

HOUSE BILL No. 2566

By Committee on Taxation

Requested by Representative Curtis on behalf of Mike Smallwood of the KCK Chamber

1-23

1 AN ACT concerning sales and compensating use tax; relating to sourcing
2 of sales; providing for origin sourcing for certain sales; amending
3 K.S.A. 79-3669 and 79-3670 and repealing the existing sections.
4

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

6 New Section 1. (a) On and after July 1, 2024, retail sales, excluding
7 the lease or rental, of tangible personal property or digital goods shall be
8 sourced to the location where the seller receives an order for the sale of
9 such property or goods, if:

10 (1) The seller receives the order in this state and the purchaser
11 receives the property or goods in this state;

12 (2) the location where the consumer receives the property or goods is
13 determined under K.S.A. 79-3670(a)(2) through (a)(4), and amendments
14 thereto; and

15 (3) the recordkeeping system used by the seller to calculate the tax
16 imposed captures the location where the order is received at the time the
17 order is received.

18 (b) (1) For the purposes of this section, the location where a seller
19 receives an order is a physical location of the seller or a third party where
20 an order is initially received by or on behalf of the seller.

21 (2) A physical location of a seller or third party includes the
22 following, if operated by or on behalf of the seller:

23 (A) Automated order receipt system;

24 (B) office; or

25 (C) outlet.

26 (3) The location where a seller receives an order does not include the
27 location:

28 (A) Where the order may be subsequently accepted, completed or
29 fulfilled; or

30 (B) from which tangible personal property or a product transferred
31 electronically is shipped.

32 (4) An order is received when all of the information from the
33 purchaser necessary to the determination of whether the order can be
34 accepted has been received by or on behalf of the seller.

1 (c) (1) A purchaser is not liable for a tax, penalty or interest on a sale
2 for which the purchaser remits a tax under the Kansas retailers' sales tax
3 act or the Kansas compensating tax act to the seller in the amount that the
4 seller invoices, if the amount is calculated at the total tax rate applicable to
5 the location where the seller receives the order or at the rate applicable to
6 the location where receipt by the purchaser occurs.

7 (2) A purchaser may rely on a written representation by the seller as
8 to the location where the order for such sale was received by the seller. If a
9 purchaser does not have a written representation by the seller as to the
10 location where the order for such sale was received by the seller, the
11 purchaser may use a location indicated by a business address for the seller
12 that is available from business records of the purchaser that are maintained
13 in the ordinary course of the purchaser's business to determine the rate
14 applicable to the location where the order was received.

15 (d) For the purposes of this section, if services subject to taxation
16 under the Kansas retailers' sales tax act or the Kansas compensating tax act
17 are sold with tangible personal property or digital goods pursuant to a
18 single contract or in the same transaction, the services are billed on the
19 same billing statement or invoice and, because of the application of
20 subsection (a), the transaction would be sourced to more than one
21 jurisdiction, the situs of the transaction shall be the location where the
22 order is received by or on behalf of the seller.

23 Sec. 2. K.S.A. 79-3669 is hereby amended to read as follows: 79-
24 3669. (a) The retail sale of a product shall be sourced in accordance with
25 K.S.A. 79-3670, and amendments thereto, *and section 1, and amendments*
26 *thereto*. The provisions of K.S.A. 79-3670, and amendments thereto, *and*
27 *section 1, and amendments thereto*, apply regardless of the
28 characterization of a product as tangible personal property, a digital good
29 or a service. The provisions of K.S.A. 79-3670, and amendments thereto,
30 *and section 1, and amendments thereto*, only apply to determine a seller's
31 obligation to pay or collect and remit a sales or use tax with respect to the
32 seller's retail sale of a product. These provisions do not affect the
33 obligation of a purchaser or lessee to remit tax on the use of the product to
34 the taxing jurisdictions of that use.

35 (b) K.S.A. 79-3670, and amendments thereto, *and section 1, and*
36 *amendments thereto*, does not apply to sales or use taxes levied on the
37 following:

38 (1) The retail sale or transfer of water craft, modular homes,
39 manufactured homes or mobile homes. The retail sale of these items shall
40 be sourced according to K.S.A. 12-191, and amendments thereto;

41 (2) the retail sales, excluding lease or rental, of motor vehicles,
42 trailers, semi-trailers or aircraft that do not qualify as transportation
43 equipment, as defined in ~~subsection (d) of~~ K.S.A. 79-3670(d), and

1 amendments thereto. The retail sale of these items shall be sourced
2 according to K.S.A. 12-191, and amendments thereto, and the lease or
3 rental of these items must be sourced according to ~~subsection (e)~~ of K.S.A.
4 79-3670(c), and amendments thereto; and

5 (3) telecommunications services, as set out in K.S.A. 79-3673, and
6 amendments thereto, and ancillary services, as defined in K.S.A. 79-3602,
7 and amendments thereto, shall be sourced in accordance with K.S.A. 79-
8 3673, and amendments thereto.

9 Sec. 3. K.S.A. 79-3670 is hereby amended to read as follows: 79-
10 3670. (a) *Except as otherwise provided by section 1, and amendments*
11 *thereto*, the retail sale, excluding lease or rental, of a product shall be
12 sourced as follows:

13 (1) When the product is received by the purchaser at a business
14 location of the seller, the sale is sourced to that business location;

15 (2) when the product is not received by the purchaser at a business
16 location of the seller, the sale is sourced to the location where receipt by
17 the purchaser, or the purchaser's donee, designated as such by the
18 purchaser, occurs, including the location indicated by instructions for
19 delivery to the purchaser or donee, known to the seller;

20 (3) when subsection (a)(1) and (a)(2) do not apply, the sale is sourced
21 to the location indicated by an address for the purchaser that is available
22 from the business records of the seller that are maintained in the ordinary
23 course of the seller's business when use of this address does not constitute
24 bad faith;

25 (4) when subsections (a)(1), (a)(2) and (a)(3) do not apply, the sale is
26 sourced to the location indicated by an address for the purchaser obtained
27 during the consummation of the sale, including the address of a purchaser's
28 payment instrument, if no other address is available, when use of this
29 address does not constitute bad faith;

30 (5) when none of the previous rules of subsection (a)(1), (a)(2), (a)(3)
31 or (a)(4) apply, including the circumstance in which the seller is without
32 sufficient information to apply the previous rules, then the location will be
33 determined by the address from which tangible personal property was
34 shipped, from which the digital good or the computer software delivered
35 electronically was first available for transmission by the seller, or from
36 which the service was provided, disregarding for these purposes any
37 location that merely provided the digital transfer of the product sold.

38 (b) The lease or rental of tangible personal property, other than
39 property identified in subsection (c) or (d), shall be sourced as follows:

40 (1) For a lease or rental that requires recurring periodic payments, the
41 first periodic payment is sourced the same as a retail sale in accordance
42 with the provisions of subsection (a). Periodic payments made subsequent
43 to the first payment are sourced to the primary property location for each

1 period covered by the payment. The primary property location shall be as
2 indicated by an address for the property provided by the lessee that is
3 available to the lessor from its records maintained in the ordinary course of
4 business, when use of this address does not constitute bad faith. The
5 property location shall not be altered by intermittent use at different
6 locations, such as use of business property that accompanies employees on
7 business trips and service calls;

8 (2) for a lease or rental that does not require recurring periodic
9 payments, the payment is sourced the same as a retail sale in accordance
10 with the provisions of subsection (a); and

11 (3) this subsection does not affect the imposition or computation of
12 sales or use tax on leases or rentals based on a lump sum or accelerated
13 basis, or on the acquisition of property for lease.

14 (c) The lease or rental of motor vehicles, trailers, semi-trailers or
15 aircraft that do not qualify as transportation equipment, as defined in
16 subsection (d), shall be sourced as follows:

17 (1) For a lease or rental that requires recurring periodic payments,
18 each periodic payment is sourced to the primary property location. The
19 primary property location shall be as indicated by an address for the
20 property provided by the lessee that is available to the lessor from its
21 records maintained in the ordinary course of business, when use of this
22 address does not constitute bad faith. This location shall not be altered by
23 intermittent use at different locations;

24 (2) for a lease or rental that does not require recurring periodic
25 payments, the payment is sourced the same as a retail sale in accordance
26 with the provisions of subsection (a); and

27 (3) this subsection does not affect the imposition or computation of
28 sales or use tax on leases or rentals based on a lump sum or accelerated
29 basis or on the acquisition of property for lease.

30 (d) The retail sale, including lease or rental, of transportation
31 equipment shall be sourced the same as a retail sale in accordance with the
32 provisions of subsection (a), notwithstanding the exclusion of lease or
33 rental in subsection (a). "Transportation equipment" means any of the
34 following:

35 (1) Locomotives and railcars that are utilized for the carriage of
36 persons or property in interstate commerce;

37 (2) trucks and truck-tractors with a gross vehicle weight rating
38 (GVWR) of 10,001 pounds or greater, trailers, semi-trailers or passenger
39 buses that are:

40 (A) Registered through the international registration plan; and

41 (B) operated under authority of a carrier authorized and certificated
42 by the United States department of transportation or another federal or a
43 foreign authority to engage in the carriage of persons or property in

1 interstate or foreign commerce;

2 (3) aircraft that are operated by air carriers authorized and certificated
3 by the United States department of transportation or another federal or a
4 foreign authority to engage in the carriage of persons or property in
5 interstate or foreign commerce; and

6 (4) containers designed for use on and component parts attached or
7 secured on the items set forth in subsection (d)(1), (d)(2) and (d)(3).

8 (e) As used in this section, the terms "receive" and "receipt" mean:

9 (1) Taking possession of tangible personal property;

10 (2) making first use of services; or

11 (3) taking possession or making first use of digital goods, whichever
12 comes first. The terms receive and receipt do not include possession by a
13 shipping company on behalf of the purchaser.

14 Sec. 4. K.S.A. 79-3669 and 79-3670 are hereby repealed.

15 Sec. 5. This act shall take effect and be in force from and after its
16 publication in the statute book.