

HOUSE BILL No. 2235

By Committee on Taxation

2-1

1 AN ACT concerning sales and use taxation; relating to the administration
2 thereof; required notices and reports.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. As used in sections 1 through 6, and amendments thereto:

6 (a) "Director" means the state director of taxation.

7 (b) "Kansas purchase" means:

8 (1) In the case of goods that are shipped, a Kansas purchase is one
9 that is shipped into Kansas;

10 (2) with respect to sales of goods that are downloaded or otherwise
11 delivered electronically:

12 (A) If the purchaser provides a "bill to" address, then a Kansas
13 purchase is one for which the "bill to" address is in Kansas; or

14 (B) if the purchaser does not provide a "bill to" address, then the
15 retailer that does not collect Kansas sales tax shall determine whether a
16 purchaser is in Kansas, and is therefore a Kansas purchaser, using any
17 other commercially reasonable method based on the business's existing
18 billing, customer-tracking or other systems.

19 A "Kansas purchase" shall not include any purchases or rentals of VHS
20 tapes, DVDs, blu-ray disks or other video materials to the extent that
21 disclosure of the purchasers of such items would violate 18 U.S.C. § 2710.

22 (c) "Kansas purchaser" means:

23 (1) With respect to sales of goods that are shipped, a Kansas
24 purchaser is a purchaser that requests the goods be shipped into Kansas. If
25 a purchase is made by one party, who may be inside or outside of Kansas,
26 and shipped to a party in Kansas, the Kansas purchaser is the purchaser of
27 the goods, not the recipient of the goods; or

28 (2) with respect to sales of goods that are downloaded or otherwise
29 delivered electronically:

30 (A) If the purchaser provides a "bill to" address, then a Kansas
31 purchaser is a purchaser whose "bill to" address is in Kansas; or

32 (B) if the purchaser does not provide a "bill to" address, then the
33 retailer that does not collect Kansas sales tax shall determine whether a
34 purchaser is in Kansas, and is therefore a Kansas purchaser, using any
35 other commercially reasonable method based on the business's existing
36 billing, customer-tracking or other systems.

1 (d) (1) "Retailer that does not collect Kansas sales tax" means a
2 retailer that sells goods to Kansas purchasers and that does not collect
3 Kansas sales or use tax. A retailer that does not collect Kansas sales tax
4 includes a retailer that makes sales in Kansas both by means of download
5 of digital goods or software and by means of shipping or otherwise
6 physically delivering goods to a Kansas purchaser.

7 (2) A "retailer that does not collect Kansas sales tax" does not
8 include:

9 (A) A retailer that makes sales in Kansas solely by means of
10 download of digital goods or software; or

11 (B) a retailer that makes less than \$50,000 in total gross sales in
12 Kansas in the prior calendar year and that reasonably expects total gross
13 sales in Kansas in the current calendar year will be less than \$50,000.

14 (e) "Secretary" means the secretary of revenue.

15 Sec. 2. A retailer that does not collect Kansas sales tax who makes
16 sales to a Kansas purchaser shall maintain records and books of such sales
17 in the same manner as provided in K.S.A. 79-3609, and amendments
18 thereto. If any such retailer fails to voluntarily furnish any of the
19 information specified in K.S.A. 79-3609(a), and amendments thereto,
20 when requested by the director, or the director's duly authorized agents and
21 employees, the director may issue subpoenas to compel access to or for the
22 production of such books, papers, records, invoices or documents in the
23 custody of or to which the retailer has access, or to compel the appearance
24 of such retailer, and may issue interrogatories to any such retailer to the
25 same extent and subject to the same limitations as would apply if the
26 subpoena or interrogatories were issued or served in aid of a civil action in
27 the district court. The director may administer oaths and take depositions
28 to the same extent and subject to the same limitations as would apply if the
29 deposition was in aid of a civil action in the district court. In case of the
30 refusal of any retailer to comply with any subpoena or interrogatory or to
31 testify to any matter which such person may be lawfully questioned, the
32 district court of any county may, upon application of the director, order
33 such retailer to comply with such subpoena or interrogatory or to testify.
34 Failure to obey the court's order may be punished by the court as
35 contempt. Subpoenas or interrogatories issued under the provisions of this
36 section may be served upon individuals and corporations in the manner
37 provided in K.S.A. 60-304, and amendments thereto, for the service of
38 process by any officer authorized to serve subpoenas in civil actions or by
39 the director.

40 Sec. 3. (a) (1) Each retailer that does not collect Kansas sales tax shall
41 notify Kansas purchasers that sales or use tax is due on all purchases made
42 from the retailer that are not exempt from sales tax and that the state of
43 Kansas requires the purchaser to report use taxes due on their K-40 tax

1 form. Such notice must be provided with respect to each transaction
2 between the retailer that does not collect Kansas sales tax and a Kansas
3 purchaser. Such notice must be clearly legible, reasonably prominent and
4 located in close proximity to the total price.

5 (2) The notice required by this section shall contain the following
6 information:

7 (A) A statement indicating that the retailer does not collect Kansas
8 sales or use tax;

9 (B) the purchase is not exempt from Kansas sales or use tax merely
10 because it is made over the internet or by other remote means; and

11 (C) the state of Kansas requires a Kansas purchaser to report the use
12 tax due on such purchaser's K-40 tax form.

13 (3) Failure to provide the notice required by subsection (a) shall
14 subject the retailer to a penalty of \$10 for each such failure. The director
15 may waive all or a portion of such penalty for reasonable cause shown.

16 (b) (1) Each retailer that does not collect Kansas sales tax shall send
17 an annual notice to all Kansas purchasers by January 31 of each year
18 summarizing the Kansas purchases of a Kansas purchaser for the
19 preceding calendar year. Such notice shall be sent separately to all Kansas
20 purchasers by first-class mail, shall include the words "Important Tax
21 Document Enclosed" on the exterior of the mailing and shall not be
22 included with any other shipments.

23 (2) The notice required by this subsection shall include the following
24 information:

25 (A) The name of the retailer;

26 (B) the total amount paid by the Kansas purchaser for Kansas
27 purchases made from the retailer in the previous calendar year. Such
28 notification shall also include, if available, the dates of purchase, the
29 amounts of each purchase and the category of the purchase, including, if
30 known by the retailer, whether the purchase is exempt or not exempt from
31 taxation;

32 (C) that the state of Kansas requires use taxes due to be reported on
33 the K-40 tax form;

34 (D) that the retailer is required by law to provide the Kansas
35 department of revenue with the total dollar amount of purchases made by
36 the Kansas purchaser, however, no information about the purchase other
37 than the dollar amount will be provided to the department; and

38 (E) any other information required by the director.

39 (3) If the retailer is required by another state to provide a similar
40 notice, and the retailer provides a single such notice to all purchasers with
41 respect to items purchased for delivery in all states, the notice required by
42 subsection (b) shall be sufficient if it contains substantially all the
43 information required in a form that is generalized to any state.

1 (4) Any retailer that does not collect Kansas sales tax that is required
2 to send an annual notice to Kansas purchasers as required by this
3 subsection shall not be required to send the notice to any de minimis
4 Kansas purchaser. A de minimis Kansas purchaser shall be a Kansas
5 purchaser whose total Kansas purchases for the prior calendar year are less
6 than \$200. Such retailer shall make commercially reasonable business
7 efforts, based on the business's existing billing, customer-tracking or other
8 systems, to identify multiple purchases made by a single Kansas purchaser.

9 (5) Failure to provide the notice required by subsection (b) shall
10 subject the retailer to a penalty of \$10 for each such failure. The director
11 may waive all or a portion of such penalty for reasonable cause shown.

12 Sec. 4. (a) On or before March 1 of each year, each retailer that does
13 not collect Kansas sales tax who is required to file a notice under the
14 provisions of section 3(b), and amendments thereto, shall file an annual
15 statement for each purchaser to the department of revenue on such forms
16 as approved by the department. Such notice shall contain the following
17 information:

18 (1) The name of each Kansas purchaser;

19 (2) the billing address of each Kansas purchaser, if the information
20 was provided to the retailer;

21 (3) the shipping address of each Kansas purchaser, if the information
22 was provided to the retailer; and

23 (4) the total amount of Kansas purchases made by each Kansas
24 purchaser during the prior calendar year. No other information about the
25 purchase shall be provided.

26 (b) If the retailer has more than one Kansas billing address or more
27 than one Kansas shipping address for a Kansas purchaser, then the retailer
28 shall provide all such addresses of the Kansas purchaser.

29 (c) Any retailer who is not required to send any notices pursuant to
30 the provisions of section 3(b)(4), and amendments thereto, shall also be
31 exempt from the requirements to send the report required by this section.

32 (d) If a retailer is required to provide any notices pursuant to the
33 provisions of section 3(b), and amendments thereto, then such retailer
34 must include all the purchases made by all Kansas purchasers in its report,
35 including any purchases made by de minimis Kansas purchasers as
36 determined under section 3(b)(4), and amendments thereto.

37 (e) Failure to file the notice required by this section shall subject the
38 retailer to a penalty equal to \$10 times the number of Kansas purchasers
39 that should have been included in the report. The director may waive all or
40 a portion of such penalty for reasonable cause shown.

41 Sec. 5. Any information obtained by the department of revenue in
42 connection with the administration of sections 1 through 4, and
43 amendments thereto, shall be subject to the same confidentiality provisions

1 as set forth in K.S.A. 79-3614, and amendments thereto.

2 Sec. 6. The secretary may adopt any rules and regulations necessary
3 to administer the provisions of sections 1 through 5, and amendments
4 thereto.

5 Sec. 7. This act shall take effect and be in force from and after its
6 publication in the statute book.