

HOUSE BILL No. 2349

By Committee on Taxation

2-14

1 AN ACT concerning sales and compensating use tax; relating to remote
2 sellers; required collection and remittance of tax; amending K.S.A.
3 2018 Supp. 79-3702 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2018 Supp. 79-3702 is hereby amended to read as
7 follows: 79-3702. For the purposes of this act: (a) "Purchase price" means
8 the consideration paid or given or contracted to be paid or given by any
9 person to the seller of an article of tangible personal property for the article
10 purchased. The term shall include, in addition to the consideration paid or
11 given or contracted to be paid or given, the actual cost of transportation
12 from the place where the article was purchased to the person using the
13 same in this state. If a cash discount is allowed and taken on the sale it
14 shall be deducted in arriving at the purchase price.

15 (b) The meaning ascribed to words and phrases in K.S.A. 79-3602,
16 and amendments thereto, insofar as is practicable, shall be applicable
17 herein unless otherwise provided. The provisions of K.S.A. 79-3601 ~~to~~
18 *through 79-3625, inclusive, 79-3650, and amendments thereto, and K.S.A.*
19 *2018 Supp. 79-3693 and 79-3694, and amendments thereto, relating to*
20 *enforcement, collection and administration, insofar as practicable, shall*
21 *have full force and effect with respect to taxes imposed under the*
22 *provisions of this act.*

23 (c) "Use" means the exercise within this state by any person of any
24 right or power over tangible personal property incident to the ownership of
25 that property, except that it shall not include processing, or the sale of the
26 property in the regular course of business, and except storage as
27 hereinafter defined.

28 (d) "Storage" means any keeping or retaining in this state for any
29 purpose except sale in the regular course of business or subsequent use
30 solely outside this state of tangible personal property purchased from a
31 retailer.

32 (e) "Storage" and "use" do not include the keeping, retaining or
33 exercising of any right or power over tangible personal property shipped or
34 brought into this state for the purpose of subsequently transporting it
35 outside the state for use thereafter solely outside the state, or for the
36 purpose of being processed, fabricated, or manufactured into, attached to

1 or incorporated into, other tangible personal property to be transported
2 outside the state and thereafter used solely outside the state.

3 (f) "Property used in processing" means: (1) Any tangible personal
4 property which, when used in fabrication, compounding, manufacturing or
5 germination, becomes an integral part of the new article resulting from
6 such fabrication, compounding, manufacturing, or germination, and
7 intended to be sold ultimately at retail; and (2) fuel which is consumed in
8 creating power, heat, or steam for processing or for generating electric
9 current.

10 (g) "Retailer" means every person engaged in the business of selling
11 tangible personal property for use within the meaning of this act, except
12 that, when in the opinion of the director it is necessary for the efficient
13 administration of this act to regard any salesperson, representatives,
14 truckers, peddlers or canvassers as the agents of the dealers, distributors,
15 supervisors, employers or persons under whom they operate or from whom
16 they obtain the tangible personal property sold by them, irrespective of
17 whether they are making sales on their own behalf or on behalf of such
18 dealers, distributors, supervisors, employers, or persons, the director may
19 so regard them and may regard the dealers, distributors, supervisors,
20 employers, or persons as retailers for the purposes of this act.

21 (h) (1) "Retailer doing business in this state" or any like term, means:
22 (A) Any retailer maintaining in this state, permanently, temporarily,
23 directly or indirectly through a subsidiary, agent or representative, an
24 office, distribution house, sales house, warehouse or other place of
25 business;

26 (B) any retailer utilizing an employee, independent contractor, agent,
27 representative, salesperson, canvasser, solicitor or other person operating
28 in this state either permanently or temporarily, for the purpose of selling,
29 delivering, installing, assembling, servicing, repairing, soliciting sales or
30 the taking of orders for tangible personal property;

31 (C) any retailer, including a contractor, repair person or other service
32 provider, who enters this state to perform services that are enumerated in
33 K.S.A. 79-3603, and amendments thereto, and who is required to secure a
34 retailer's sales tax registration certificate before performing those services;

35 (D) any retailer deriving rental receipts from a lease of tangible
36 personal property situated in this state;

37 (E) any person regularly maintaining a stock of tangible personal
38 property in this state for sale in the normal course of business; ~~and~~

39 (F) any retailer who has any other contact with this state that would
40 allow this state to require the retailer to collect and remit tax under the
41 provisions of the constitution and laws of the United States; *and*

42 (G) *for any retailer that does not satisfy the requirements contained*
43 *in subparagraphs (A) through (F), such retailer shall be a retailer doing*

1 *business in this state, if, during the preceding calendar year, the retailer*
2 *had any gross receipts from sales by the retailer to customers in this state.*

3 (2) A retailer shall be presumed to be doing business in this state if
4 any of the following occur:

5 (A) Any person, other than a common carrier acting in its capacity as
6 such, that has nexus with the state sufficient to require such person to
7 collect and remit taxes under the provisions of the constitution and laws of
8 the United States if such person were making taxable retail sales of
9 tangible personal property or services in this state:

10 (i) Sells the same or a substantially similar line of products as the
11 retailer and does so under the same or a substantially similar business
12 name;

13 (ii) maintains a distribution house, sales house, warehouse or similar
14 place of business in Kansas that delivers or facilitates the sale or delivery
15 of property sold by the retailer to consumers;

16 (iii) uses trademarks, service marks, or trade names in the state that
17 are the same or substantially similar to those used by the retailer;

18 (iv) delivers, installs, assembles or performs maintenance services for
19 the retailer's customers within the state;

20 (v) facilitates the retailer's delivery of property to customers in the
21 state by allowing the retailer's customers to pick up property sold by the
22 retailer at an office, distribution facility, warehouse, storage place or
23 similar place of business maintained by the person in the state;

24 (vi) has a franchisee or licensee operating under its trade name if the
25 franchisee or the licensee is required to collect the tax under the Kansas
26 retailers' sales tax act; or

27 (vii) conducts any other activities in the state that are significantly
28 associated with the retailer's ability to establish and maintain a market in
29 the state for the retailer's sales.

30 (B) Any affiliated person conducting activities in this state described
31 in subparagraph (A) or ~~(C)~~ (D) has nexus with this state sufficient to
32 require such person to collect and remit taxes under the provisions of the
33 constitution and laws of the United States if such person were making
34 taxable retail sales of tangible personal property or services in this state.

35 (C) *For any retailer who, during the preceding calendar year, has*
36 *any gross receipts from sales by the retailer to customers in this state, such*
37 *retailer shall have nexus with this state requiring such person to collect*
38 *and remit taxes.*

39 ~~(C)~~(D) The retailer enters into an agreement with one or more
40 residents of this state under which the resident, for a commission or other
41 consideration, directly or indirectly refers potential customers, whether by
42 a link or an internet website, by telemarketing, by an in-person oral
43 presentation, or otherwise, to the retailer, if the cumulative gross receipts

1 from sales by the retailer to customers in the state who are referred to the
2 retailer by all residents with this type of an agreement with the retailer is in
3 excess of \$10,000 during the preceding 12 months. This presumption may
4 be rebutted by submitting proof that the residents with whom the retailer
5 has an agreement did not engage in any activity within the state that was
6 significantly associated with the retailer's ability to establish or maintain
7 the retailer's market in the state during the preceding 12 months. Such
8 proof may consist of sworn written statements from all of the residents
9 with whom the retailer has an agreement stating that they did not engage in
10 any solicitation in the state on behalf of the retailer during the preceding
11 year, provided that such statements were provided and obtained in good
12 faith. This subparagraph shall take effect 90 days after the enactment of
13 this statute and shall apply to sales made and uses occurring on or after the
14 effective date of this subparagraph and without regard to the date the
15 retailer and the resident entered into the agreement described in this
16 subparagraph. The term "preceding 12 months" as used in this
17 subparagraph includes the 12 months commencing prior to the effective
18 date of this subparagraph.

19 ~~(D)~~(E) The presumptions in subparagraphs (A) and (B) may be
20 rebutted by demonstrating that the activities of the person or affiliated
21 person in the state are not significantly associated with the retailer's ability
22 to establish or maintain a market in this state for the retailer's sales.

23 (3) The processing of orders electronically, by fax, telephone, the
24 internet or other electronic ordering process, does not relieve a retailer of
25 responsibility for collection of the tax from the purchaser if the retailer is
26 doing business in this state pursuant to this section.

27 (i) "Director" means the director of taxation.

28 (j) As used in this section, "affiliated person" means any person that
29 is a member of the same "controlled group of corporations" as defined in
30 section 1563(a) of the federal internal revenue code as the retailer or any
31 other entity that, notwithstanding its form of organization, bears the same
32 ownership relationship to the retailer as a corporation that is a member of
33 the same "controlled group of corporations" as defined in section 1563(a)
34 of the federal internal revenue code.

35 Sec. 2. K.S.A. 2018 Supp. 79-3702 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after
37 January 1, 2020, and its publication in the statute book.