AN ACT concerning
sales and use

and

taxation; relating to imposition of
[sales and use] tax;

exemptions;

income taxation, retention of

Kansas payroll withholding taxes by certain employers,
requirements and procedures;

amending K.S.A. 2010 Supp. 79-3603
and 79-3703 and repealing the existing section sections.

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. 79-3703 is hereby amended to read as
follows: 79-3703. There is hereby levied and there shall be collected
from every person in this state a tax or excise for the privilege of
using, storing, or consuming within this state any article of tangible
personal property. Such tax shall be levied and collected in an amount
equal to the consideration paid by the taxpayer multiplied by 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 of 2% until the earlier of: (1) The date the bonds issued to finance or
refinance the redevelopment project undertaken in the district have been
paid in full; or (2) the final scheduled maturity of the first series of bonds
issued to finance the redevelopment project. All property purchased or
leased within or without this state and subsequently used, stored or
consumed in this state shall be subject to the compensating tax if the
same property or transaction would have been subject to the Kansas
retailers' sales tax had the transaction been wholly within this state.

[New Sec. 3. (a) On or after July 1, 2011, any qualified new
company as defined in subsection (c)(1), shall be eligible to retain 95% of
the qualified new company's Kansas payroll withholding taxes upon
wages paid by such qualified new company for a period of one year
from the date the qualified company establishes a new business and
commences business operations.

(b) Any qualified new company shall submit in a form and in a manner prescribed by the secretary, information that proves that the applicant is a qualified new company, including the date of establishment of the new business and commencement of business operations, the number of employees hired by the qualified new company, the amount of gross wages being paid to each employee and such other information as required by the secretary. If the qualified new company fails to meet the provisions of this section, the qualified new company shall not be entitled to any further benefits provided under this section. In such case, the qualified new company shall be required to remit to the state an amount equal to the aggregate Kansas payroll withholding taxes retained by the qualified new company pursuant to this section as of the date the qualified new company fails to comply with the provisions of this section.

(c) As used in this section: (1) "Qualified new company" means a company which establishes a new business and commences business operations on or after July 1, 2011, and has 10 or less employees. If a company commences business operations with 10 or less employees and hires additional employees during the first year of operation to exceed this ten-employee limitation, such company shall still qualify for benefits pursuant to this section for the first 10 employees for such first year of operation but shall not be eligible for such benefits for any employees above the first 10 employees. Such company shall include a person, for-profit corporation, limited liability company, S corporation, partnership, registered limited liability partnership, and sole proprietorship that is subject to the Kansas income tax act, K.S.A. 79-3201 et seq., and amendments thereto. No company or person shall be eligible under this section if such person, company or ownership interest of such company had an ownership interest in a business of the same nature or character within the one-year period prior to commencement of the new business, or if the secretary determines such company created the new company for the purpose of avoiding taxation; and

(2) "secretary" means the secretary of the department of revenue.

(d) The secretary of revenue is hereby authorized to adopt rules and regulations necessary to administer the provisions of this section.]

Sec. 2. K.S.A. 2010 Supp. 79-3603 and 79-3703 is hereby repealed. Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.