

SENATE BILL No. 397

By Committee on Assessment and Taxation

1-20

9 AN ACT concerning the Fort Scott/Bourbon county riverfront authority;
10 relating to taxation; Kansas retailers' sales tax act, political subdivisions
11 thereunder; property tax exemptions; amending K.S.A. 2009 Supp. 79-
12 201a and 79-3602 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 2009 Supp. 79-201a is hereby amended to read as
16 follows: 79-201a. The following described property, to the extent herein
17 specified, shall be exempt from all property or ad valorem taxes levied
18 under the laws of the state of Kansas:

19 *First.* All property belonging exclusively to the United States, except
20 property which congress has expressly declared to be subject to state and
21 local taxation.

22 *Second.* All property used exclusively by the state or any municipality
23 or political subdivision of the state. All property owned, being acquired
24 pursuant to a lease-purchase agreement or operated by the state or any
25 municipality or political subdivision of the state, including property which
26 is vacant or lying dormant, which is used or is to be used for any govern-
27 mental or proprietary function and for which bonds may be issued or
28 taxes levied to finance the same, shall be considered to be used exclusively
29 by the state, municipality or political subdivision for the purposes of this
30 section. The lease by a municipality or political subdivision of the state
31 of any real property owned or being acquired pursuant to a lease-purchase
32 agreement for the purpose of providing office space necessary for the
33 performance of medical services by a person licensed to practice medicine
34 and surgery or osteopathic medicine by the board of healing arts pursuant
35 to K.S.A. 65-2801 et seq., and amendments thereto, dentistry services by
36 a person licensed by the Kansas dental board pursuant to K.S.A. 65-1401
37 et seq., and amendments thereto, optometry services by a person licensed
38 by the board of examiners in optometry pursuant to K.S.A. 65-1501 et
39 seq., and amendments thereto, or K.S.A. 74-1501 et seq., and amend-
40 ments thereto, podiatry services by a person licensed by the board of
41 healing arts pursuant to K.S.A. 65-2001 et seq., and amendments thereto,
42 or the practice of psychology by a person licensed by the behavioral sci-
43 ences regulatory board pursuant to K.S.A. 74-5301 et seq., and amend-

1 ments thereto, shall be construed to be a governmental function, and
2 such property actually and regularly used for such purpose shall be
3 deemed to be used exclusively for the purposes of this paragraph. The
4 lease by a municipality or political subdivision of the state of any real
5 property, or portion thereof, owned or being acquired pursuant to a lease-
6 purchase agreement to any entity for the exclusive use by it for an exempt
7 purpose, including the purpose of displaying or exhibiting personal prop-
8 erty by a museum or historical society, if no portion of the lease payments
9 include compensation for return on the investment in such leased prop-
10 erty shall be deemed to be used exclusively for the purposes of this par-
11 agraph. All property leased, other than motor vehicles leased for a period
12 of at least one year and property being acquired pursuant to a lease-
13 purchase agreement, to the state or any municipality or political subdivi-
14 sion of the state by any private entity shall not be considered to be used
15 exclusively by the state or any municipality or political subdivision of the
16 state for the purposes of this section except that the provisions of this
17 sentence shall not apply to any such property subject to lease on the
18 effective date of this act until the term of such lease expires but property
19 taxes levied upon any such property prior to tax year 1989, shall not be
20 abated or refunded. Any property constructed or purchased with the pro-
21 ceeds of industrial revenue bonds issued prior to July 1, 1963, as author-
22 ized by K.S.A. 12-1740 to 12-1749, or purchased with proceeds of im-
23 provement district bonds issued prior to July 1, 1963, as authorized by
24 K.S.A. 19-2776, or with proceeds of bonds issued prior to July 1, 1963,
25 as authorized by K.S.A. 19-3815a and 19-3815b, or any property im-
26 proved, purchased, constructed, reconstructed or repaired with the pro-
27 ceeds of revenue bonds issued prior to July 1, 1963, as authorized by
28 K.S.A. 13-1238 to 13-1245, inclusive, or any property improved, reim-
29 proved, reconstructed or repaired with the proceeds of revenue bonds
30 issued after July 1, 1963, under the authority of K.S.A. 13-1238 to 13-
31 1245, inclusive, which had previously been improved, reconstructed or
32 repaired with the proceeds of revenue bonds issued under such act on or
33 before July 1, 1963, shall be exempt from taxation for so long as any of
34 the revenue bonds issued to finance such construction, reconstruction,
35 improvement, repair or purchase shall be outstanding and unpaid. Any
36 property constructed or purchased with the proceeds of any revenue
37 bonds authorized by K.S.A. 13-1238 to 13-1245, inclusive, 19-2776, 19-
38 3815a and 19-3815b, and amendments thereto, issued on or after July 1,
39 1963, shall be exempt from taxation only for a period of 10 calendar years
40 after the calendar year in which the bonds were issued. Any property, all
41 or any portion of which is constructed or purchased with the proceeds of
42 revenue bonds authorized by K.S.A. 12-1740 to 12-1749, inclusive, and
43 amendments thereto, issued on or after July 1, 1963 and prior to July 1,

1 1981, shall be exempt from taxation only for a period of 10 calendar years
2 after the calendar year in which the bonds were issued. Except as here-
3 inafter provided, any property constructed or purchased wholly with the
4 proceeds of revenue bonds issued on or after July 1, 1981, under the
5 authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments
6 thereto, shall be exempt from taxation only for a period of 10 calendar
7 years after the calendar year in which the bonds were issued. Except as
8 hereinafter provided, any property constructed or purchased in part with
9 the proceeds of revenue bonds issued on or after July 1, 1981, under the
10 authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments
11 thereto, shall be exempt from taxation to the extent of the value of that
12 portion of the property financed by the revenue bonds and only for a
13 period of 10 calendar years after the calendar year in which the bonds
14 were issued. The exemption of that portion of the property constructed
15 or purchased with the proceeds of revenue bonds shall terminate upon
16 the failure to pay all taxes levied on that portion of the property which is
17 not exempt and the entire property shall be subject to sale in the manner
18 prescribed by K.S.A. 79-2301 et seq., and amendments thereto. Property
19 constructed or purchased in whole or in part with the proceeds of revenue
20 bonds issued on or after January 1, 1995, under the authority of K.S.A.
21 12-1740 to 12-1749, inclusive, and amendments thereto, and used in any
22 retail enterprise identified under the standard industrial classification
23 codes, major groups 52 through 59, inclusive, except facilities used exclu-
24 sively to house the headquarters or back office operations of such retail
25 enterprises identified thereunder, shall not be exempt from taxation. For
26 the purposes of the preceding provision “standard industrial classification
27 code” means a standard industrial classification code published in the
28 Standard Industrial Classification manual, 1987, as prepared by the sta-
29 tistical policy division of the office of management and budget of the
30 office of the president of the United States. “Headquarters or back office
31 operations” means a facility from which the enterprise is provided direc-
32 tion, management, administrative services, or distribution or warehousing
33 functions in support of transactions made by the enterprise. Property
34 purchased, constructed, reconstructed, equipped, maintained or repaired
35 with the proceeds of industrial revenue bonds issued under the authority
36 of K.S.A. 12-1740 et seq., and amendments thereto, which is located in
37 a redevelopment project area established under the authority of K.S.A.
38 12-1770 et seq., shall not be exempt from taxation. Property purchased,
39 acquired, constructed, reconstructed, improved, equipped, furnished, re-
40 paired, enlarged or remodeled with all or any part of the proceeds of
41 revenue bonds issued under authority of K.S.A. 12-1740 to 12-1749a,
42 inclusive, and amendments thereto for any poultry confinement facility
43 on agricultural land which is owned, acquired, obtained or leased by a

1 corporation, as such terms are defined by K.S.A. 17-5903 and amend-
2 ments thereto, shall not be exempt from such taxation. Property pur-
3 chased, acquired, constructed, reconstructed, improved, equipped, fur-
4 nished, repaired, enlarged or remodeled with all or any part of the
5 proceeds of revenue bonds issued under the authority of K.S.A. 12-1740
6 to 12-1749a, inclusive, and amendments thereto, for a rabbit confinement
7 facility on agricultural land which is owned, acquired, obtained or leased
8 by a corporation, as such terms are defined by K.S.A. 17-5903 and amend-
9 ments thereto, shall not be exempt from such taxation.

10 *Third.* All works, machinery and fixtures used exclusively by any rural
11 water district or township water district for conveying or production of
12 potable water in such rural water district or township water district, and
13 all works, machinery and fixtures used exclusively by any entity which
14 performed the functions of a rural water district on and after January 1,
15 1990, and the works, machinery and equipment of which were exempted
16 hereunder on March 13, 1995.

17 *Fourth.* All fire engines and other implements used for the extin-
18 guishment of fires, with the buildings used exclusively for the safekeeping
19 thereof, and for the meeting of fire companies, whether belonging to any
20 rural fire district, township fire district, town, city or village, or to any fire
21 company organized therein or therefor.

22 *Fifth.* All property, real and personal, owned by county fair associa-
23 tions organized and operating under the provisions of K.S.A. 2-125 et
24 seq., and amendments thereto.

25 *Sixth.* Property acquired and held by any municipality under the mu-
26 nicipal housing law (K.S.A. 17-2337 et seq.) and amendments thereto,
27 except that such exemption shall not apply to any portion of the project
28 used by a nondwelling facility for profit making enterprise.

29 *Seventh.* All property of a municipality, acquired or held under and
30 for the purposes of the urban renewal law (K.S.A. 17-4742 et seq.) and
31 amendments thereto except that such tax exemption shall terminate when
32 the municipality sells, leases or otherwise disposes of such property in an
33 urban renewal area to a purchaser or lessee which is not a public body
34 entitled to tax exemption with respect to such property.

35 *Eighth.* All property acquired and held by the Kansas armory board
36 for armory purposes under the provisions of K.S.A. 48-317, and amend-
37 ments thereto.

38 *Ninth.* All property acquired and used by the Kansas turnpike au-
39 thority under the authority of K.S.A. 68-2001 et seq., and amendments
40 thereto, K.S.A. 68-2030 et seq., and amendments thereto, K.S.A. 68-2051
41 et seq., and amendments thereto, and K.S.A. 68-2070 et seq., and amend-
42 ments thereto.

43 *Tenth.* All property acquired and used for state park purposes by the

1 Kansas department of wildlife and parks.

2 *Eleventh.* The state office building constructed under authority of
3 K.S.A. 75-3607 et seq., and amendments thereto, and the site upon which
4 such building is located.

5 *Twelfth.* All buildings erected under the authority of K.S.A. 76-6a01
6 et seq., and amendments thereto, and all other student union buildings
7 and student dormitories erected upon the campus of any institution men-
8 tioned in K.S.A. 76-6a01, and amendments thereto, by any other non-
9 profit corporation.

10 *Thirteenth.* All buildings, as the same is defined in subsection (c) of
11 K.S.A. 76-6a13, and amendments thereto, which are erected, constructed
12 or acquired under the authority of K.S.A. 76-6a13 et seq., and amend-
13 ments thereto, and building sites acquired therefor.

14 *Fourteenth.* All that portion of the waterworks plant and system of
15 the city of Kansas City, Missouri, now or hereafter located within the
16 territory of the state of Kansas pursuant to the compact and agreement
17 adopted by K.S.A. 79-205, and amendments thereto.

18 *Fifteenth.* All property, real and personal, owned by a groundwater
19 management district organized and operating pursuant to K.S.A. 82a-
20 1020, and amendments thereto.

21 *Sixteenth.* All property, real and personal, owned by the joint water
22 district organized and operating pursuant to K.S.A. 80-1616 et seq., and
23 amendments thereto.

24 *Seventeenth.* All property, including interests less than fee ownership,
25 acquired for the state of Kansas by the secretary of transportation or a
26 predecessor in interest which is used in the administration, construction,
27 maintenance or operation of the state system of highways, regardless of
28 how or when acquired.

29 *Eighteenth.* Any building used primarily as an industrial training cen-
30 ter for academic or vocational education programs designed for and op-
31 erated under contract with private industry, and located upon a site
32 owned, leased or being acquired by or for an area vocational school, an
33 area vocational-technical school, a technical college, or a community col-
34 lege, as defined by K.S.A. 72-4412, and amendments thereto, and the site
35 upon which any such building is located.

36 *Nineteenth.* For all taxable years commencing after December 31,
37 1997, all buildings of an area vocational school, an area vocational-tech-
38 nical school, a technical college or a community college, as defined by
39 K.S.A. 72-4412, and amendments thereto, which are owned and operated
40 by any such school or college as a student union or dormitory and the
41 site upon which any such building is located.

42 *Twentieth.* For all taxable years commencing after December 31,
43 1997, all personal property which is contained within a dormitory that is

1 exempt from property taxation and which is necessary for the accom-
2 modation of the students residing therein.

3 *Twenty-First.* All real property from and after the date of its transfer
4 by the city of Olathe, Kansas, to the Kansas state university foundation,
5 all buildings and improvements thereafter erected and located on such
6 property, and all tangible personal property, which is held, used or op-
7 erated for educational and research purposes at the Kansas state univer-
8 sity Olathe innovation campus located in the city of Olathe, Kansas.

9 *Twenty-Second.* All real property, and all tangible personal property,
10 owned by postsecondary educational institutions, as that term is defined
11 in K.S.A. 74-3201b, and amendments thereto, or by the board of regents
12 on behalf of the postsecondary educational institutions, which is leased
13 by a for profit company and is actually and regularly used exclusively for
14 research and development purposes so long as any rental income received
15 by such postsecondary educational institution or the board of regents
16 from such a company is used exclusively for educational or scientific pur-
17 poses. Any such lease or occupancy described in this section shall be for
18 a term of no more than five years.

19 *Twenty-Third.* All property, real and personal, owned by the Fort
20 Scott/Bourbon county riverfront authority under the authority of the Fort
21 Scott/Bourbon county riverfront authority act, K.S.A. 2009 Supp. 12-5701
22 et seq., and amendments thereto.

23 Except as otherwise specifically provided, the provisions of this section
24 shall apply to all taxable years commencing after December 31, 2009.

25 Sec. 2. K.S.A. 2009 Supp. 79-3602 is hereby amended to read as
26 follows: 79-3602. Except as otherwise provided, as used in the Kansas
27 retailers' sales tax act:

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

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

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

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

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

42 (f) "Computer" means an electronic device that accepts information
43 in digital or similar form and manipulates it for a result based on a se-

1 quence of instructions.

2 (g) “Computer software” means a set of coded instructions designed
3 to cause a computer or automatic data processing equipment to perform
4 a task.

5 (h) “Delivered electronically” means delivered to the purchaser by
6 means other than tangible storage media.

7 (i) “Delivery charges” means charges by the seller of personal prop-
8 erty or services for preparation and delivery to a location designated by
9 the purchaser of personal property or services including, but not limited
10 to, transportation, shipping, postage, handling, crating and packing. De-
11 livery charges shall not include charges for delivery of direct mail if the
12 charges are separately stated on an invoice or similar billing document
13 given to the purchaser.

14 (j) “Direct mail” means printed material delivered or distributed by
15 United States mail or other delivery services to a mass audience or to
16 addressees on a mailing list provided by the purchaser or at the direction
17 of the purchaser when the cost of the items are not billed directly to the
18 recipients. Direct mail includes tangible personal property supplied di-
19 rectly or indirectly by the purchaser to the direct mail seller for inclusion
20 in the package containing the printed material. Direct mail does not in-
21 clude multiple items of printed material delivered to a single address.

22 (k) “Director” means the state director of taxation.

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

43 (m) “Electronic” means relating to technology having electrical, dig-

- 1 ital, magnetic, wireless, optical, electromagnetic or similar capabilities.
- 2 (n) "Food and food ingredients" means substances, whether in liquid,
3 concentrated, solid, frozen, dried or dehydrated form, that are sold for
4 ingestion or chewing by humans and are consumed for their taste or
5 nutritional value. "Food and food ingredients" does not include alcoholic
6 beverages or tobacco.
- 7 (o) "Gross receipts" means the total selling price or the amount re-
8 ceived as defined in this act, in money, credits, property or other consid-
9 eration valued in money from sales at retail within this state; and em-
10 braced within the provisions of this act. The taxpayer, may take credit in
11 the report of gross receipts for: (1) An amount equal to the selling price
12 of property returned by the purchaser when the full sale price thereof,
13 including the tax collected, is refunded in cash or by credit; and (2) an
14 amount equal to the allowance given for the trade-in of property.
- 15 (p) "Ingredient or component part" means tangible personal property
16 which is necessary or essential to, and which is actually used in and be-
17 comes an integral and material part of tangible personal property or serv-
18 ices produced, manufactured or compounded for sale by the producer,
19 manufacturer or compounder in its regular course of business. The fol-
20 lowing items of tangible personal property are hereby declared to be
21 ingredients or component parts, but the listing of such property shall not
22 be deemed to be exclusive nor shall such listing be construed to be a
23 restriction upon, or an indication of, the type or types of property to be
24 included within the definition of "ingredient or component part" as
25 herein set forth:
- 26 (1) Containers, labels and shipping cases used in the distribution of
27 property produced, manufactured or compounded for sale which are not
28 to be returned to the producer, manufacturer or compounder for reuse.
- 29 (2) Containers, labels, shipping cases, paper bags, drinking straws,
30 paper plates, paper cups, twine and wrapping paper used in the distri-
31 bution and sale of property taxable under the provisions of this act by
32 wholesalers and retailers and which is not to be returned to such whole-
33 saler or retailer for reuse.
- 34 (3) Seeds and seedlings for the production of plants and plant prod-
35 ucts produced for resale.
- 36 (4) Paper and ink used in the publication of newspapers.
- 37 (5) Fertilizer used in the production of plants and plant products
38 produced for resale.
- 39 (6) Feed for animals, fowl and aquatic plants and animals, the primary
40 purpose of which is use in agriculture or aquaculture, as defined in K.S.A.
41 47-1901, and amendments thereto, the production of food for human
42 consumption, the production of animal, dairy, poultry or aquatic plant
43 and animal products, fiber, fur, or the production of offspring for use for

1 any such purpose or purposes.

2 (q) “Isolated or occasional sale” means the nonrecurring sale of tan-
3 gible personal property, or services taxable hereunder by a person not
4 engaged at the time of such sale in the business of selling such property
5 or services. Any religious organization which makes a nonrecurring sale
6 of tangible personal property acquired for the purpose of resale shall be
7 deemed to be not engaged at the time of such sale in the business of
8 selling such property. Such term shall include: (1) Any sale by a bank,
9 savings and loan institution, credit union or any finance company licensed
10 under the provisions of the Kansas uniform consumer credit code of tan-
11 gible personal property which has been repossessed by any such entity;
12 and (2) any sale of tangible personal property made by an auctioneer or
13 agent on behalf of not more than two principals or households if such
14 sale is nonrecurring and any such principal or household is not engaged
15 at the time of such sale in the business of selling tangible personal
16 property.

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

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

25 (B) a transfer or possession or control of property under an agree-
26 ment that requires the transfer of title upon completion of required pay-
27 ments and payment of an option price does not exceed the greater of
28 \$100 or 1% of the total required payments; or

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

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

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

43 (4) This definition will be applied only prospectively from the effec-

- 1 tive date of this act and will have no retroactive impact on existing leases
2 or rentals.
- 3 (s) “Load and leave” means delivery to the purchaser by use of a
4 tangible storage media where the tangible storage media is not physically
5 transferred to the purchaser.
- 6 (t) “Member state” means a state that has entered in the agreement,
7 pursuant to provisions of article VIII of the agreement.
- 8 (u) “Model 1 seller” means a seller that has selected a CSP as its
9 agent to perform all the seller’s sales and use tax functions, other than
10 the seller’s obligation to remit tax on its own purchases.
- 11 (v) “Model 2 seller” means a seller that has selected a CAS to perform
12 part of its sales and use tax functions, but retains responsibility for re-
13 mitting the tax.
- 14 (w) “Model 3 seller” means a seller that has sales in at least five
15 member states, has total annual sales revenue of at least \$500,000,000,
16 has a proprietary system that calculates the amount of tax due each jurisdic-
17 tion and has entered into a performance agreement with the member
18 states that establishes a tax performance standard for the seller. As used
19 in this subsection a seller includes an affiliated group of sellers using the
20 same proprietary system.
- 21 (x) “Municipal corporation” means any city incorporated under the
22 laws of Kansas.
- 23 (y) “Nonprofit blood bank” means any nonprofit place, organization,
24 institution or establishment that is operated wholly or in part for the
25 purpose of obtaining, storing, processing, preparing for transfusing, fur-
26 nishing, donating or distributing human blood or parts or fractions of
27 single blood units or products derived from single blood units, whether
28 or not any remuneration is paid therefor, or whether such procedures are
29 done for direct therapeutic use or for storage for future use of such
30 products.
- 31 (z) “Persons” means any individual, firm, copartnership, joint adven-
32 ture, association, corporation, estate or trust, receiver or trustee, or any
33 group or combination acting as a unit, and the plural as well as the singular
34 number; and shall specifically mean any city or other political subdivision
35 of the state of Kansas engaging in a business or providing a service spe-
36 cifically taxable under the provisions of this act.
- 37 (aa) “Political subdivision” means any municipality, agency or sub-
38 division of the state which is, or shall hereafter be, authorized to levy taxes
39 upon tangible property within the state or which certifies a levy to a
40 municipality, agency or subdivision of the state which is, or shall hereafter
41 be, authorized to levy taxes upon tangible property within the state. Such
42 term also shall include any public building commission, housing, airport,
43 port, metropolitan transit or similar authority established pursuant to law

1 ~~and~~ the horsethief reservoir benefit district established pursuant to
2 K.S.A. 82a-2201, and amendments thereto, *and the Fort Scott/Bourbon*
3 *county riverfront authority established pursuant to K.S.A. 2009 Supp. 12-*
4 *5703, and amendments thereto.*

5 (bb) “Prescription” means an order, formula or recipe issued in any
6 form of oral, written, electronic or other means of transmission by a duly
7 licensed practitioner authorized by the laws of this state.

8 (cc) “Prewritten computer software” means computer software, in-
9 cluding prewritten upgrades, which is not designed and developed by the
10 author or other creator to the specifications of a specific purchaser. The
11 combining of two or more prewritten computer software programs or
12 prewritten portions thereof does not cause the combination to be other
13 than prewritten computer software. Prewritten computer software in-
14 cludes software designed and developed by the author or other creator
15 to the specifications of a specific purchaser when it is sold to a person
16 other than the purchaser. Where a person modifies or enhances computer
17 software of which the person is not the author or creator, the person shall
18 be deemed to be the author or creator only of such person’s modifications
19 or enhancements. Prewritten computer software or a prewritten portion
20 thereof that is modified or enhanced to any degree, where such modifi-
21 cation or enhancement is designed and developed to the specifications of
22 a specific purchaser, remains prewritten computer software, except that
23 where there is a reasonable, separately stated charge or an invoice or
24 other statement of the price given to the purchaser for such modification
25 or enhancement, such modification or enhancement shall not constitute
26 prewritten computer software.

27 (dd) “Property which is consumed” means tangible personal property
28 which is essential or necessary to and which is used in the actual process
29 of and consumed, depleted or dissipated within one year in (1) the pro-
30 duction, manufacture, processing, mining, drilling, refining or compound-
31 ing of tangible personal property, (2) the providing of services, (3) the
32 irrigation of crops, for sale in the regular course of business, or (4) the
33 storage or processing of grain by a public grain warehouse or other grain
34 storage facility, and which is not reusable for such purpose. The following
35 is a listing of tangible personal property, included by way of illustration
36 but not of limitation, which qualifies as property which is consumed:

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

42 (B) electricity, gas and water; and

43 (C) petroleum products, lubricants, chemicals, solvents, reagents and

1 catalysts.

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

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

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

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

12 (ii) "Retailer" means a seller regularly engaged in the business of
13 selling, leasing or renting tangible personal property at retail or furnishing
14 electrical energy, gas, water, services or entertainment, and selling only
15 to the user or consumer and not for resale.

16 (jj) "Retail sale" or "sale at retail" means any sale, lease or rental for
17 any purpose other than for resale, sublease or subrent.

18 (kk) "Sale" or "sales" means the exchange of tangible personal prop-
19 erty, as well as the sale thereof for money, and every transaction, condi-
20 tional or otherwise, for a consideration, constituting a sale, including the
21 sale or furnishing of electrical energy, gas, water, services or entertain-
22 ment taxable under the terms of this act and including, except as provided
23 in the following provision, the sale of the use of tangible personal property
24 by way of a lease, license to use or the rental thereof regardless of the
25 method by which the title, possession or right to use the tangible personal
26 property is transferred. The term "sale" or "sales" shall not mean the sale
27 of the use of any tangible personal property used as a dwelling by way of
28 a lease or rental thereof for a term of more than 28 consecutive days.

29 (ll) (1) "Sales or selling price" applies to the measure subject to sales
30 tax and means the total amount of consideration, including cash, credit,
31 property and services, for which personal property or services are sold,
32 leased or rented, valued in money, whether received in money or oth-
33 erwise, without any deduction for the following:

34 (A) The seller's cost of the property sold;

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

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

40 (D) delivery charges; and

41 (E) installation charges.

42 (2) "Sales or selling price" includes consideration received by the
43 seller from third parties if:

- 1 (A) The seller actually receives consideration from a party other than
2 the purchaser and the consideration is directly related to a price reduction
3 or discount on the sale;
- 4 (B) the seller has an obligation to pass the price reduction or discount
5 through to the purchaser;
- 6 (C) the amount of the consideration attributable to the sale is fixed
7 and determinable by the seller at the time of the sale of the item to the
8 purchaser; and
- 9 (D) one of the following criteria is met:
- 10 (i) The purchaser presents a coupon, certificate or other documen-
11 tation to the seller to claim a price reduction or discount where the cou-
12 pon, certificate or documentation is authorized, distributed or granted by
13 a third party with the understanding that the third party will reimburse
14 any seller to whom the coupon, certificate or documentation is presented;
- 15 (ii) the purchaser identifies to the seller that the purchaser is a mem-
16 ber of a group or organization entitled to a price reduction or discount.
17 A preferred customer card that is available to any patron does not con-
18 stitute membership in such a group; or
- 19 (iii) the price reduction or discount is identified as a third party price
20 reduction or discount on the invoice received by the purchaser or on a
21 coupon, certificate or other documentation presented by the purchaser.
- 22 (3) "Sales or selling price" shall not include:
- 23 (A) Discounts, including cash, term or coupons that are not reim-
24 bursed by a third party that are allowed by a seller and taken by a pur-
25 chaser on a sale;
- 26 (B) interest, financing and carrying charges from credit extended on
27 the sale of personal property or services, if the amount is separately stated
28 on the invoice, bill of sale or similar document given to the purchaser;
- 29 (C) any taxes legally imposed directly on the consumer that are sep-
30 arately stated on the invoice, bill of sale or similar document given to the
31 purchaser;
- 32 (D) the amount equal to the allowance given for the trade-in of prop-
33 erty, if separately stated on the invoice, billing or similar document given
34 to the purchaser; and
- 35 (E) commencing on July 1, 2006, and ending on June 30, 2009, cash
36 rebates granted by a manufacturer to a purchaser or lessee of a new motor
37 vehicle if paid directly to the retailer as a result of the original sale.
- 38 (mm) "Seller" means a person making sales, leases or rentals of per-
39 sonal property or services.
- 40 (nn) "Service" means those services described in and taxed under the
41 provisions of K.S.A. 79-3603 and amendments thereto.
- 42 (oo) "Sourcing rules" means the rules set forth in K.S.A. 2009 Supp.
43 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and amendments

- 1 thereto, which shall apply to identify and determine the state and local
2 taxing jurisdiction sales or use taxes to pay, or collect and remit on a
3 particular retail sale.
- 4 (pp) “Tangible personal property” means personal property that can
5 be seen, weighed, measured, felt or touched, or that is in any other man-
6 ner perceptible to the senses. Tangible personal property includes elec-
7 tricity, water, gas, steam and prewritten computer software.
- 8 (qq) “Taxpayer” means any person obligated to account to the direc-
9 tor for taxes collected under the terms of this act.
- 10 (rr) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco or
11 any other item that contains tobacco.
- 12 (ss) “Entity-based exemption” means an exemption based on who
13 purchases the product or who sells the product. An exemption that is
14 available to all individuals shall not be considered an entity-based
15 exemption.
- 16 (tt) “Over-the-counter” drug means a drug that contains a label that
17 identifies the product as a drug as required by 21 C.F.R. § 201.66. The
18 over-the-counter drug label includes: (1) A drug facts panel; or (2) a
19 statement of the active ingredients with a list of those ingredients con-
20 tained in the compound, substance or preparation. Over-the-counter
21 drugs do not include grooming and hygiene products such as soaps, clean-
22 ing solutions, shampoo, toothpaste, antiperspirants and sun tan lotions
23 and screens.
- 24 (uu) “Ancillary services” means services that are associated with or
25 incidental to the provision of telecommunications services, including, but
26 not limited to, detailed telecommunications billing, directory assistance,
27 vertical service and voice mail services.
- 28 (vv) “Conference bridging service” means an ancillary service that
29 links two or more participants of an audio or video conference call and
30 may include the provision of a telephone number. Conference bridging
31 service does not include the telecommunications services used to reach
32 the conference bridge.
- 33 (ww) “Detailed telecommunications billing service” means an ancil-
34 lary service of separately stating information pertaining to individual calls
35 on a customer’s billing statement.
- 36 (xx) “Directory assistance” means an ancillary service of providing
37 telephone number information or address information, or both.
- 38 (yy) “Vertical service” means an ancillary service that is offered in
39 connection with one or more telecommunications services, which offers
40 advanced calling features that allow customers to identify callers and to
41 manage multiple calls and call connections, including conference bridging
42 services.
- 43 (zz) “Voice mail service” means an ancillary service that enables the

1 customer to store, send or receive recorded messages. Voice mail service
2 does not include any vertical services that the customer may be required
3 to have in order to utilize the voice mail service.

4 (aaa) "Telecommunications service" means the electronic transmis-
5 sion, conveyance or routing of voice, data, audio, video or any other in-
6 formation or signals to a point, or between or among points. The term
7 telecommunications service includes such transmission, conveyance or
8 routing in which computer processing applications are used to act on the
9 form, code or protocol of the content for purposes of transmissions, con-
10 veyance or routing without regard to whether such service is referred to
11 as voice over Internet protocol services or is classified by the federal
12 communications commission as enhanced or value added. Telecommu-
13 nications service does not include:

14 (1) Data processing and information services that allow data to be
15 generated, acquired, stored, processed or retrieved and delivered by an
16 electronic transmission to a purchaser where such purchaser's primary
17 purpose for the underlying transaction is the processed data or
18 information;

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

21 (3) tangible personal property;

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

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

24 (6) internet access service;

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

32 (8) ancillary services; or

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

35 (bbb) "800 service" means a telecommunications service that allows
36 a caller to dial a toll-free number without incurring a charge for the call.
37 The service is typically marketed under the name 800, 855, 866, 877 and
38 888 toll-free calling, and any subsequent numbers designated by the fed-
39 eral communications commission.

40 (ccc) "900 service" means an inbound toll telecommunications serv-
41 ice purchased by a subscriber that allows the subscriber's customers to
42 call in to the subscriber's prerecorded announcement or live service. 900
43 service does not include the charge for collection services provided by

1 the seller of the telecommunications services to the subscriber, or service
2 or product sold by the subscriber to the subscriber's customer. The serv-
3 ice is typically marketed under the name 900 service, and any subsequent
4 numbers designated by the federal communications commission.

5 (ddd) "Value-added non-voice data service" means a service that oth-
6 erwise meets the definition of telecommunications services in which com-
7 puter processing applications are used to act on the form, content, code
8 or protocol of the information or data primarily for a purpose other than
9 transmission, conveyance or routing.

10 (eee) "International" means a telecommunications service that orig-
11 inates or terminates in the United States and terminates or originates
12 outside the United States, respectively. United States includes the Dis-
13 trict of Columbia or a U.S. territory or possession.

14 (fff) "Interstate" means a telecommunications service that originates
15 in one United States state, or a United States territory or possession, and
16 terminates in a different United States state or a United States territory
17 or possession.

18 (ggg) "Intrastate" means a telecommunications service that originates
19 in one United States state or a United States territory or possession, and
20 terminates in the same United States state or a United States territory or
21 possession.

22 Sec. 3. K.S.A. 2009 Supp. 79-201a and 79-3602 are hereby repealed.

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