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

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

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

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

(b) "Kansas purchase" means:

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

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

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

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

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

(c) "Kansas purchaser" means:

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

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

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

(B) if the purchaser does not provide a "bill to" address, then the retailer that does not collect Kansas sales tax shall determine whether a purchaser is in Kansas, and is therefore a Kansas purchaser, using any other commercially reasonable method based on the business’s existing billing, customer-tracking or other systems.
(d) (1) "Retailer that does not collect Kansas sales tax" means a retailer that sells goods to Kansas purchasers and that does not collect Kansas sales or use tax. A retailer that does not collect Kansas sales tax includes a retailer that makes sales in Kansas both by means of download of digital goods or software and by means of shipping or otherwise physically delivering goods to a Kansas purchaser.

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

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

(B) a retailer that makes less than $100,000 in total gross sales in Kansas in the prior calendar year and that reasonably expects total gross sales in Kansas in the current calendar year will be less than $100,000.

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

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

Sec. 3. (a) (1) Each retailer that does not collect Kansas sales tax shall notify Kansas purchasers that sales or use tax is due on all purchases made from the retailer that are not exempt from sales tax and that the state of Kansas requires the purchaser to report use taxes due on their K-40 tax
form. Such notice must be provided with respect to each transaction between the retailer that does not collect Kansas sales tax and a Kansas purchaser. Such notice must be clearly legible, reasonably prominent and located in close proximity to the total price.

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

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

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

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

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

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

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

(A) The name of the retailer;

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

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

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

(E) any other information required by the director.

(3) If the retailer is required by another state to provide a similar notice, and the retailer provides a single such notice to all purchasers with respect to items purchased for delivery in all states, the notice required by subsection (b) shall be sufficient if it contains substantially all the information required in a form that is generalized to any state.
(4) Any retailer that does not collect Kansas sales tax that is required
to send an annual notice to Kansas purchasers as required by this
subsection shall not be required to send the notice to any de minimis
Kansas purchaser. A de minimis Kansas purchaser shall be a Kansas
purchaser whose total Kansas purchases for the prior calendar year are less
than $500. Such retailer shall make commercially reasonable business
efforts, based on the business’s existing billing, customer-tracking or other
systems, to identify multiple purchases made by a single Kansas purchaser.

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

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

(1) The name of each Kansas purchaser;
(2) the billing address of each Kansas purchaser, if the information
was provided to the retailer;
(3) the shipping address of each Kansas purchaser, if the information
was provided to the retailer; and
(4) the total amount of Kansas purchases made by each Kansas
purchaser during the prior calendar year. No other information about the
purchase shall be provided.

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

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

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

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

Sec. 5. Any information obtained by the department of revenue in
connection with the administration of sections 1 through 4, and
amendments thereto, shall be subject to the same confidentiality provisions
Sec. 6. The secretary may adopt any rules and regulations necessary to administer the provisions of sections 1 through 5, and amendments thereto.

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