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

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

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

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

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

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

(e) "Storage" and "use" do not include the keeping, retaining or
exercising of any right or power over tangible personal property shipped or
brought into this state for the purpose of subsequently transporting it
outside the state for use thereafter solely outside the state, or for the
purpose of being processed, fabricated, or manufactured into, attached to
or incorporated into, other tangible personal property to be transported
outside the state and thereafter used solely outside the state.

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

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

(h) (1) "Retailer doing business in this state" or any like term, means:
(A) Any retailer maintaining in this state, permanently, temporarily,
directly or indirectly through a subsidiary, agent or representative, an
office, distribution house, sales house, warehouse or other place of
business;
(B) any retailer utilizing an employee, independent contractor, agent,
representative, salesperson, canvasser, solicitor or other person operating
in this state either permanently or temporarily, for the purpose of selling,
delivering, installing, assembling, servicing, repairing, soliciting sales or
the taking of orders for tangible personal property;
(C) any retailer, including a contractor, repair person or other service
provider, who enters this state to perform services that are enumerated in
K.S.A. 79-3603, and amendments thereto, and who is required to secure a
retailer's sales tax registration certificate before performing those services;
(D) any retailer deriving rental receipts from a lease of tangible
personal property situated in this state;
(E) any person regularly maintaining a stock of tangible personal
property in this state for sale in the normal course of business; and
(F) any retailer who has any other contact with this state that would
allow this state to require the retailer to collect and remit tax under the
provisions of the constitution and laws of the United States; and
(G) for any retailer that does not satisfy the requirements contained
in subparagraphs (A) through (F), such retailer shall be a retailer doing
business in this state, if, during the preceding calendar year, the retailer had any gross receipts from sales by the retailer to customers in this state.

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

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

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

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

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

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

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

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

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

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

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

(C)(D) The retailer enters into an agreement with one or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link or an internet website, by telemarketing, by an in-person oral presentation, or otherwise, to the retailer, if the cumulative gross receipts
from sales by the retailer to customers in the state who are referred to the retailer by all residents with this type of an agreement with the retailer is in excess of $10,000 during the preceding 12 months. This presumption may be rebutted by submitting proof that the residents with whom the retailer has an agreement did not engage in any activity within the state that was significantly associated with the retailer's ability to establish or maintain the retailer's market in the state during the preceding 12 months. Such proof may consist of sworn written statements from all of the residents with whom the retailer has an agreement stating that they did not engage in any solicitation in the state on behalf of the retailer during the preceding year, provided that such statements were provided and obtained in good faith. This subparagraph shall take effect 90 days after the enactment of this statute and shall apply to sales made and uses occurring on or after the effective date of this subparagraph and without regard to the date the retailer and the resident entered into the agreement described in this subparagraph. The term "preceding 12 months" as used in this subparagraph includes the 12 months commencing prior to the effective date of this subparagraph.

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

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

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

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

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

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