized meteorological reporting agency  
31 or organization;

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

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

43 (s) on and after January 1, 2005, the gross receipts received from the

1 sale of prewritten computer software and the sale of the services of mod-  
2 ifying, altering, updating or maintaining prewritten computer software,  
3 whether the prewritten computer software is installed or delivered elec-  
4 tronically by tangible storage media physically transferred to the pur-  
5 chaser or by load and leave;

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

7 (u) the gross receipts received from the sale of prepaid calling service  
8 and prepaid wireless calling service as defined in K.S.A. 2008 Supp. 79-  
9 3673, and amendments thereto; and

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

18 New Sec. 2. From and after January 1, 2010, notwithstanding any  
19 provision of law to the contrary any exemption provided to any nonprofit  
20 organization from the imposition of sales tax pursuant to the Kansas re-  
21 tailers' sales tax act shall apply only to: (a) Purchases of tangible personal  
22 property and services by such organization for exempt purposes; or (b)  
23 the sale of tangible personal property and services for exempt purposes  
24 in conjunction with fund-raising activities that do not occur for more than  
25 60 days in a calendar year.

26 Sec. 3. K.S.A. 2008 Supp. 79-3603 is hereby repealed.

27 Sec. 4. This act shall take effect and be in force from and after its  
28 publication in the statute book.