AN ACT concerning sales and compensating use tax; relating to sourcing of sales, origin sourcing; amending K.S.A. 2016 Supp. 79-3669 and 79-3670 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:
New Section 1. (a) Beginning July 1, 2017, retail sales, excluding the lease or rental, of tangible personal property or digital goods shall be sourced to the location where the seller receives an order for the sale of such property or goods if:
(1) The seller receives the order in this state and the purchaser receives the property or goods in this state;
(2) the location where the consumer receives the property or goods is determined under KSA 2016 Supp. 79-3670(a)(2) through (4), and amendments thereto; and
(3) the record-keeping system used by the seller to calculate the tax imposed captures the location where the order is received at the time the order is received.
(b) (1) For the purposes of this section, the location where a seller receives an order is a physical location of the seller or a third party where an order is initially received by or on behalf of the seller.
(2) A physical location of a seller or third party includes the following, if operated by or on behalf of the seller:
(A) An automated order receipt system;
(B) an office; or
(C) an outlet.
(3) The location where a seller receives an order does not include the location:
(A) Where the order may be subsequently accepted, completed or fulfilled; or
(B) from which tangible personal property or a product transferred electronically is shipped.
(4) An order is received when all of the information from the purchaser necessary to the determination of whether the order can be accepted has been received by or on behalf of the seller.
(b) (1) A purchaser is not liable for a tax, penalty or interest on a sale for which the purchaser remits a tax under the Kansas retailers' sales tax
act or the Kansas compensating tax to the seller in the amount the seller
invoices if the amount is calculated at the total tax rate applicable to the
location where the seller receives the order or at the rate applicable to the
location where receipt by the purchaser occurs.

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

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

Sec. 2. K.S.A. 2016 Supp. 79-3669 is hereby amended to read as
follows: 79-3669. (a) The retail sale of a product shall be sourced in
accordance with K.S.A. 2016 Supp. 79-3670 and section I, and
amendments thereto. The provisions of K.S.A. 2016 Supp. 79-3670 and
section I, and amendments thereto, apply regardless of the characterization
of a product as tangible personal property, a digital good or a service. The
provisions of K.S.A. 2016 Supp. 79-3670 and section I, and amendments
thereto, only apply to determine a seller's obligation to pay or collect and
remit a sales or use tax with respect to the seller's retail sale of a product.
These provisions do not affect the obligation of a purchaser or lessee to
remit tax on the use of the product to the taxing jurisdictions of that use.

(b) K.S.A. 2016 Supp. 79-3670 and section I, and amendments
thereto, does not apply to sales or use taxes levied on the following: (1)
The retail sale or transfer of water craft, modular homes, manufactured
homes or mobile homes. The retail sale of these items shall be sourced
according to K.S.A. 12-191, and amendments thereto;

(2) the retail sales, excluding lease or rental, of motor vehicles,
trailers, semi-trailers or aircraft that do not qualify as transportation
equipment, as defined in subsection (d) of K.S.A. 2016 Supp. 79-3670(d),
and amendments thereto. The retail sale of these items shall be sourced
according to K.S.A. 12-191, and amendments thereto, and the lease or
rental of these items must be sourced according to subsection (c) of K.S.A.
2016 Supp. 79-3670(c), and amendments thereto; and
telecommunications services, as set out in K.S.A. 2016 Supp. 79-3673, and amendments thereto, and ancillary services, as defined in K.S.A. 79-3602, and amendments thereto, shall be sourced in accordance with K.S.A. 2016 Supp. 79-3673, and amendments thereto.

Sec. 3. K.S.A. 2016 Supp. 79-3670 is hereby amended to read as follows: 79-3670. (a) Except as otherwise provided by section 1, and amendments thereto, the retail sale, excluding lease or rental, of a product shall be sourced as follows: (1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

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

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

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

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

(b) The lease or rental of tangible personal property, other than property identified in subsection (c) or (d), shall be sourced as follows: (1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The
property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls;

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

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

(c) The lease or rental of motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment, as defined in subsection (d), shall be sourced as follows: (1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations;

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

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

(d) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (a), notwithstanding the exclusion of lease or rental in subsection (a). "Transportation equipment" means any of the following: (1) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(2) trucks and truck-tractors with a gross vehicle weight rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers or passenger buses that are: (A) Registered through the international registration plan; and

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

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

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

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

(1) Taking possession of tangible personal property;
(2) making first use of services; or
(3) taking possession or making first use of digital goods, whichever comes first. The terms receive and receipt do not include possession by a shipping company on behalf of the purchaser.

Sec. 4. K.S.A. 2016 Supp. 79-3669 and 79-3670 are hereby repealed.

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