AN ACT concerning sales tax; relating to transactions subject to tax, installation of certain appliances and electronic products; amending K.S.A. 2017 Supp. 79-3603 and 79-3609 and repealing the existing sections.

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

Section 1. K.S.A. 2017 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 6.15%, and commencing July 1, 2015, at the rate of 6.5%. 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. 2017 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. 2017 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 K.S.A. 79-201 Ninth, 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 K.S.A. 79-201 Eighth and Ninth, 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
compagny solely in exchange for stock securities or membership interest in
such corporation or limited liability company; (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 paragraph (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 K.S.A. 79-5105(a), (b)(1) and (b)(2), 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, not including installation of an appliance or electronic product,
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; and

(7) "appliance" shall mean a refrigerator, freezer, range, stovetop,
range hood, oven, microwave oven, washer, dryer, dishwasher, garbage
disposal, trash compactor or window air conditioner. "Appliance" shall
also include small appliances such as coffee makers and other similar
products that are normally used or sold for personal, family or household
use, whether free-standing or built-in. "Appliance" does not include a
central vacuum system, HVAC system, soft-water system, hot water heater,
attic fan or hard-wired lighting fixture;

(8) "electronic product" includes, but is not limited to, any television,
computer, radio, receiver, amplifier, pre-amplifier, audio or video recorder
or playback equipment, video camera, video game, video monitor, satellite
receiver or satellite dish. "Electronic product" shall also include computer
accessories, including printers and video screens, electronic control
systems and any other kind of similar product that is normally sold for
personal, family or household use, whether free-standing or built-in; and

(9) "installation of an appliance or electronic product" shall mean
placing an appliance or electronic product in working order by
assembling it, sliding it into an existing opening, locating and fixing it in
place, connecting it to existing water or gas services, plugging or wiring it
into existing electrical services, connecting it to existing discharge pipes
or vents, or programming its controls. Charges for such installation
services are considered to be part of the selling price of such property
pursuant to K.S.A. 79-3602 (ll), and amendments thereto, and are taxed
whenever the sale of such property is taxed.

(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. 2017 Supp. 79-
3673, and amendments thereto;

(v) all sales of bingo cards, bingo faces and instant bingo tickets by
licensees under K.S.A. 2017 Supp. 75-5171 et seq., and amendments
thereto, shall be exempt from taxes imposed pursuant to this section; and

(w) all sales of charitable raffle tickets in accordance with K.S.A.
2017 Supp. 75-5171 et seq., and amendments thereto, shall be exempt
from taxes imposed pursuant to this section.

Sec. 2. K.S.A. 2017 Supp. 79-3609 is hereby amended to read as
follows: 79-3609. (a) Every person engaged in the business of selling
tangible personal property at retail or furnishing services taxable in this
state, shall keep records and books of all such sales, together with
invoices, bills of lading, sales records, copies of bills of sale and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be available for and subject to inspection by the director, or the director's duly authorized agents and employees, for a period of three years from the last day of the calendar year or of the fiscal year of the retailer, whichever comes later, to which the records pertain. Such records shall be preserved during the entire period during which they are subject to inspection by the director, unless the director in writing previously authorizes their disposal.

Any person selling tangible personal property or furnishing taxable services shall be prohibited from asserting that any sales are exempt from taxation unless the retailer has in the retailer's possession a properly executed exemption certificate provided by the consumer claiming the exemption, except as follows: (1) A retailer is relieved of liability for tax otherwise applicable if the retailer obtains a fully completed exemption certificate or captures the relevant data elements required by the director within 90 days subsequent to the date of the sale; or (2) if the retailer has not obtained an exemption certificate or all relevant data elements, the retailer, within 120 days subsequent to a request for substantiation by the director, either may obtain a fully completed exemption certificate from the purchaser, taken in good faith which meets the requirements specified in this subsection, or obtain other information establishing that the transaction was not subject to tax. Otherwise, the sales shall be deemed to be taxable sales under this act. The seller shall obtain an exemption certificate that claims an exemption that was authorized pursuant to Kansas law on the date of the transaction in the jurisdiction where the transaction is sourced pursuant to law, could be applicable to the item being purchased and is reasonable for the purchaser's type of business. If the seller obtains an exemption certificate or other information as described in this subsection, the seller is relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction, and it must be established that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

(b) The amount of tax imposed by this act is to be assessed within three years after the return is filed, and no proceedings in court for the collection of such taxes shall begin after the expiration of such period. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may begin at
any time within two years from the discovery of such fraud. No
assessment shall be made for any period preceding the date of registration
of the retailer by more than three years except in cases of fraud. For any
refund or credit claim filed after July 1, 2011, no refund or credit shall be
allowed by the director after three years from the due date of the return for
the reporting period as provided by K.S.A. 79-3607, and amendments
thereto, unless before the expiration of such period a claim therefor is filed
by the taxpayer, and, except as otherwise provided in K.S.A. 2017 Supp.
79-3694, and amendments thereto, no suit or action to recover on any
claim for refund shall be commenced, until after the expiration of six
months from the date of filing such claim satisfying the requirements
specified by K.S.A. 2017 Supp. 79-3693, and amendments thereto,
therefor with the director. A refund claim shall not be deemed filed unless
such claim is complete as required by K.S.A. 2017 Supp. 79-3693, and
amendments thereto. For all mailed returns, including refund claims, each
return or refund claim shall be presumed to have been filed with the
department on the postmark date of such return or refund claim or if such
date is illegible, the date three days prior to the date such return or refund
claim is received.

(c) Before the expiration of time prescribed in this section for the
assessment of additional tax or the filing of a claim for refund, the director
is hereby authorized to enter into an agreement in writing with the
taxpayer consenting to the extension of the periods of limitations for the
assessment of tax or for the filing of a claim for refund, at any time prior to
the expiration of the period of limitations. The period so agreed upon may
be extended by subsequent agreements in writing made before the
expiration of the period previously agreed upon. In consideration of such
agreement or agreements, interest due in excess of 48 months on any
additional tax shall be waived.

(d) Interest at the rate prescribed by K.S.A. 79-2968, and
amendments thereto, shall be allowed on any overpayment of tax
computed from the filing date of the return claiming the refund, except that
no interest shall be allowed on any such refund if the same is paid within
120 days after the filing date of the return claiming the refund or the date
of payment, whichever is later, provided that such return or refund claim
satisfies the requirements specified by K.S.A. 2017 Supp. 79-3693, and
amendments thereto, at the time the return or refund claim is received.

(e) Notwithstanding any other provision of this section or the
provisions of the Kansas compensating tax act:

(1) (A) Any claim for refund of tax imposed by the Kansas retailers'
sales tax act or the Kansas compensating tax act based upon the provisions
of subsection (kk) of K.S.A. 79-3606(kk) in existence prior to its
amendment by this act which is without dispute shall be allowed, but, with
respect to any claim exceeding $10,000, the refund associated therewith shall not be paid until after 510 days from the date such claim was filed and shall not include interest from such date. As used in this subparagraph, a claim for refund without dispute shall not include any claim the basis for which is a judicial or quasi-judicial interpretation of such subsection occurring after the effective date of this act.

(B) Any refund of tax resulting from a final determination or adjudication with regard to any claim submitted or to be submitted for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606(kk) in existence prior to its amendment by this act not described by subparagraph (A) shall, with respect to any refund exceeding $50,000, be paid in equal annual installments over 10 years commencing with the year of such final determination or adjudication. Interest shall not accrue during the time period of such payment.

(2) No claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the application of the provisions of subsection (n) of K.S.A. 79-3606(n), and amendments thereto, pursuant to its interpretation by the court of appeals of the state of Kansas in its opinion filed on August 13, 1999, in the case entitled In re appeal of Water District No. 1 of Johnson County shall be allowed for tax paid prior to the effective date of this act. The provisions of this subsection shall not be applicable to water district no. 1 of Johnson county.

(3) No claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the application of the provisions of K.S.A. 79-3603(p), pursuant to its interpretation by the court of appeals of the state of Kansas in its opinion filed on April 14, 2017, in the case entitled In re appeal of Lowe's Home Centers, L.L.C., No. 115,254, or by any other appellate court considering such decision, shall be allowed for tax paid prior to the effective date of this act. The provisions of this subsection shall not be applicable to Lowe's Home Centers L.L.C.

Sec. 3. K.S.A. 2017 Supp. 79-3603 and 79-3609 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.