SESSION OF 2011

HOUSE BILL No. 2117

By Committee on Taxation

AN ACT concerning sales taxation; relating to imposition of tax; exemptions; amending K.S.A. 2010 Supp. 79-3603 and repealing the existing section.

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

Section 1. K.S.A. 2010 Supp. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 5.3%, and commencing July 1, 2010, at the rate of 6.3%, and commencing July 1, 2013, at the rate of 5.7%. Within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

(b) the gross receipts from intrastate, interstate or international telecommunications services and any ancillary services sourced to this state in accordance with K.S.A. 2010 Supp. 79-3673, and amendments thereto, except that telecommunications service does not include: (1) Any interstate or international 800 or 900 service; (2) any interstate or international private communications service as defined in K.S.A. 2010 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice data service; (4) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including carrier access services; or (5) any service or transaction defined in this section among entities classified as members of an affiliated group as provided by section 1504 of the federal internal revenue code of 1986, as in effect on January 1, 2001;

(c) the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities, except that, on and after January 1, 2006, for
sales of gas, electricity and heat delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises, and for agricultural use and also, for such use, all sales of propane gas, the state rate shall be 0%; and for all sales of propane gas, LP gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises, the state rate shall be 0%, but such tax shall not be levied and collected upon the gross receipts from: (1) The sale of a rural water district benefit unit; (2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or (3) connection or reconnection fees collected by a water supplier; 
(d) the gross receipts from the sale of meals or drinks furnished at any private club, drinking establishment, catered event, restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public; 
(e) the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services including admissions to state, county, district and local fairs, but such tax shall not be levied and collected upon the gross receipts received from sales of admissions to any cultural and historical event which occurs triennially; 
(f) the gross receipts from the operation of any coin-operated device dispensing or providing tangible personal property, amusement or other services except laundry services, whether automatic or manually operated; 
(g) the gross receipts from the service of renting of rooms by hotels, as defined by K.S.A. 36-501, and amendments thereto, or by accommodation brokers, as defined by K.S.A. 12-1692, and amendments thereto but such tax shall not be levied and collected upon the gross receipts received from sales of such service to the federal government and any agency, officer or employee thereof in association with the performance of official government duties; 
(h) the gross receipts from the service of renting or leasing of tangible personal property except such tax shall not apply to the renting or leasing of machinery, equipment or other personal property owned by a city and purchased from the proceeds of industrial revenue bonds issued prior to July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, and any city or lessee renting or leasing such machinery, equipment or other personal property purchased with the proceeds of such bonds who shall have paid a tax under the provisions of this section upon sales made prior to July 1, 1973, shall be entitled to a refund from the sales tax refund fund of all taxes paid thereon; 
(i) the gross receipts from the rendering of dry cleaning, pressing,
dyeing and laundry services except laundry services rendered through a
coin-operated device whether automatic or manually operated;
(j) the gross receipts from the rendering of the services of washing
and washing and waxing of vehicles;
(k) the gross receipts from cable, community antennae and other
subscriber radio and television services;
(l) (1) except as otherwise provided by paragraph (2), the gross
receipts received from the sales of tangible personal property to all
contractors, subcontractors or repairmen for use by them in erecting
structures, or building on, or otherwise improving, altering, or repairing
real or personal property.
(2) Any such contractor, subcontractor or repairman who maintains
an inventory of such property both for sale at retail and for use by them
for the purposes described by paragraph (1) shall be deemed a retailer
with respect to purchases for and sales from such inventory, except that
the gross receipts received from any such sale, other than a sale at retail,
shall be equal to the total purchase price paid for such property and the
tax imposed thereon shall be paid by the deemed retailer;
(m) the gross receipts received from fees and charges by public and
private clubs, drinking establishments, organizations and businesses for
participation in sports, games and other recreational activities, but such
tax shall not be levied and collected upon the gross receipts received
from: (1) Fees and charges by any political subdivision, by any
organization exempt from property taxation pursuant to paragraph Ninth
of K.S.A. 79-201, and amendments thereto, or by any youth recreation
organization exclusively providing services to persons 18 years of age or
younger which is exempt from federal income taxation pursuant to
section 501(c)(3) of the federal internal revenue code of 1986, for
participation in sports, games and other recreational activities; and (2)
entry fees and charges for participation in a special event or tournament
sanctioned by a national sporting association to which spectators are
charged an admission which is taxable pursuant to subsection (e);
(n) the gross receipts received from dues charged by public and
private clubs, drinking establishments, organizations and businesses,
payment of which entitles a member to the use of facilities for recreation
or entertainment, but such tax shall not be levied and collected upon the
gross receipts received from: (1) Dues charged by any organization
exempt from property taxation pursuant to paragraphs Eighth and Ninth
of K.S.A. 79-201, and amendments thereto; and (2) sales of memberships
in a nonprofit organization which is exempt from federal income taxation
pursuant to section 501 (c)(3) of the federal internal revenue code of
1986, and whose purpose is to support the operation of a nonprofit zoo;
(o) the gross receipts received from the isolated or occasional sale of
motor vehicles or trailers but not including: (1) The transfer of motor
vehicles or trailers by a person to a corporation or limited liability
company solely in exchange for stock securities or membership interest
in such corporation or limited liability company; or (2) the transfer of
motor vehicles or trailers by one corporation or limited liability company
to another when all of the assets of such corporation or limited liability
company are transferred to such other corporation or limited liability
company; or (3) the sale of motor vehicles or trailers which are subject to
taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and
amendments thereto, by an immediate family member to another
immediate family member. For the purposes of clause (3), immediate
family member means lineal ascendants or descendants, and their
spouses. Any amount of sales tax paid pursuant to the Kansas retailers
sales tax act on the isolated or occasional sale of motor vehicles or trailers
on and after July 1, 2004, which the base for computing the tax was the
value pursuant to subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105,
and amendments thereto, when such amount was higher than the amount
of sales tax which would have been paid under the law as it existed on
June 30, 2004, shall be refunded to the taxpayer pursuant to the procedure
prescribed by this section. Such refund shall be in an amount equal to the
difference between the amount of sales tax paid by the taxpayer and the
amount of sales tax which would have been paid by the taxpayer under
the law as it existed on June 30, 2004. Each claim for a sales tax refund
shall be verified and submitted not later than six months from the
effective date of this act to the director of taxation upon forms furnished
by the director and shall be accompanied by any additional
documentation required by the director. The director shall review each
claim and shall refund that amount of tax paid as provided by this act. All
such refunds shall be paid from the sales tax refund fund, upon warrants
of the director of accounts and reports pursuant to vouchers approved by
the director of taxation or the director's designee. No refund for an
amount less than $10 shall be paid pursuant to this act. In determining the
base for computing the tax on such isolated or occasional sale, the fair
market value of any motor vehicle or trailer traded in by the purchaser to
the seller may be deducted from the selling price;

(p) the gross receipts received for the service of installing or
applying tangible personal property which when installed or applied is
not being held for sale in the regular course of business, and whether or
not such tangible personal property when installed or applied remains
tangible personal property or becomes a part of real estate, except that no
tax shall be imposed upon the service of installing or applying tangible
personal property in connection with the original construction of a
building or facility, the original construction, reconstruction, restoration,
remodeling, renovation, repair or replacement of a residence or the
construction, reconstruction, restoration, replacement or repair of a bridge
or highway.

For the purposes of this subsection:
(1) "Original construction" shall mean the first or initial construction
of a new building or facility. The term "original construction" shall
include the addition of an entire room or floor to any existing building or
facility, the completion of any unfinished portion of any existing building
or facility and the restoration, reconstruction or replacement of a building,
facility or utility structure damaged or destroyed by fire, flood, tornado,
lightning, explosion, windstorm, ice loading and attendant winds,
terrorism or earthquake, but such term, except with regard to a residence,
shall not include replacement, remodeling, restoration, renovation or
reconstruction under any other circumstances;
(2) "building" shall mean only those enclosures within which
individuals customarily are employed, or which are customarily used to
house machinery, equipment or other property, and including the land
improvements immediately surrounding such building;
(3) "facility" shall mean a mill, plant, refinery, oil or gas well, water
well, feedlot or any conveyance, transmission or distribution line of any
cooperative, nonprofit, membership corporation organized under or
subject to the provisions of K.S.A. 17-4601 et seq., and amendments
thereto, or municipal or quasi-municipal corporation, including the land
improvements immediately surrounding such facility;
(4) "residence" shall mean only those enclosures within which
individuals customarily live;
(5) "utility structure" shall mean transmission and distribution lines
owned by an independent transmission company or cooperative, the
Kansas electric transmission authority or natural gas or electric public
utility; and
(6) "windstorm" shall mean straight line winds of at least 80 miles
per hour as determined by a recognized meteorological reporting agency
or organization;
(q) the gross receipts received for the service of repairing, servicing,
altering or maintaining tangible personal property which when such
services are rendered is not being held for sale in the regular course of
business, and whether or not any tangible personal property is transferred
in connection therewith. The tax imposed by this subsection shall be
applicable to the services of repairing, servicing, altering or maintaining
an item of tangible personal property which has been and is fastened to,
connected with or built into real property;
(r) the gross receipts from fees or charges made under service or
maintenance agreement contracts for services, charges for the providing
of which are taxable under the provisions of subsection (p) or (q);
(s) on and after January 1, 2005, the gross receipts received from the
sale of prewritten computer software and the sale of the services of
modifying, altering, updating or maintaining prewritten computer
software, whether the prewritten computer software is installed or
delivered electronically by tangible storage media physically transferred
to the purchaser or by load and leave;
(t) the gross receipts received for telephone answering services;
(u) the gross receipts received from the sale of prepaid calling
service and prepaid wireless calling service as defined in K.S.A. 2010
Supp. 79-3673, and amendments thereto; and
(v) the gross receipts received from the sales of bingo cards, bingo
faces and instant bingo tickets by licensees under K.S.A. 79-4701, et seq.,
and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1,
2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before
July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo
faces and instant bingo tickets by licensees under K.S.A. 79-4701 et seq.,
and amendments thereto, shall be exempt from taxes imposed pursuant to
this section.

Sec. 2. K.S.A. 2010 Supp. 79-3603 is hereby repealed.
Sec. 3. This act shall take effect and be in force from and after its
publication in the statute book.