

SENATE BILL No. 429

By Committee on Assessment and Taxation

1-22

9 AN ACT concerning sales taxation; relating to streamlined sales and use
10 tax agreement conformity; amending K.S.A. 2009 Supp. 79-3609, 79-
11 3651, 79-3666 and 79-3672 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2009 Supp. 79-3609 is hereby amended to read as
15 follows: 79-3609. (a) Every person engaged in the business of selling tan-
16 gible personal property at retail or furnishing services taxable in this state,
17 shall keep records and books of all such sales, together with invoices, bills
18 of lading, sales records, copies of bills of sale and other pertinent papers
19 and documents. Such books and records and other papers and documents
20 shall, at all times during business hours of the day, be available for and
21 subject to inspection by the director, or the director's duly authorized
22 agents and employees, for a period of three years from the last day of the
23 calendar year or of the fiscal year of the retailer, whichever comes later,
24 to which the records pertain. Such records shall be preserved during the
25 entire period during which they are subject to inspection by the director,
26 unless the director in writing previously authorizes their disposal. Any
27 person selling tangible personal property or furnishing taxable services
28 shall be prohibited from asserting that any sales are exempt from taxation
29 unless the retailer has in the retailer's possession a properly executed
30 exemption certificate provided by the consumer claiming the exemption,
31 except as follows: (1) A retailer is relieved of liability for tax otherwise
32 applicable if the retailer obtains a fully completed exemption certificate
33 or captures the relevant data elements required by the director within 90
34 days subsequent to the date of the sale; or (2) if the retailer has not
35 obtained an exemption certificate or all relevant data elements, the re-
36 tailer, within 120 days subsequent to a request for substantiation by the
37 director, either may ~~prove that the transaction was not subject to tax by~~
38 ~~other means or~~ obtain a fully completed exemption certificate from the
39 purchaser, taken in good faith *which meets the requirements specified in*
40 *this subsection, or obtain other information establishing that the trans-*
41 *action was not subject to tax.* Otherwise, the sales shall be deemed to be
42 taxable sales under this act. *The seller shall obtain an exemption certificate*
43 *that claims an exemption that was authorized pursuant to Kansas law on*

1 *the date of the transaction in the jurisdiction where the transaction is*
2 *sourced pursuant to law, could be applicable to the item being purchased*
3 *and is reasonable for the purchaser's type of business. If the seller obtains*
4 *an exemption certificate or other information as described in this subsec-*
5 *tion, the seller is relieved of any liability for the tax on the transaction*
6 *unless it is discovered through the audit process that the seller had knowl-*
7 *edge or had reason to know at the time such information was provided*
8 *that the information relating to the exemption claimed was materially false*
9 *or the seller otherwise knowingly participated in activity intended to pur-*
10 *posefully evade the tax that is properly due on the transaction, and it must*
11 *be established that the seller had knowledge or had reason to know at the*
12 *time the information was provided that the information was materially*
13 *false.*

14 (b) The amount of tax imposed by this act is to be assessed within
15 three years after the return is filed, and no proceedings in court for the
16 collection of such taxes shall be begun after the expiration of such period.
17 In the case of a false or fraudulent return with intent to evade tax, the
18 tax may be assessed or a proceeding in court for collection of such tax
19 may be begun at any time, within two years from the discovery of such
20 fraud. No assessment shall be made for any period preceding the date of
21 registration of the retailer by more than three years except in cases of
22 fraud. For any refund or credit claim filed after June 15, 2009, no refund
23 or credit shall be allowed by the director after one year from the due date
24 of the return for the reporting period as provided by K.S.A. 79-3607, and
25 amendments thereto, unless before the expiration of such period a claim
26 therefor is filed by the taxpayer, and, except as otherwise provided in
27 K.S.A. 2009 Supp. 79-3694, and amendments thereto, no suit or action
28 to recover on any claim for refund shall be commenced until after the
29 expiration of six months from the date of filing such claim satisfying the
30 requirements specified by K.S.A. 2009 Supp. 79-3693, and amendments
31 thereto, therefor with the director. A refund claim shall not be deemed
32 filed unless such claim is complete as required by K.S.A. 2009 Supp. 79-
33 3693, and amendments thereto. For all mailed returns, including refund
34 claims, each return or refund claim shall be presumed to have been filed
35 with the department on the postmark date of such return or refund claim
36 or if such date is illegible, the date three days prior to the date such return
37 or refund claim is received.

38 (c) Before the expiration of time prescribed in this section for the
39 assessment of additional tax or the filing of a claim for refund, the director
40 is hereby authorized to enter into an agreement in writing with the tax-
41 payer consenting to the extension of the periods of limitations for the
42 assessment of tax or for the filing of a claim for refund, at any time prior
43 to the expiration of the period of limitations. The period so agreed upon

1 may be extended by subsequent agreements in writing made before the
2 expiration of the period previously agreed upon. In consideration of such
3 agreement or agreements, interest due in excess of 48 months on any
4 additional tax shall be waived.

5 (d) Interest at the rate prescribed by K.S.A. 79-2968, and amend-
6 ments thereto, shall be allowed on any overpayment of tax computed from
7 the filing date of the return claiming the refund, except that no interest
8 shall be allowed on any such refund if the same is paid within 120 days
9 after the filing date of the return claiming the refund or the date of
10 payment, whichever is later, provided that such return or refund claim
11 satisfies the requirements specified by K.S.A. 2009 Supp. 79-3693, and
12 amendments thereto, at the time the return or refund claim is received.

13 (e) Notwithstanding any other provision of this section or the provi-
14 sions of the Kansas compensating tax act:

15 (1) (A) Any claim for refund of tax imposed by the Kansas retailers'
16 sales tax act or the Kansas compensating tax act based upon the provisions
17 of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment
18 by this act which is without dispute shall be allowed, but, with respect to
19 any claim exceeding \$10,000, the refund associated therewith shall not
20 be paid until after 510 days from the date such claim was filed and shall
21 not include interest from such date. As used in this subparagraph, a claim
22 for refund without dispute shall not include any claim the basis for which
23 is a judicial or quasi-judicial interpretation of such subsection occurring
24 after the effective date of this act.

25 (B) Any refund of tax resulting from a final determination or adju-
26 dication with regard to any claim submitted or to be submitted for refund
27 of tax imposed by the Kansas retailers' sales tax act or the Kansas com-
28 pensating tax act based upon the provisions of subsection (kk) of K.S.A.
29 79-3606 in existence prior to its amendment by this act not described by
30 subparagraph (A) shall, with respect to any refund exceeding \$50,000, be
31 paid in equal annual installments over 10 years commencing with the year
32 of such final determination or adjudication. Interest shall not accrue dur-
33 ing the time period of such payment.

34 (2) No claim for refund of tax imposed by the Kansas retailers' sales
35 tax act or the Kansas compensating tax act based upon the application of
36 the provisions of subsection (n) of K.S.A. 79-3606 pursuant to its inter-
37 pretation by the court of appeals of the state of Kansas in its opinion filed
38 on August 13, 1999, in the case entitled In re appeal of Water District
39 No. 1 of Johnson County shall be allowed for tax paid prior to the effective
40 date of this act. The provisions of this subsection shall not be applicable
41 to Water District No. 1 of Johnson county.

42 Sec. 2. K.S.A. 2009 Supp. 79-3651 is hereby amended to read as
43 follows: 79-3651. (a) For the purpose of the proper administration of the

1 Kansas retailers' sales tax act and to prevent evasion of the tax imposed
2 thereunder, it shall be presumed that all gross receipts from the sale of
3 tangible personal property or enumerated services are subject to tax until
4 the contrary is established. The burden of proving that a sale is not subject
5 to tax is upon the seller unless the seller takes from the purchaser an
6 exemption certificate to the effect that the property or service purchased
7 is not subject to tax.

8 (b) An exemption certificate shall relieve the seller from collecting
9 and remitting tax if the seller has obtained the required identifying in-
10 formation as determined by the director, from the purchaser and the
11 reason for claiming the exemption at the time of purchase and has main-
12 tained proper records of exempt transactions pursuant to subsection (a)
13 of K.S.A. 79-3609, and amendments thereto and provided them to the
14 director when requested, except that no such relief from liability shall
15 apply to a seller who: Fraudulently fails to collect the tax; solicits pur-
16 chasers to participate in the unlawful claim of an exemption; accepts an
17 exemption certificate claiming an entity based exemption when the sub-
18 ject of the transaction is actually received by the purchaser at a location
19 operated by the seller and the director provides an exemption certificate
20 that clearly and affirmatively indicates that the claimed exemption is not
21 available. The seller shall obtain the same information for proof of a
22 claimed exemption regardless of the medium in which the transaction
23 occurred. The purchaser improperly claiming an exemption shall remain
24 liable for the nonpayment of tax.

25 (c) The exemption certificate shall be substantially in such form as
26 the director may prescribe. The seller shall use the standard form for
27 claiming an exemption electronically as adopted by the director. A seller
28 may require a purchaser to provide a copy of the purchaser's sales tax
29 registration certificate with a resale certificate as a condition for honoring
30 the purchaser's resale exemption claim, except that in the case of drop
31 shipment sales into this state, the third party vendor may claim a resale
32 exemption based on an exemption certificate provided by its customer,
33 re-seller, or any other information acceptable to the secretary available
34 to the third party vendor evidencing qualification for a resale exemption,
35 regardless of whether the customer, re-seller, is registered to collect and
36 remit sales and use tax in this state. A purchaser is not required to provide
37 a signature to claim an exemption from tax unless a paper exemption
38 certificate is used. A seller is relieved of liability for the tax otherwise
39 applicable if it obtains a blanket exemption certificate for a purchaser
40 with which the seller has a recurring business relationship. Such blanket
41 certificate need not be renewed or updated by the seller for exemption
42 certificate information or data elements when there is a recurring busi-
43 ness relationship between the buyer and seller. For purposes of this sub-

1 section, a recurring business relationship exists when a period of no more
2 than 12 months elapses between sales transactions.

3 (d) To lawfully present a resale exemption certificate the purchaser
4 must be engaged in the business of selling property or services of the
5 same kind that is purchased, hold a registration certificate, except as oth-
6 erwise permitted in subsection (c) for drop shipment sales into this state,
7 and at the time of purchase, either intend to resell the property in the
8 regular course of business or be unable to ascertain whether the property
9 will be resold or used for some other purpose. A resale exemption certi-
10 ficate may be used for resale of services to tangible personal property
11 and not for services to real property.

12 (e) Any person who issues a resale certificate or other exemption
13 certificate in order to unlawfully avoid payment of tax for business or
14 personal gain shall be guilty of a misdemeanor and upon conviction shall
15 be punished by a fine of not more than \$1,000 or imprisonment for not
16 more than one year, or by both. In addition, if the director determines
17 that a person issued a resale certificate in order to unlawfully avoid pay-
18 ment of tax for business or personal gain, the director shall increase any
19 penalty that is due from the person under K.S.A. 79-3615, and amend-
20 ments thereto, by \$250 or 10 times the tax due, whichever is greater, on
21 each transaction where the misuse of a resale certificate occurred.

22 (f) Exemption certificates issued by an entity claiming a specific ex-
23 emption under K.S.A. 79-3606, and amendments thereto, based on the
24 status of the entity shall bear the name, address of the entity and iden-
25 tification number issued to the entity pursuant to K.S.A. 2009 Supp. 79-
26 3692, and amendments thereto, ~~and indicate the subsection under which~~
27 ~~the exemption is being claimed.~~ Such certificate shall be signed by an
28 ~~officer, office manager or other administrator~~ *authorized person* of the
29 nonprofit entity, if in paper form, and contain the tax identification num-
30 ber of the entity. The certificate shall be substantially in such form as the
31 director may prescribe. *A seller may require that payments be made on*
32 *an exempt entity's check, warrant, voucher or is charged to the entity's*
33 *account shall relieve the seller from collecting and remitting the tax if it*
34 ~~is taken in good faith as a condition for honoring the entity's exemption~~
35 *claim.*

36 (g) It shall be the duty of every person who purchases tangible per-
37 sonal property or services that are taxable under this act to pay the full
38 amount of tax that is lawfully due to the retailer making the sale. Any
39 person who willfully and intentionally refuses to pay such tax to the re-
40 tailer shall be guilty of a misdemeanor and upon conviction shall be pun-
41 ished and fined as provided by subsection (g) of K.S.A. 79-3615, and
42 amendments thereto.

43 Sec. 3. K.S.A. 2009 Supp. 79-3666 is hereby amended to read as

1 follows: 79-3666. State sales tax rate changes must take effect on the first
2 day of a calendar quarter. The secretary shall make a reasonable effort to
3 provide sellers with as much advance notice as practicable of any rate
4 changes, legislative change in the tax base and amendments to sales and
5 use tax rules and regulations. Failure of a seller to receive such notice or
6 failure of the secretary to provide such notice to a seller or limit the
7 effective date of a rate change shall not relieve the seller of its obligation
8 to collect sales or use tax or otherwise comply with any such legislative,
9 rule or regulatory changes. *Whenever there is less than 30 days between*
10 *the effective date of any amendments to K.S.A. 79-3603 and 79-3703,*
11 *which make a change in the retailers' sales tax or compensating use tax*
12 *rate and the date such rate change takes effect as provided by this section,*
13 *the seller shall be relieved from liability for failing to collect tax at the*
14 *changed rate if:*

15 (a) *The seller collected tax at the immediately preceding rate during*
16 *such time period; and*

17 (b) *the seller's failure to collect at the changed rate does not extend*
18 *beyond 30 days after such effective date.*

19 *When the seller fraudulently failed to collect at the new sales tax rate*
20 *or solicits purchasers based on the immediately preceding effective rate,*
21 *such relief from liability does not apply to such seller.*

22 Sec. 4. K.S.A. 2009 Supp. 79-3672 is hereby amended to read as
23 follows: 79-3672. (a) (1) Notwithstanding the provisions of K.S.A. 2009
24 Supp. 79-3670 and amendments thereto, ~~a purchaser of direct mail that~~
25 ~~is not a holder of a direct pay permit shall provide to the seller in con-~~
26 ~~junction with the purchase either a direct mail form or information to~~
27 ~~show the jurisdictions to which the direct mail is delivered to recipients.~~
28 ~~—(2)— Upon receipt of the direct mail form, the seller is relieved of all~~
29 ~~obligations to collect, pay or remit the applicable tax and the purchaser~~
30 ~~is obligated to pay or remit the applicable tax on a direct pay basis. A~~
31 ~~direct mail form shall remain in effect for all future sales of direct mail~~
32 ~~by the seller to the purchaser until it is revoked in writing.~~

33 ~~—(3)— Upon receipt of information from the purchaser showing the ju-~~
34 ~~risdictions to which the direct mail is delivered to recipients, the seller~~
35 ~~shall collect the tax according to the delivery information provided by the~~
36 ~~purchaser. In the absence of bad faith, the seller is relieved of any further~~
37 ~~obligation to collect tax on any transaction where the seller has collected~~
38 ~~tax pursuant to the delivery information provided by the purchaser.~~

39 ~~—(b)— If the purchaser of direct mail does not have a direct pay permit~~
40 ~~and does not provide the seller with either a direct mail form or delivery~~
41 ~~information, as required by subsection (a), the seller shall collect the tax~~
42 ~~according to subsection (a)(5) of K.S.A. 2009 Supp. 79-3670 and amend-~~
43 ~~ments thereto. Nothing in this subsection shall limit a purchaser's obli-~~

- 1 ~~gation for sales or use tax to any state to which the direct mail is delivered.~~
2 ~~—(c) If a purchaser of direct mail provides the seller with document-~~
3 ~~tation of direct pay authority, the purchaser shall not be required to pro-~~
4 ~~vide a direct mail form or delivery information to the seller. the following~~
5 ~~provisions apply to sales of “advertising and promotional direct mail”:~~
6 (1) A purchaser of “advertising and promotional direct mail” may
7 provide the seller with either:
8 (A) A direct pay permit;
9 (B) an exemption certificate, or other statement approved, authorized
10 or accepted by the secretary, claiming “direct mail”; or
11 (C) information showing the jurisdictions to which the “advertising
12 and promotional direct mail” is to be delivered to recipients.
13 (2) If the purchaser provides the permit, certificate or statement re-
14 ferred to in subsections (a)(1)(A) or (a)(1)(B), the seller, in the absence of
15 bad faith, is relieved of all obligations to collect, pay or remit any tax on
16 any transaction involving “advertising and promotional direct mail” to
17 which the permit, certificate or statement applies. The purchaser shall
18 source the sale to the jurisdictions to which the “advertising and promo-
19 tional direct mail” is to be delivered to the recipients and shall report and
20 pay any applicable tax due.
21 (3) If the purchaser provides the seller information showing the ju-
22 risdictions to which the “advertising and promotional direct mail” is to
23 be delivered to recipients, the seller shall source the sale to the jurisdictions
24 to which the “advertising and promotional direct mail” is to be delivered
25 and shall collect and remit the applicable tax. In the absence of bad faith,
26 the seller is relieved of any further obligation to collect any additional tax
27 on the sale of “advertising and promotional direct mail” where the seller
28 has sourced the sale according to the delivery information provided by
29 the purchaser.
30 (4) If the purchaser does not provide the seller with any of the items
31 listed in subsections (a)(1)(A), (a)(1)(B) or (a)(1)(C), the sale shall be sour-
32 ced according to subsection (a)(5) of K.S.A. 2009 Supp. 79-3670, and
33 amendments thereto.
34 (b) Notwithstanding the provisions of K.S.A. 2009 Supp. 79-3670,
35 and amendments thereto, the following provisions apply to sales of “other
36 direct mail”:
37 (1) Except as otherwise provided in this subsection, sales of “other
38 direct mail” are sourced in accordance with subsection (a)(3) of K.S.A.
39 2009 Supp. 79-3670, and amendments thereto.
40 (2) A purchaser of “other direct mail” may provide the seller with
41 either:
42 (A) A direct pay permit; or
43 (B) an exemption certificate, or other statement approved, authorized

- 1 *or accepted by the secretary, claiming “direct mail.”*
- 2 (3) *If the purchaser provides the permit, certificate or statement re-*
3 *ferred to in subsection (b)(2)(A) or (b)(2)(B), the seller, in the absence of*
4 *bad faith, is relieved of all obligations to collect, pay or remit any tax on*
5 *any transaction involving “other direct mail” to which the permit, certifi-*
6 *cate or statement apply. Notwithstanding subsection (b)(1) the sale shall*
7 *be sourced to the jurisdictions to which the “other direct mail” is to be*
8 *delivered to the recipients and the purchaser shall report and pay any*
9 *applicable tax due.*
- 10 (c) *For purposes of this section:*
- 11 (1) *“Advertising and promotional direct mail” means:*
- 12 (A) *Printed material that meets the definition of “direct mail”; and*
13 (B) *the primary purpose of which is to attract public attention to a*
14 *product, person, business or organization, or to attempt to sell, popularize*
15 *or secure financial support for a product, person, business or organiza-*
16 *tion. As used in this subsection, the word “product” means tangible per-*
17 *sonal property, a product transferred electronically or a service;*
- 18 (2) *“other direct mail” means any direct mail that is not “advertising*
19 *and promotional direct mail” regardless of whether “advertising and pro-*
20 *motional direct mail” is included in the same mailing. The term includes,*
21 *but is not limited to:*
- 22 (A) *Transactional direct mail that contains personal information spe-*
23 *cific to the addressee including, but not limited to, invoices, bills, state-*
24 *ments of account and payroll advices;*
- 25 (B) *any legally required mailings including, but not limited to, pri-*
26 *vacancy notices, tax reports and stockholder reports; and*
- 27 (C) *other non-promotional direct mail delivered to existing or former*
28 *shareholders, customers, employees or agents including, but not limited*
29 *to, newsletters and informational pieces.*
- 30 *“Other direct mail” does not include the development of billing infor-*
31 *mation or the provision of any data processing service that is more than*
32 *incidental.*
- 33 (d) (1) (A) *This section applies to a transaction characterized as the*
34 *sale of services only if the service is an integral part of the production and*
35 *distribution of printed material that meets the definition of “direct mail”.*
- 36 (B) *This section does not apply to any transaction that includes the*
37 *development of billing information or the provision of any data processing*
38 *service that is more than incidental regardless of whether “advertising*
39 *and promotional direct mail” is included in the same mailing.*
- 40 (2) *If a transaction is a “bundled transaction” that includes advertis-*
41 *ing and promotional direct mail, this section shall apply only if the pri-*
42 *mary purpose of the transaction is the sale of products or services that*
43 *meet the definition of “advertising and promotional direct mail.”*

- 1 (3) *Nothing in this section shall limit any purchaser's:*
- 2 (A) *Obligation for sales or use tax to any state to which the direct*
- 3 *mail is delivered;*
- 4 (B) *right, if any, to a credit for sales or use taxes legally due and paid*
- 5 *to other jurisdictions; or*
- 6 (C) *right, if any, to a refund of sales or use taxes overpaid to any*
- 7 *jurisdiction.*
- 8 (4) *This section applies for purposes of uniformly sourcing direct mail*
- 9 *transactions.*
- 10 Sec. 5. K.S.A. 2009 Supp. 79-3609, 79-3651, 79-3666 and 79-3672
- 11 are hereby repealed.
- 12 Sec. 6. This act shall take effect and be in force from and after its
- 13 publication in the statute book.