

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2756

By Committee on Taxation

2-21

1 AN ACT concerning sales and compensating use tax; relating to
2 imposition of tax, nexus, remote sellers, marketplace facilitators, digital
3 property and subscription services; amending K.S.A. 2017 Supp. 79-
4 3602 and 79-3603 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. Sections 1 through 10, and amendments thereto, shall
8 be known and may be cited as the Kansas main street parity act.

9 New Sec. 2. As used in the Kansas main street parity act:

10 (a) "Act" means the Kansas main street parity act.

11 (b) "Affiliated person" means a person that, with respect to another
12 person: (1) Has an ownership interest of more than 5%, whether direct or
13 indirect, in the other person; or (2) is related to the other person because a
14 third person, or group of third persons who are affiliated persons with
15 respect to each other, holds an ownership interest of more than 5%,
16 whether direct or indirect, in the related persons.

17 (c) "Applications" or "apps" means software programs, services or
18 resources made available to users via the internet designed to perform a
19 group of coordinated functions, tasks or activities and includes, but is not
20 limited to, cloud-based applications, desktop applications, mobile
21 applications, native applications and web applications.

22 (d) "Content distribution network" or "CDN" means a person that
23 operates an organized network of servers and other computer hardware
24 placed in geographically distributed data centers within close proximity to
25 internet users.

26 (e) "Cookies" means text data files stored locally on computers and
27 physical communications devices of the customers of a retailer when such
28 customers visit the retailer's website for the first time and subsequent
29 times, and act to identify the customer on each subsequent visit.

30 (f) "Delivery" means the method by which a retailer delivers tangible
31 personal property or a service that it has sold to a customer, however
32 effected, including through electronic delivery. A delivery includes a
33 delivery made by the retailer itself, a related person or a contract party.

34 (g) "Delivery company" means an unrelated person that, pursuant to
35 an agreement with a retailer, delivers tangible personal property or services
36 sold by such retailer and may also provide additional services, including

1 order fulfillment, order management, return processing, the preparation of
2 sales reports or other analytics and consumer access to customer service.

3 (h) "Department" means the Kansas department of revenue.

4 (i) "Internet retailer" means a person that derives sales from
5 transactions consummated over the internet, whether such transactions are:

6 (1) Completed on a website maintained or operated by the internet
7 retailer itself, or a website maintained or operated by a related person or a
8 person with which the internet retailer contracts, including a marketplace
9 facilitator; or

10 (2) fulfilled by a related person or a person with which the internet
11 retailer contracts.

12 An internet retailer, in addition to its internet sales, may also derive
13 sales from orders completed other than over the internet.

14 (j) "Marketplace facilitator" means a person that, pursuant to an
15 agreement with an Internet retailer, facilitates sales by such internet retailer
16 through a physical or electronic marketplace operated by the person, and
17 engages:

18 (1) Directly or indirectly, through one or more related persons in any
19 of the following:

20 (A) Transmitting or otherwise communicating the offer or acceptance
21 between a buyer and internet retailer;

22 (B) owning or operating the infrastructure, electronic or physical, or
23 technology that brings buyers and internet retailers together;

24 (C) providing a virtual currency that buyers are allowed or required to
25 use to purchase products from the internet retailer; or

26 (D) software development or research and development activities
27 related to any of the activities described in this subsection, if such
28 activities are directly related to a physical or electronic marketplace
29 operated by the person or a related person; and

30 (2) in any of the following activities with respect to the internet
31 retailer's products:

32 (A) Payment processing services;

33 (B) fulfillment or storage services;

34 (C) listing products for sale;

35 (D) setting prices;

36 (E) branding sales as those of the marketplace facilitator;

37 (F) order taking;

38 (G) advertising or promotion; or

39 (H) providing customer service or accepting or assisting with returns
40 or exchanges.

41 (k) "Kansas sales" means all sales made by a retailer of tangible
42 personal property or services delivered into the state, however
43 consummated.

1 (l) "Marketplace seller" means a seller that makes retail sales through
2 any physical or electronic marketplaces operated by a marketplace
3 facilitator or directly resulting from a referral by a referrer, regardless of
4 whether the seller is required to be registered with the department.

5 (m) "Online marketplace facilitator" means a marketplace facilitator
6 that facilitates sales through an electronic marketplace.

7 (n) "Otherwise subject to tax" means Kansas sales or use tax
8 jurisdiction over a retailer, including an internet retailer, that is conferred
9 by in-state contacts other than as referenced in this subsection.

10 (o) "Platform" means an electronic or physical medium, including a
11 website or catalog, operated by a referrer.

12 (p) "Provider" means a person that provides access to the internet,
13 whether through dial-up access through a modem or point-to-point
14 protocol, cable modem, wireless connection or any other form of
15 connection, and whether such person is denominated as an internet access
16 provider (IAP) or internet service provider (ISP), and whether or not such
17 person provides services other than access to the internet such as leased
18 lines (T-1 or T-3), web development, such provider's own proprietary
19 content or any other services.

20 (q) "Referral" means the transfer by a referrer of a potential customer
21 to a marketplace seller that advertises or lists products for sale on the
22 referrer's platform.

23 (r) "Referrer" means a person, other than a person engaging in the
24 business of printing a newspaper or publishing a newspaper, who contracts
25 or otherwise agrees with a seller to list or advertise for sale one or more
26 items in any medium, including a website or catalog; receives a
27 commission, fee or other consideration from the seller for the listing or
28 advertisement; transfers, via telephone, internet link, or other means, a
29 purchaser to a seller or an affiliated person to complete the sale; and does
30 not collect receipts from the purchasers for the transaction.

31 "Referrer" does not include a person that:

32 (1) Provides internet advertising services; and

33 (2) does not ever provide either the marketplace seller's shipping
34 terms or advertise whether a marketplace seller charges sales tax.

35 (s) "Sale" or "sales" shall have the same meaning as defined in K.S.A.
36 79-3602(kk), whether or not such sales qualify for a sales tax exemption.

37 (t) "Seller" shall have the same meaning as defined in K.S.A. 79-
38 3602(mm) and includes marketplace facilitators, whether making sales in
39 the seller's own right or on behalf of marketplace sellers.

40 (u) "Software" means a set of coded instructions designed to cause a
41 computer or other physical communications device or automatic data
42 processing equipment to perform a task, including, but not limited to,
43 native, cloud, desktop, mobile or web-based applications ("apps") that are

1 downloaded and run on computers or other physical communications
2 devices, and web applications or dynamic web pages in which the coded
3 instructions are downloaded, executed and run on web browsers.

4 (v) "Tax" means the sales tax imposed under K.S.A. 79-3603, and
5 amendments thereto, or the use tax imposed under K.S.A. 79-3703, and
6 amendments thereto.

7 (w) "Transaction" means a sale of tangible personal property or a
8 service by an internet retailer including, but not limited to, all such internet
9 retailer's transactions for tangible personal property or a service, however
10 consummated, including transactions completed on a website operated by:

11 (1) Such internet retailer;

12 (2) a related person; or

13 (3) a contract party, including a marketplace facilitator.

14 (x) The meaning ascribed to words and phrases in K.S.A. 79-3602,
15 and amendments thereto, insofar as practicable, shall be applicable herein
16 unless otherwise provided.

17 New Sec. 3. (a) On and after January 1, 2019, any marketplace
18 facilitator that meets the criteria in subsection (b) or that has a physical
19 presence in this state, must collect and remit retail sales or use tax on all
20 taxable retail sales into this state pursuant to this act. Marketplace
21 facilitators must begin collecting state and local retail sales or use taxes on
22 taxable retail sales sourced to this state beginning on the first day of the
23 next calendar month that is at least 30 days from the date that the
24 marketplace facilitator met the threshold described in subsection (b).

25 (b) A marketplace facilitator is subject to subsection (a) if, during the
26 current or immediately preceding calendar year, the gross receipts from
27 retail sales sourced to this state pursuant to the Kansas retailers' sales tax
28 act by the marketplace facilitator, whether in its own name or as an agent
29 of a marketplace seller, totaled at least \$50,000.

30 New Sec. 4. (a) (1) For purposes of this act, and both the Kansas
31 retailers' sales tax act and the Kansas compensating tax act, a marketplace
32 facilitator is deemed to be an agent of any marketplace seller making retail
33 sales through the marketplace facilitator's physical or electronic
34 marketplace.

35 (2) In addition to other applicable recordkeeping requirements, the
36 department may require a marketplace facilitator or referrer to provide or
37 make available to the department any information the department
38 determines is reasonably necessary to enforce the provisions of this act,
39 the Kansas retailers' sales tax act and the Kansas compensating tax act.
40 Such information may include documentation of sales made by
41 marketplace sellers through the marketplace facilitator's physical or
42 electronic marketplace. The department may prescribe by rules and
43 regulations the form and manner for providing this information.

1 (b) A marketplace facilitator is relieved of liability under this act for
2 failure to collect the correct amount of tax to the extent that the
3 marketplace facilitator can show to the department's satisfaction that the
4 error was due to incorrect information given to the marketplace facilitator
5 by the marketplace seller, unless the marketplace facilitator and
6 marketplace seller are affiliated persons. When the marketplace facilitator
7 is relieved of liability under this subsection, the marketplace seller is
8 solely liable for the amount of uncollected tax due.

9 (c) Except as otherwise provided in this section, a marketplace seller
10 obligated to collect the taxes imposed under this act is not required to
11 collect such taxes on all taxable retail sales through a marketplace operated
12 by a marketplace facilitator if the marketplace seller has obtained
13 documentation from the marketplace facilitator indicating that the
14 marketplace facilitator is registered with the department and will collect all
15 applicable taxes due under this act, the Kansas retailers' sales tax act or the
16 Kansas compensating tax act on all taxable retail sales made on behalf of
17 the marketplace seller through the marketplace operated by the
18 marketplace facilitator. The documentation required by this subsection
19 must be provided in a form and manner prescribed by or acceptable to the
20 department. This subsection does not relieve a marketplace seller from
21 liability for uncollected taxes due under this act, the Kansas retailers' sales
22 tax act or the Kansas compensating tax act resulting from a marketplace
23 facilitator's failure to collect the proper amount of tax due when the error
24 was due to incorrect information given to the marketplace facilitator by the
25 marketplace seller.

26 (d) No class action may be brought against a marketplace facilitator
27 in any court of this state on behalf of purchasers arising from or in any
28 way related to an overpayment of sales or use tax collected by the
29 marketplace facilitator or referrer, regardless of whether that claim is
30 characterized as a tax refund claim. Nothing in this subsection affects a
31 purchaser's right to seek a refund from the department as provided by the
32 Kansas retailers' sales tax act.

33 New Sec. 5. (a) Except as otherwise provided in this act, taxes
34 imposed under the Kansas retailers' sales tax act or the Kansas
35 compensating tax act and payable by a consumer directly to the
36 department are due, on returns prescribed by the department, as prescribed
37 by those acts.

38 (b) Nothing in this act affects the obligation of any purchaser from
39 this state to remit retail sales or use tax as to any applicable taxable
40 transaction in which the seller does not collect and remit retail sales or use
41 tax.

42 New Sec. 6. (a) A marketplace facilitator that is subject to section 3,
43 and amendments thereto, and is complying with the requirements of the

1 Kansas retailers' sales tax act or the Kansas compensating tax act may only
2 seek a recovery of retail sales and use taxes, penalties or interest from the
3 department by following the recovery procedures established under the
4 Kansas retailers' sales tax act. However, no claim may be granted on the
5 basis that the taxpayer lacked a physical presence in this state and
6 complied with the tax collection provisions of the Kansas retailers' sales
7 tax act or the Kansas compensating tax act voluntarily.

8 (b) Neither the state nor any seller who collects and remits retail sales
9 or use tax under section 3, and amendments thereto, is liable to a purchaser
10 that claims that the retail sales or use tax has been over-collected because a
11 provision of this act is later deemed unlawful.

12 New Sec. 7. (a) **On and after January 1, 2019**, a retailer with a
13 principal place of business located outside the state that is not otherwise
14 subject to Kansas sales or use tax is required to register, collect and remit
15 Kansas sales or use tax upon the taxed gross receipts received with respect
16 to its Kansas sales of tangible personal property or services if such retailer
17 has engaged or is engaged in the following contact:

18 (1) Property interests in, or the use of, in-state software, including,
19 but not limited to, applications or cookies that are distributed to or stored
20 on the computers or other physical communications devices of the
21 retailer's in-state customers, and may enable the retailer's use of such
22 physical devices;

23 (2) contracts or other relationships with content distribution networks
24 resulting in the use of in-state servers and other computer hardware or the
25 receipt of server- or hardware-related in-state services; or

26 (3) contracts or other relationships with online marketplace
27 facilitators or delivery companies resulting in in-state services, including,
28 but not limited to, payment processing and order fulfillment, order
29 management, return processing or otherwise assisting with returns and
30 exchanges, the preparation of sales reports or other analytics and consumer
31 access to customer service.

32 (b) Notwithstanding the provisions of subsection (a), registration,
33 collection and remittance under subsection (a) by the retailer shall only be
34 required if:

35 (1) For the period beginning on July 1, 2018, through December 31,
36 2018, during the preceding 12 months, the retailer had in excess of
37 \$50,000 in Kansas sales from transactions completed over the internet and
38 made sales resulting in a delivery into Kansas in 100 or more transactions;
39 or

40 (2) for each calendar year beginning with 2019, during the preceding
41 calendar year the retailer had in excess of \$50,000 in Kansas sales from
42 transactions completed over the internet and made sales resulting in a
43 delivery into Kansas in 100 or more transactions.

1 (c) This section does not apply to a retailer under the following
2 circumstances:

3 (1) The retailer does not have any of the contacts referenced in
4 subsection (a); or

5 (2) the retailer's only contacts with Kansas are in-state customers who
6 access a site on the internet retailer's out-of-state computer server.

7 (d) A provider of internet access service or online services is not
8 deemed to be the agent of a retailer for purposes of determining the
9 application of this section to such retailer solely as a result of:

10 (1) The display of such retailer's information or content on the
11 provider's out-of-state computer server; or

12 (2) the processing of orders through the provider's out-of-state
13 computer server.

14 (e) Nothing in this section shall be construed to relieve or otherwise
15 limit an internet retailer's obligation to register, collect and remit Kansas
16 sales or use tax if it has sufficient nexus with Kansas under applicable law
17 even if it has a principal place of business located outside the state and
18 would not otherwise be subjected to tax other than by reason of the
19 contacts referenced in subsection (a).

20 (f) Nothing in this section shall be construed to relieve or limit a non-
21 internet retailer's obligation to register, collect and remit Kansas sales or
22 use tax if it has the contacts specified in subsection (a).

23 New Sec. 8. The provisions of K.S.A. 79-3601 through 79-3696, and
24 amendments thereto, relating to enforcement, collection and
25 administration, insofar as practicable, shall have full force and effect with
26 respect to taxes imposed under the provisions of the Kansas ~~remote sellers~~
27 **main street** parity act.

28 New Sec. 9. The secretary of revenue shall adopt such rules and
29 regulations as deemed necessary for the administration of sections 1
30 through 8, and amendments thereto.

31 New Sec. 10. If any provision of the Kansas main street parity act or
32 the application thereof to any person or circumstance is held invalid, the
33 invalidity shall not affect other provisions or applications of the act that
34 can be given effect without the invalid provision or application, and to this
35 end the provisions of this act are severable.

36 New Sec. 11. If any provision of this act or the application thereof to
37 any person or circumstance is held invalid, the invalidity shall not affect
38 other provisions or applications of the act that can be given effect without
39 the invalid provision or application, and to this end the provisions of this
40 act are severable.

41 Sec. 12. K.S.A. 2017 Supp. 79-3602 is hereby amended to read as
42 follows: 79-3602. Except as otherwise provided, as used in the Kansas
43 retailers' sales tax act:

1 (a) "Agent" means a person appointed by a seller to represent the
2 seller before the member states.

3 (b) "Agreement" means the multistate agreement entitled the
4 streamlined sales and use tax agreement approved by the streamlined sales
5 tax implementing states at Chicago, Illinois on November 12, 2002.

6 (c) "Alcoholic beverages" means beverages that are suitable for
7 human consumption and contain 0.05% or more of alcohol by volume.

8 (d) *"Ancillary services" means services that are associated with or*
9 *incidental to the provision of telecommunications services, including, but*
10 *not limited to, detailed communications billing, directory assistance,*
11 *vertical service and voice mail services.*

12 (e) "Certified automated system (CAS)" means software certified
13 under the agreement to calculate the tax imposed by each jurisdiction on a
14 transaction, determine the amount of tax to remit to the appropriate state
15 and maintain a record of the transaction.

16 ~~(e)~~(f) "Certified service provider (CSP)" means an agent certified
17 under the agreement to perform all the seller's sales and use tax functions,
18 other than the seller's obligation to remit tax on its own purchases.

19 ~~(f)~~(g) "Computer" means an electronic device that accepts
20 information in digital or similar form and manipulates it for a result based
21 on a sequence of instructions.

22 ~~(g)~~(h) "Computer software" means a set of coded instructions
23 designed to cause a computer or automatic data processing equipment to
24 perform a task.

25 (i) *"Conference bridging service" means an ancillary service that*
26 *links two or more participants of an audio or video conference call and*
27 *may include the provision of a telephone number. "Conference bridging*
28 *service" does not include the telecommunications services used to reach*
29 *the conference bridge.*

30 ~~(h)~~(j) "Delivered electronically" means delivered to the purchaser by
31 means other than tangible storage media.

32 ~~(j)~~(k) "Delivery charges" means charges by the seller of personal
33 property or services for preparation and delivery to a location designated
34 by the purchaser of personal property or services including, but not limited
35 to, transportation, shipping, postage, handling, crating and packing.
36 Delivery charges shall not include charges for delivery of direct mail if the
37 charges are separately stated on an invoice or similar billing document
38 given to the purchaser.

39 (l) *"Detailed telecommunications billing service" means an ancillary*
40 *service of separately stating information pertaining to individual calls on*
41 *a customer's billing statement.*

42 (m) *"Digital audio-visual works" means a series of related images*
43 *that, when shown in succession, impart an impression of motion, with*

1 accompanying sounds, if any, and includes, but is not limited to, movies,
2 motion pictures, musical videos, news and entertainment programs, and
3 live events. "Digital audio-visual works" shall not include video greeting
4 cards, video games or electronic games.

5 (n) "Digital audio works" means works that result from the fixation of
6 a series of musical, spoken or other sounds and includes, but is not limited
7 to, ringtones, recorded or live songs, music, readings of books or other
8 written materials, speeches or other sound recordings. "Digital audio
9 works" shall not include audio greeting cards sent by electronic mail.

10 (o) "Digital books" means works that are generally recognized in the
11 ordinary and usual sense as books, including any literary work expressed
12 in words, numbers or other verbal or numerical symbols or indicia if the
13 literary work is generally recognized in the ordinary or usual sense as a
14 book. "Digital books" shall not include digital audio-visual works, digital
15 audio works, periodicals, magazines, newspapers or other news or
16 information products, chat rooms or web logs.

17 (p) (1) "Digital code" means a code that provides a purchaser with a
18 right to obtain one or more types of digital property. A "digital code" may
19 be obtained by any means, including electronic mail messaging or by
20 tangible means, regardless of the code's designation as a song code, video
21 code or book code.

22 (2) "Digital code" shall not include a code that represents:

23 (A) A stored monetary value that is deducted from a total as it is used
24 by the purchaser; or

25 (B) a redeemable card, gift card or gift certificate that entitles the
26 holder to select specific types of digital property.

27 (q) "Digital property" means media or products that are encoded in
28 machine-readable formats and includes, but is not limited to, any of the
29 following that are transferred electronically:

30 (1) Digital audio-visual works;

31 (2) digital audio works;

32 (3) digital books;

33 (4) artwork;

34 (5) digital photographs and pictures;

35 (6) periodicals;

36 (7) newspapers;

37 (8) magazines;

38 (9) video, audio and other greeting cards;

39 (10) graphics;

40 (11) templates;

41 (12) patterns;

42 (13) desktop applications;

43 (14) mobile applications;

- 1 (15) *web applications;*
- 2 (16) *cloud-based applications;*
- 3 (17) *native applications;*
- 4 (18) *online games;*
- 5 (19) *video games;*
- 6 (20) *electronic games; or*
- 7 (21) *any digital code related to any of the items listed above.*

8 ~~(j)~~(r) "Direct mail" means printed material delivered or distributed by
9 United States mail or other delivery services to a mass audience or to
10 addressees on a mailing list provided by the purchaser or at the direction of
11 the purchaser when the cost of the items are not billed directly to the
12 recipients. Direct mail includes tangible personal property supplied
13 directly or indirectly by the purchaser to the direct mail seller for inclusion
14 in the package containing the printed material. Direct mail does not
15 include multiple items of printed material delivered to a single address.

16 ~~(k)~~(s) "Director" means the state director of taxation.

17 (t) "*Directory assistance*" means an ancillary service of providing
18 telephone number information or address information, or both.

19 ~~(h)~~(u) "Educational institution" means any nonprofit school, college
20 and university that offers education at a level above the 12th grade, and
21 conducts regular classes and courses of study required for accreditation by,
22 or membership in, the higher learning commission, the state board of
23 education, or that otherwise qualify as an "educational institution," as
24 defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall
25 include: (1) A group of educational institutions that operates exclusively
26 for an educational purpose; (2) nonprofit endowment associations and
27 foundations organized and operated exclusively to receive, hold, invest
28 and administer moneys and property as a permanent fund for the support
29 and sole benefit of an educational institution; (3) nonprofit trusts,
30 foundations and other entities organized and operated principally to hold
31 and own receipts from intercollegiate sporting events and to disburse such
32 receipts, as well as grants and gifts, in the interest of collegiate and
33 intercollegiate athletic programs for the support and sole benefit of an
34 educational institution; and (4) nonprofit trusts, foundations and other
35 entities organized and operated for the primary purpose of encouraging,
36 fostering and conducting scholarly investigations and industrial and other
37 types of research for the support and sole benefit of an educational
38 institution.

39 ~~(m)~~(v) "Electronic" means relating to technology having electrical,
40 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

41 (w) "*Entity-based exemption*" means an exemption based on who
42 purchases the product or who sells the product. An exemption that is
43 available to all individuals shall not be considered an entity-based

1 *exemption.*

2 ~~(h)~~(x) "Food and food ingredients" means substances, whether in
3 liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold
4 for ingestion or chewing by humans and are consumed for their taste or
5 nutritional value. "Food and food ingredients" does not include alcoholic
6 beverages or tobacco.

7 ~~(i)~~(y) "Gross receipts" means the total selling price or the amount
8 received as defined in this act, in money, credits, property or other
9 consideration valued in money from sales at retail within this state; and
10 embraced within the provisions of this act. The taxpayer, may take credit
11 in the report of gross receipts for: (1) An amount equal to the selling price
12 of property returned by the purchaser when the full sale price thereof,
13 including the tax collected, is refunded in cash or by credit; and (2) an
14 amount equal to the allowance given for the trade-in of property.

15 ~~(j)~~(z) "Ingredient or component part" means tangible personal
16 property which is necessary or essential to, and which is actually used in
17 and becomes an integral and material part of tangible personal property or
18 services produced, manufactured or compounded for sale by the producer,
19 manufacturer or compounder in its regular course of business. The
20 following items of tangible personal property are hereby declared to be
21 ingredients or component parts, but the listing of such property shall not be
22 deemed to be exclusive nor shall such listing be construed to be a
23 restriction upon, or an indication of, the type or types of property to be
24 included within the definition of "ingredient or component part" as herein
25 set forth:

26 (1) Containers, labels and shipping cases used in the distribution of
27 property produced, manufactured or compounded for sale which are not to
28 be returned to the producer, manufacturer or compounder for reuse.

29 (2) Containers, labels, shipping cases, paper bags, drinking straws,
30 paper plates, paper cups, twine and wrapping paper used in the distribution
31 and sale of property taxable under the provisions of this act by wholesalers
32 and retailers and which is not to be returned to such wholesaler or retailer
33 for reuse.

34 (3) Seeds and seedlings for the production of plants and plant
35 products produced for resale.

36 (4) Paper and ink used in the publication of newspapers.

37 (5) Fertilizer used in the production of plants and plant products
38 produced for resale.

39 (6) Feed for animals, fowl and aquatic plants and animals, the
40 primary purpose of which is use in agriculture or aquaculture, as defined in
41 K.S.A. 47-1901, and amendments thereto, the production of food for
42 human consumption, the production of animal, dairy, poultry or aquatic
43 plant and animal products, fiber, fur, or the production of offspring for use

1 for any such purpose or purposes.

2 (aa) *"International"* means a telecommunications service that
3 originates or terminates in the United States and terminates or originates
4 outside the United States, respectively. The United States includes the
5 District of Columbia or a U.S. territory or possession.

6 (bb) *"Interstate"* means a telecommunications service that originates
7 in one United States state, or a United States territory or possession, and
8 terminates in a different United States state or a United States territory or
9 possession.

10 (cc) *"Intrastate"* means a telecommunications service that originates
11 in one United States state or a United States territory or possession, and
12 terminates in the same United States state or a United States territory or
13 possession.

14 ~~(d)~~(dd) *"Isolated or occasional sale"* means the nonrecurring sale of
15 tangible personal property, or services taxable hereunder by a person not
16 engaged at the time of such sale in the business of selling such property or
17 services. Any religious organization which makes a nonrecurring sale of
18 tangible personal property acquired for the purpose of resale shall be
19 deemed to be not engaged at the time of such sale in the business of selling
20 such property. Such term shall include: (1) Any sale by a bank, savings and
21 loan institution, credit union or any finance company licensed under the
22 provisions of the Kansas uniform consumer credit code of tangible
23 personal property which has been repossessed by any such entity; and (2)
24 any sale of tangible personal property made by an auctioneer or agent on
25 behalf of not more than two principals or households if such sale is
26 nonrecurring and any such principal or household is not engaged at the
27 time of such sale in the business of selling tangible personal property.

28 ~~(e)~~(ee) *"Lease or rental"* means any transfer of possession or control
29 of tangible personal property for a fixed or indeterminate term for
30 consideration. A lease or rental may include future options to purchase or
31 extend.

32 (1) Lease or rental does not include: (A) A transfer of possession or
33 control of property under a security agreement or deferred payment plan
34 that requires the transfer of title upon completion of the required
35 payments;

36 (B) a transfer of possession or control of property under an agreement
37 that requires the transfer of title upon completion of required payments and
38 payment of an option price does not exceed the greater of \$100 or 1% of
39 the total required payments; or

40 (C) providing tangible personal property along with an operator for a
41 fixed or indeterminate period of time. A condition of this exclusion is that
42 the operator is necessary for the equipment to perform as designed. For the
43 purpose of this subsection, an operator must do more than maintain,

1 inspect or set-up the tangible personal property.

2 (2) Lease or rental does include agreements covering motor vehicles
3 and trailers where the amount of consideration may be increased or
4 decreased by reference to the amount realized upon sale or disposition of
5 the property as defined in 26 U.S.C. § 7701(h)(1).

6 (3) This definition shall be used for sales and use tax purposes
7 regardless if a transaction is characterized as a lease or rental under
8 generally accepted accounting principles, the internal revenue code, the
9 uniform commercial code, K.S.A. 84-1-101 et seq., and amendments
10 thereto, or other provisions of federal, state or local law.

11 (4) This definition will be applied only prospectively from the
12 effective date of this act and will have no retroactive impact on existing
13 leases or rentals.

14 ~~(s)~~(ff) "Load and leave" means delivery to the purchaser by use of a
15 tangible storage media where the tangible storage media is not physically
16 transferred to the purchaser.

17 ~~(t)~~(gg) "Member state" means a state that has entered in the
18 agreement, pursuant to provisions of article VIII of the agreement.

19 ~~(u)~~(hh) "Model 1 seller" means a seller that has selected a CSP as its
20 agent to perform all the seller's sales and use tax functions, other than the
21 seller's obligation to remit tax on its own purchases.

22 ~~(v)~~(ii) "Model 2 seller" means a seller that has selected a CAS to
23 perform part of its sales and use tax functions, but retains responsibility for
24 remitting the tax.

25 ~~(w)~~(jj) "Model 3 seller" means a seller that has sales in at least five
26 member states, has total annual sales revenue of at least \$500,000,000, has
27 a proprietary system that calculates the amount of tax due each jurisdiction
28 and has entered into a performance agreement with the member states that
29 establishes a tax performance standard for the seller. As used in this
30 subsection a seller includes an affiliated group of sellers using the same
31 proprietary system.

32 ~~(x)~~(kk) "Municipal corporation" means any city incorporated under
33 the laws of Kansas.

34 ~~(y)~~(ll) "Nonprofit blood bank" means any nonprofit place,
35 organization, institution or establishment that is operated wholly or in part
36 for the purpose of obtaining, storing, processing, preparing for transfusing,
37 furnishing, donating or distributing human blood or parts or fractions of
38 single blood units or products derived from single blood units, whether or
39 not any remuneration is paid therefor, or whether such procedures are done
40 for direct therapeutic use or for storage for future use of such products.

41 *(mm) "Over-the-counter drug" means a drug that contains a label*
42 *that identifies the product as a drug as required by 21 C.F.R. § 201.66.*
43 *The over-the-counter drug label includes: (1) A drug facts panel; or (2) a*

1 *statement of the active ingredients with a list of those ingredients*
2 *contained in the compound, substance or preparation. "Over-the-counter*
3 *drugs" do not include grooming and hygiene products such as soaps,*
4 *cleaning solutions, shampoo, toothpaste, antiperspirants and suntan*
5 *lotions and screens.*

6 ~~(z)~~(nn) "Persons" means any individual, firm, copartnership, joint
7 adventure, association, corporation, estate or trust, receiver or trustee, or
8 any group or combination acting as a unit, and the plural as well as the
9 singular number; and shall specifically mean any city or other political
10 subdivision of the state of Kansas engaging in a business or providing a
11 service specifically taxable under the provisions of this act.

12 ~~(aa)~~ (oo) "Political subdivision" means any municipality, agency or
13 subdivision of the state which is, or shall hereafter be, authorized to levy
14 taxes upon tangible property within the state or which certifies a levy to a
15 municipality, agency or subdivision of the state which is, or shall hereafter
16 be, authorized to levy taxes upon tangible property within the state. Such
17 term also shall include any public building commission, housing, airport,
18 port, metropolitan transit or similar authority established pursuant to law
19 and the horsethief reservoir benefit district established pursuant to K.S.A.
20 82a-2201, and amendments thereto.

21 ~~(bb)~~ (pp) "Prescription" means an order, formula or recipe issued in
22 any form of oral, written, electronic or other means of transmission by a
23 duly licensed practitioner authorized by the laws of this state.

24 ~~(ee)~~ (qq) "Prewritten computer software" means computer software,
25 including prewritten upgrades, which is not designed and developed by the
26 author or other creator to the specifications of a specific purchaser. The
27 combining of two or more prewritten computer software programs or
28 prewritten portions thereof does not cause the combination to be other than
29 prewritten computer software. Prewritten computer software includes
30 software designed and developed by the author or other creator to the
31 specifications of a specific purchaser when it is sold to a person other than
32 the purchaser. Where a person modifies or enhances computer software of
33 which the person is not the author or creator, the person shall be deemed to
34 be the author or creator only of such person's modifications or
35 enhancements. Prewritten computer software or a prewritten portion
36 thereof that is modified or enhanced to any degree, where such
37 modification or enhancement is designed and developed to the
38 specifications of a specific purchaser, remains prewritten computer
39 software, except that where there is a reasonable, separately stated charge
40 or an invoice or other statement of the price given to the purchaser for
41 such modification or enhancement, such modification or enhancement
42 shall not constitute prewritten computer software.

43 ~~(dd)~~ (rr) "Property which is consumed" means tangible personal

1 property which is essential or necessary to and which is used in the actual
2 process of and consumed, depleted or dissipated within one year in: (1)
3 The production, manufacture, processing, mining, drilling, refining or
4 compounding of tangible personal property; (2) the providing of services;
5 (3) the irrigation of crops, for sale in the regular course of business; or (4)
6 the storage or processing of grain by a public grain warehouse or other
7 grain storage facility, and which is not reusable for such purpose. The
8 following is a listing of tangible personal property, included by way of
9 illustration but not of limitation, which qualifies as property which is
10 consumed:

11 (A) Insecticides, herbicides, germicides, pesticides, fungicides,
12 fumigants, antibiotics, biologicals, pharmaceuticals, vitamins and
13 chemicals for use in commercial or agricultural production, processing or
14 storage of fruit, vegetables, feeds, seeds, grains, animals or animal
15 products whether fed, injected, applied, combined with or otherwise used;
16 (B) electricity, gas and water; and
17 (C) petroleum products, lubricants, chemicals, solvents, reagents and
18 catalysts.

19 ~~(ee)~~ (ss) "Purchase price" applies to the measure subject to use tax
20 and has the same meaning as sales price.

21 ~~(ff)~~ (tt) "Purchaser" means a person to whom a sale of personal
22 property is made or to whom a service is furnished.

23 ~~(gg)~~ (uu) "Quasi-municipal corporation" means any county, township,
24 school district, drainage district or any other governmental subdivision in
25 the state of Kansas having authority to receive or hold moneys or funds.

26 ~~(hh)~~ (vv) "Registered under this agreement" means registration by a
27 seller with the member states under the central registration system
28 provided in article IV of the agreement.

29 ~~(ii)~~ (ww) "Retailer" means a seller regularly engaged in the business
30 of selling, leasing or renting tangible personal property at retail or
31 furnishing electrical energy, gas, water, services or entertainment, and
32 selling only to the user or consumer and not for resale.

33 ~~(jj)~~ (xx) "Retail sale" or "sale at retail" means any sale, lease or rental
34 for any purpose other than for resale, sublease or subrent.

35 ~~(kk)~~ (yy) "Sale" or "sales" means the exchange of tangible personal
36 property, as well as the sale thereof for money, and every transaction,
37 conditional or otherwise, for a consideration, constituting a sale, including
38 the sale or furnishing of electrical energy, gas, water, services or
39 entertainment taxable under the terms of this act and including, except as
40 provided in the following provision, the sale of the use of tangible personal
41 property by way of a lease, license to use or the rental thereof regardless of
42 the method by which the title, possession or right to use the tangible
43 personal property is transferred. The term "sale" or "sales" shall not mean

1 the sale of the use of any tangible personal property used as a dwelling by
2 way of a lease or rental thereof for a term of more than 28 consecutive
3 days.

4 (H) (zz) (1) "Sales or selling price" applies to the measure subject to
5 sales tax and means the total amount of consideration, including cash,
6 credit, property and services, for which personal property or services are
7 sold, leased or rented, valued in money, whether received in money or
8 otherwise, without any deduction for the following:

9 (A) The seller's cost of the property sold;

10 (B) the cost of materials used, labor or service cost, interest, losses,
11 all costs of transportation to the seller, all taxes imposed on the seller and
12 any other expense of the seller;

13 (C) charges by the seller for any services necessary to complete the
14 sale, other than delivery and installation charges;

15 (D) delivery charges; and

16 (E) installation charges.

17 (2) "Sales or selling price" includes consideration received by the
18 seller from third parties if:

19 (A) The seller actually receives consideration from a party other than
20 the purchaser and the consideration is directly related to a price reduction
21 or discount on the sale;

22 (B) the seller has an obligation to pass the price reduction or discount
23 through to the purchaser;

24 (C) the amount of the consideration attributable to the sale is fixed
25 and determinable by the seller at the time of the sale of the item to the
26 purchaser; and

27 (D) one of the following criteria is met:

28 (i) The purchaser presents a coupon, certificate or other
29 documentation to the seller to claim a price reduction or discount where
30 the coupon, certificate or documentation is authorized, distributed or
31 granted by a third party with the understanding that the third party will
32 reimburse any seller to whom the coupon, certificate or documentation is
33 presented;

34 (ii) the purchaser identifies to the seller that the purchaser is a
35 member of a group or organization entitled to a price reduction or
36 discount. A preferred customer card that is available to any patron does not
37 constitute membership in such a group; or

38 (iii) the price reduction or discount is identified as a third party price
39 reduction or discount on the invoice received by the purchaser or on a
40 coupon, certificate or other documentation presented by the purchaser.

41 (3) "Sales or selling price" shall not include:

42 (A) Discounts, including cash, term or coupons that are not
43 reimbursed by a third party that are allowed by a seller and taken by a

1 purchaser on a sale;

2 (B) interest, financing and carrying charges from credit extended on
3 the sale of personal property or services, if the amount is separately stated
4 on the invoice, bill of sale or similar document given to the purchaser;

5 (C) any taxes legally imposed directly on the consumer that are
6 separately stated on the invoice, bill of sale or similar document given to
7 the purchaser;

8 (D) the amount equal to the allowance given for the trade-in of
9 property, if separately stated on the invoice, billing or similar document
10 given to the purchaser; and

11 (E) commencing on July 1, 2006, and ending on June 30, 2009, cash
12 rebates granted by a manufacturer to a purchaser or lessee of a new motor
13 vehicle if paid directly to the retailer as a result of the original sale.

14 ~~(mm)~~ (aaa) "Seller" means a person making sales, leases or rentals of
15 personal property or services.

16 ~~(nn)~~ (bbb) "Service" means those services described in and taxed
17 under the provisions of K.S.A. 79-3603, and amendments thereto.

18 ~~(oo)~~ (ccc) "Sourcing rules" means the rules set forth in K.S.A. 2017
19 Supp. 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and
20 amendments thereto, which shall apply to identify and determine the state
21 and local taxing jurisdiction sales or use taxes to pay, or collect and remit
22 on a particular retail sale.

23 ~~(pp)~~ (ddd) "Tangible personal property" means personal property that
24 can be seen, weighed, measured, felt or touched, or that is in any other
25 manner perceptible to the senses. Tangible personal property includes
26 electricity, water, gas, steam and prewritten computer software.

27 ~~(qq)~~ (eee) "Taxpayer" means any person obligated to account to the
28 director for taxes collected under the terms of this act.

29 *(fff) "Telecommunications service" means the electronic*
30 *transmission, conveyance or routing of voice, data, audio, video or any*
31 *other information or signals to a point, or between or among points. The*
32 *term "telecommunications service" includes such transmission,*
33 *conveyance or routing in which computer processing applications are*
34 *used to act on the form, code or protocol of the content for purposes of*
35 *transmissions, conveyance or routing without regard to whether such*
36 *service is referred to as voice over internet protocol service or is classified*
37 *by the federal communications commission as enhanced or value added.*
38 *"Telecommunications service" does not include:*

39 *(1) Data processing and information services that allow data to be*
40 *generated, acquired, stored, processed or retrieved and delivered by an*
41 *electronic transmission to a purchaser when such purchaser's primary*
42 *purpose for the underlying transaction is the processed data or*
43 *information;*

1 (2) installation or maintenance of wiring or equipment on a
2 customer's premises;

3 (3) tangible personal property;

4 (4) advertising, including, but not limited to, directory advertising;

5 (5) billing and collection services provided to third parties;

6 (6) internet access service;

7 (7) radio and television audio and video programming services,
8 regardless of the medium, including the furnishing of transmission,
9 conveyance and routing of such services by the programming service
10 provider. Radio and television audio and video programming services
11 shall include, but not be limited to, cable service as defined in 47 U.S.C. §
12 522(6) and audio and video programming services delivered by
13 commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;

14 (8) ancillary services; or

15 (9) digital products delivered electronically, including, but not limited
16 to, software, music, video, reading materials or ring tones.

17 ~~(gg)~~ (ggg) "Tobacco" means cigarettes, cigars, chewing or pipe
18 tobacco or any other item that contains tobacco.

19 ~~(ss)~~—"Entity-based exemption" means an exemption based on who
20 purchases the product or who sells the product. An exemption that is
21 available to all individuals shall not be considered an entity-based
22 exemption.

23 ~~(tt)~~—"Over-the-counter drug" means a drug that contains a label that
24 identifies the product as a drug as required by 21 C.F.R. § 201.66. The
25 over-the-counter drug label includes: (1) A drug facts panel; or (2) a
26 statement of the active ingredients with a list of those ingredients
27 contained in the compound, substance or preparation. Over-the-counter
28 drugs do not include grooming and hygiene products such as soaps,
29 cleaning solutions, shampoo, toothpaste, antiperspirants and sun tan
30 lotions and screens.

31 ~~(uu)~~—"Ancillary services" means services that are associated with or
32 incidental to the provision of telecommunications services, including, but
33 not limited to, detailed telecommunications billing, directory assistance,
34 vertical service and voice mail services.

35 ~~(vv)~~—"Conference bridging service" means an ancillary service that
36 links two or more participants of an audio or video conference call and
37 may include the provision of a telephone number. Conference bridging
38 service does not include the telecommunications services used to reach the
39 conference bridge.

40 ~~(ww)~~—"Detailed telecommunications billing service" means an
41 ancillary service of separately stating information pertaining to individual
42 calls on a customer's billing statement.

43 ~~(xx)~~—"Directory assistance" means an ancillary service of providing

1 ~~telephone number information or address information, or both.~~

2 *(hhh) "Value-added non-voice data service" means a service that*
3 *otherwise meets the definition of telecommunications services in which*
4 *computer processing applications are used to act on the form, content,*
5 *code or protocol of the information or data primarily for a purpose other*
6 *than transmission, conveyance or routing.*

7 ~~(yy) (iii) "Vertical service" means an ancillary service that is offered~~
8 ~~in connection with one or more telecommunications services, which offers~~
9 ~~advanced calling features that allow customers to identify callers and to~~
10 ~~manage multiple calls and call connections, including conference bridging~~
11 ~~services.~~

12 ~~(zz) (jjj) "Voice mail service" means an ancillary service that enables~~
13 ~~the customer to store, send or receive recorded messages. Voice mail~~
14 ~~service does not include any vertical services that the customer may be~~
15 ~~required to have in order to utilize the voice mail service.~~

16 ~~(aaa) "Telecommunications service" means the electronic~~
17 ~~transmission, conveyance or routing of voice, data, audio, video or any~~
18 ~~other information or signals to a point, or between or among points. The~~
19 ~~term telecommunications service includes such transmission, conveyance~~
20 ~~or routing in which computer processing applications are used to act on the~~
21 ~~form, code or protocol of the content for purposes of transmissions,~~
22 ~~conveyance or routing without regard to whether such service is referred to~~
23 ~~as voice over internet protocol services or is classified by the federal~~
24 ~~communications commission as enhanced or value added.~~
25 ~~Telecommunications service does not include:~~

26 ~~(1) Data processing and information services that allow data to be~~
27 ~~generated, acquired, stored, processed or retrieved and delivered by an~~
28 ~~electronic transmission to a purchaser where such purchaser's primary~~
29 ~~purpose for the underlying transaction is the processed data or~~
30 ~~information;~~

31 ~~(2) installation or maintenance of wiring or equipment on a~~
32 ~~customer's premises;~~

33 ~~(3) tangible personal property;~~

34 ~~(4) advertising, including, but not limited to, directory advertising;~~

35 ~~(5) billing and collection services provided to third parties;~~

36 ~~(6) internet access service;~~

37 ~~(7) radio and television audio and video programming services,~~
38 ~~regardless of the medium, including the furnishing of transmission,~~
39 ~~conveyance and routing of such services by the programming service~~
40 ~~provider. Radio and television audio and video programming services shall~~
41 ~~include, but not be limited to, cable service as defined in 47 U.S.C. §~~
42 ~~522(6) and audio and video programming services delivered by~~
43 ~~commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;~~

1 ~~(8) ancillary services; or~~

2 ~~(9) digital products delivered electronically, including, but not limited~~
3 ~~to, software, music, video, reading materials or ring tones.~~

4 ~~(bbb) (lll) "800 service" means a telecommunications service that~~
5 ~~allows a caller to dial a toll-free number without incurring a charge for the~~
6 ~~call. The service is typically marketed under the name 800, 855, 866, 877~~
7 ~~and 888 toll-free calling, and any subsequent numbers designated by the~~
8 ~~federal communications commission.~~

9 ~~(eee) (mmm) "900 service" means an inbound toll~~
10 ~~telecommunications service purchased by a subscriber that allows the~~
11 ~~subscriber's customers to call in to the subscriber's prerecorded~~
12 ~~announcement or live service. 900 service does not include the charge for~~
13 ~~collection services provided by the seller of the telecommunications~~
14 ~~services to the subscriber, or service or product sold by the subscriber to~~
15 ~~the subscriber's customer. The service is typically marketed under the~~
16 ~~name 900 service, and any subsequent numbers designated by the federal~~
17 ~~communications commission.~~

18 ~~(ddd) "Value-added non-voice data service" means a service that~~
19 ~~otherwise meets the definition of telecommunications services in which~~
20 ~~computer processing applications are used to act on the form, content,~~
21 ~~code or protocol of the information or data primarily for a purpose other~~
22 ~~than transmission, conveyance or routing.~~

23 ~~(eee) "International" means a telecommunications service that~~
24 ~~originates or terminates in the United States and terminates or originates~~
25 ~~outside the United States, respectively. United States includes the District~~
26 ~~of Columbia or a U.S. territory or possession.~~

27 ~~(fff) "Interstate" means a telecommunications service that originates~~
28 ~~in one United States state, or a United States territory or possession, and~~
29 ~~terminates in a different United States state or a United States territory or~~
30 ~~possession.~~

31 ~~(ggg) "Intrastate" means a telecommunications service that originates~~
32 ~~in one United States state or a United States territory or possession, and~~
33 ~~terminates in the same United States state or a United States territory or~~
34 ~~possession.~~

35 Sec. 13. K.S.A. 2017 Supp. 79-3603 is hereby amended to read as
36 follows: 79-3603. For the privilege of engaging in the business of selling
37 tangible personal property at retail in this state or rendering or furnishing
38 any of the services taxable under this act, there is hereby levied and there
39 shall be collected and paid a tax at the rate of 6.15%, and commencing
40 July 1, 2015, at the rate of 6.5%. Within a redevelopment district
41 established pursuant to K.S.A. 74-8921, and amendments thereto, there is
42 hereby levied and there shall be collected and paid an additional tax at the
43 rate of 2% until the earlier of the date the bonds issued to finance or

1 refinance the redevelopment project have been paid in full or the final
2 scheduled maturity of the first series of bonds issued to finance any part of
3 the project upon:

4 (a) The gross receipts received from the sale of tangible personal
5 property at retail within this state;

6 (b) the gross receipts from intrastate, interstate or international
7 telecommunications services and any ancillary services sourced to this
8 state in accordance with K.S.A. 2017 Supp. 79-3673, and amendments
9 thereto, except that telecommunications service does not include: (1) Any
10 interstate or international 800 or 900 service; (2) any interstate or
11 international private communications service as defined in K.S.A. 2017
12 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice
13 data service; (4) any telecommunication service to a provider of
14 telecommunication services which will be used to render
15 telecommunications services, including carrier access services; or (5) any
16 service or transaction defined in this section among entities classified as
17 members of an affiliated group as provided by section 1504 of the federal
18 internal revenue code of 1986, as in effect on January 1, 2001;

19 (c) the gross receipts from the sale or furnishing of gas, water,
20 electricity and heat, which sale is not otherwise exempt from taxation
21 under the provisions of this act, and whether furnished by municipally or
22 privately owned utilities, except that, on and after January 1, 2006, for
23 sales of gas, electricity and heat delivered through mains, lines or pipes to
24 residential premises for noncommercial use by the occupant of such
25 premises, and for agricultural use and also, for such use, all sales of
26 propane gas, the state rate shall be 0%; and for all sales of propane gas, LP
27 gas, coal, wood and other fuel sources for the production of heat or
28 lighting for noncommercial use of an occupant of residential premises, the
29 state rate shall be 0%, but such tax shall not be levied and collected upon
30 the gross receipts from: (1) The sale of a rural water district benefit unit;
31 (2) a water system impact fee, system enhancement fee or similar fee
32 collected by a water supplier as a condition for establishing service; or (3)
33 connection or reconnection fees collected by a water supplier;

34 (d) the gross receipts from the sale of meals or drinks furnished at any
35 private club, drinking establishment, catered event, restaurant, eating
36 house, dining car, hotel, drugstore or other place where meals or drinks are
37 regularly sold to the public;

38 (e) the gross receipts from the sale of admissions to any place
39 providing amusement, entertainment or recreation services including
40 admissions to state, county, district and local fairs, but such tax shall not
41 be levied and collected upon the gross receipts received from sales of
42 admissions to any cultural and historical event which occurs triennially;

43 (f) the gross receipts from the operation of any coin-operated device

1 dispensing or providing tangible personal property, amusement or other
2 services except laundry services, whether automatic or manually operated;

3 (g) the gross receipts from the service of renting of rooms by hotels,
4 as defined by K.S.A. 36-501, and amendments thereto, or by
5 accommodation brokers, as defined by K.S.A. 12-1692, and amendments
6 thereto, but such tax shall not be levied and collected upon the gross
7 receipts received from sales of such service to the federal government and
8 any agency, officer or employee thereof in association with the
9 performance of official government duties;

10 (h) the gross receipts from the service of renting or leasing of tangible
11 personal property except such tax shall not apply to the renting or leasing
12 of machinery, equipment or other personal property owned by a city and
13 purchased from the proceeds of industrial revenue bonds issued prior to
14 July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through
15 12-1749, and amendments thereto, and any city or lessee renting or leasing
16 such machinery, equipment or other personal property purchased with the
17 proceeds of such bonds who shall have paid a tax under the provisions of
18 this section upon sales made prior to July 1, 1973, shall be entitled to a
19 refund from the sales tax refund fund of all taxes paid thereon;

20 (i) the gross receipts from the rendering of dry cleaning, pressing,
21 dyeing and laundry services except laundry services rendered through a
22 coin-operated device whether automatic or manually operated;

23 (j) the gross receipts from the rendering of the services of washing
24 and washing and waxing of vehicles;

25 (k) the gross receipts from cable, community antennae and other
26 subscriber radio and television services;

27 (l) (1) except as otherwise provided by paragraph (2), the gross
28 receipts received from the sales of tangible personal property to all
29 contractors, subcontractors or repairmen for use by them in erecting
30 structures, or building on, or otherwise improving, altering, or repairing
31 real or personal property.

32 (2) Any such contractor, subcontractor or repairman who maintains
33 an inventory of such property both for sale at retail and for use by them for
34 the purposes described by paragraph (1) shall be deemed a retailer with
35 respect to purchases for and sales from such inventory, except that the
36 gross receipts received from any such sale, other than a sale at retail, shall
37 be equal to the total purchase price paid for such property and the tax
38 imposed thereon shall be paid by the deemed retailer;

39 (m) the gross receipts received from fees and charges by public and
40 private clubs, drinking establishments, organizations and businesses for
41 participation in sports, games and other recreational activities, but such tax
42 shall not be levied and collected upon the gross receipts received from: (1)
43 Fees and charges by any political subdivision, by any organization exempt

1 from property taxation pursuant to K.S.A. 79-201 *Ninth*, and amendments
2 thereto, or by any youth recreation organization exclusively providing
3 services to persons 18 years of age or younger which is exempt from
4 federal income taxation pursuant to section 501(c)(3) of the federal
5 internal revenue code of 1986, for participation in sports, games and other
6 recreational activities; and (2) entry fees and charges for participation in a
7 special event or tournament sanctioned by a national sporting association
8 to which spectators are charged an admission which is taxable pursuant to
9 subsection (e);

10 (n) the gross receipts received from dues charged by public and
11 private clubs, drinking establishments, organizations and businesses,
12 payment of which entitles a member to the use of facilities for recreation
13 or entertainment, but such tax shall not be levied and collected upon the
14 gross receipts received from: (1) Dues charged by any organization exempt
15 from property taxation pursuant to K.S.A. 79-201 *Eighth* and *Ninth*, and
16 amendments thereto; and (2) sales of memberships in a nonprofit
17 organization which is exempt from federal income taxation pursuant to
18 section 501(c)(3) of the federal internal revenue code of 1986, and whose
19 purpose is to support the operation of a nonprofit zoo;

20 (o) the gross receipts received from the isolated or occasional sale of
21 motor vehicles or trailers but not including: (1) The transfer of motor
22 vehicles or trailers by a person to a corporation or limited liability
23 company solely in exchange for stock securities or membership interest in
24 such corporation or limited liability company; (2) the transfer of motor
25 vehicles or trailers by one corporation or limited liability company to
26 another when all of the assets of such corporation or limited liability
27 company are transferred to such other corporation or limited liability
28 company; or (3) the sale of motor vehicles or trailers which are subject to
29 taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and
30 amendments thereto, by an immediate family member to another
31 immediate family member. For the purposes of paragraph (3), immediate
32 family member means lineal ascendants or descendants, and their spouses.
33 Any amount of sales tax paid pursuant to the Kansas retailers sales tax act
34 on the isolated or occasional sale of motor vehicles or trailers on and after
35 July 1, 2004, which the base for computing the tax was the value pursuant
36 to K.S.A. 79-5105(a), (b)(1) and (b)(2), and amendments thereto, when
37 such amount was higher than the amount of sales tax which would have
38 been paid under the law as it existed on June 30, 2004, shall be refunded to
39 the taxpayer pursuant to the procedure prescribed by this section. Such
40 refund shall be in an amount equal to the difference between the amount of
41 sales tax paid by the taxpayer and the amount of sales tax which would
42 have been paid by the taxpayer under the law as it existed on June 30,
43 2004. Each claim for a sales tax refund shall be verified and submitted not

1 later than six months from the effective date of this act to the director of
2 taxation upon forms furnished by the director and shall be accompanied by
3 any additional documentation required by the director. The director shall
4 review each claim and shall refund that amount of tax paid as provided by
5 this act. All such refunds shall be paid from the sales tax refund fund, upon
6 warrants of the director of accounts and reports pursuant to vouchers
7 approved by the director of taxation or the director's designee. No refund
8 for an amount less than \$10 shall be paid pursuant to this act. In
9 determining the base for computing the tax on such isolated or occasional
10 sale, the fair market value of any motor vehicle or trailer traded in by the
11 purchaser to the seller may be deducted from the selling price;

12 (p) the gross receipts received for the service of installing or applying
13 tangible personal property which when installed or applied is not being
14 held for sale in the regular course of business, and whether or not such
15 tangible personal property when installed or applied remains tangible
16 personal property or becomes a part of real estate, except that no tax shall
17 be imposed upon the service of installing or applying tangible personal
18 property in connection with the original construction of a building or
19 facility, the original construction, reconstruction, restoration, remodeling,
20 renovation, repair or replacement of a residence or the construction,
21 reconstruction, restoration, replacement or repair of a bridge or highway.

22 For the purposes of this subsection:

23 (1) "original construction" shall mean the first or initial construction
24 of a new building or facility. The term "original construction" shall include
25 the addition of an entire room or floor to any existing building or facility,
26 the completion of any unfinished portion of any existing building or
27 facility and the restoration, reconstruction or replacement of a building,
28 facility or utility structure damaged or destroyed by fire, flood, tornado,
29 lightning, explosion, windstorm, ice loading and attendant winds,
30 terrorism or earthquake, but such term, except with regard to a residence,
31 shall not include replacement, remodeling, restoration, renovation or
32 reconstruction under any other circumstances;

33 (2) "building" shall mean only those enclosures within which
34 individuals customarily are employed, or which are customarily used to
35 house machinery, equipment or other property, and including the land
36 improvements immediately surrounding such building;

37 (3) "facility" shall mean a mill, plant, refinery, oil or gas well, water
38 well, feedlot or any conveyance, transmission or distribution line of any
39 cooperative, nonprofit, membership corporation organized under or subject
40 to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or
41 municipal or quasi-municipal corporation, including the land
42 improvements immediately surrounding such facility;

43 (4) "residence" shall mean only those enclosures within which

1 individuals customarily live;

2 (5) "utility structure" shall mean transmission and distribution lines
3 owned by an independent transmission company or cooperative, the
4 Kansas electric transmission authority or natural gas or electric public
5 utility; and

6 (6) "windstorm" shall mean straight line winds of at least 80 miles per
7 hour as determined by a recognized meteorological reporting agency or
8 organization;

9 (q) the gross receipts received for the service of repairing, servicing,
10 altering or maintaining tangible personal property which when such
11 services are rendered is not being held for sale in the regular course of
12 business, and whether or not any tangible personal property is transferred
13 in connection therewith. The tax imposed by this subsection shall be
14 applicable to the services of repairing, servicing, altering or maintaining an
15 item of tangible personal property which has been and is fastened to,
16 connected with or built into real property;

17 (r) the gross receipts from fees or charges made under service or
18 maintenance agreement contracts for services, charges for the providing of
19 which are taxable under the provisions of subsection (p) or (q);

20 (s) on and after January 1, 2005, the gross receipts received from the
21 sale of prewritten computer software and the sale of the services of
22 modifying, altering, updating or maintaining prewritten computer
23 software, whether the prewritten computer software is installed or
24 delivered electronically by tangible storage media physically transferred to
25 the purchaser or by load and leave;

26 (t) the gross receipts received for telephone answering services;

27 (u) the gross receipts received from the sale of prepaid calling service
28 and prepaid wireless calling service as defined in K.S.A. 2017 Supp. 79-
29 3673, and amendments thereto;

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

33 (w) all sales of charitable raffle tickets in accordance with K.S.A.
34 2017 Supp. 75-5171 et seq., and amendments thereto, shall be exempt
35 from taxes imposed pursuant to this section; *and*

36 (x) **on and after January 1, 2109**, *all sales of digital property, and*
37 *subscription services thereto, regardless of whether: (1) The purchaser*
38 *has the right to permanently use the property; (2) the purchaser's right to*
39 *access or retain the property is not permanent; or (3) the purchaser's right*
40 *of use is conditioned upon continued payment.*

41 Sec. 14. K.S.A. 2017 Supp. 79-3602 and 79-3603 are hereby
42 repealed.

43 Sec. 15. This act shall take effect and be in force from and after its

- 1 publication in the statute book.