

1 **As Amended by House Committee**

2 *Session of 2001*

3
4 **HOUSE BILL No. 2292**

5
6 By Committee on Taxation

7
8 2-5

9
10 AN ACT relating to sales taxation; exempting certain isolated sales of
11 motor vehicles; **concerning the cancellation of tax imposed upon**
12 **certain motor vehicles**; amending K.S.A. 2000 Supp. 79-3603 and
13 repealing the existing section.
14

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

16 Section 1. K.S.A. 2000 Supp. 79-3603 is hereby amended to read as
17 follows: 79-3603. For the privilege of engaging in the business of selling
18 tangible personal property at retail in this state or rendering or furnishing
19 any of the services taxable under this act, there is hereby levied and there
20 shall be collected and paid a tax at the rate of 4.9% and, within a rede-
21 velopment district established pursuant to K.S.A. 2000 Supp. 74-8921,
22 and amendments thereto, there is hereby levied and there shall be col-
23 lected and paid an additional tax at the rate of 2% until the earlier of the
24 date the bonds issued to finance or refinance the redevelopment project
25 have been paid in full or the final scheduled maturity of the first series
26 of bonds issued to finance any part of the project upon:

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

29 (b) (1) the gross receipts from intrastate telephone or telegraph serv-
30 ices and (2) the gross receipts received from the sale of interstate tele-
31 phone or telegraph services, which (A) originate within this state and
32 terminate outside the state and are billed to a customer's telephone num-
33 ber or account in this state; or (B) originate outside this state and ter-
34 minate within this state and are billed to a customer's telephone number
35 or account in this state except that the sale of interstate telephone or
36 telegraph service does not include: (A) Any interstate incoming or out-
37 going wide area telephone service or wide area transmission type service
38 which entitles the subscriber to make or receive an unlimited number of
39 communications to or from persons having telephone service in a speci-
40 fied area which is outside the state in which the station provided this
41 service is located; (B) any interstate private communications service to
42 the persons contracting for the receipt of that service that entitles the
43 purchaser to exclusive or priority use of a communications channel or

1 group of channels between exchanges; (C) any value-added nonvoice
2 service in which computer processing applications are used to act on the
3 form, content, code or protocol of the information to be transmitted; (D)
4 any telecommunication service to a provider of telecommunication serv-
5 ices which will be used to render telecommunications services, including
6 carrier access services; or (E) any service or transaction defined in this
7 section among entities classified as members of an affiliated group as
8 provided by federal law (26 U.S.C. Section 1504). For the purposes of
9 this subsection the term gross receipts does not include purchases of
10 telephone, telegraph or telecommunications using a prepaid telephone
11 calling card or prepaid authorization number. As used in this subsection,
12 a prepaid telephone calling card or prepaid authorization number means
13 the right to exclusively make telephone calls, paid for in advance, with
14 the prepaid value measured in minutes or other time units, that enables
15 the origination of calls using an access number or authorization code or
16 both, whether manually or electronically dialed;

17 (c) the gross receipts from the sale or furnishing of gas, water, elec-
18 tricity and heat, which sale is not otherwise exempt from taxation under
19 the provisions of this act, and whether furnished by municipally or pri-
20 vately owned utilities;

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

25 (e) the gross receipts from the sale of admissions to any place pro-
26 viding amusement, entertainment or recreation services including admis-
27 sions to state, county, district and local fairs, but such tax shall not be
28 levied and collected upon the gross receipts received from sales of ad-
29 missions to any cultural and historical event which occurs triennially;

30 (f) the gross receipts from the operation of any coin-operated device
31 dispensing or providing tangible personal property, amusement or other
32 services except laundry services, whether automatic or manually operated;

33 (g) the gross receipts from the service of renting of rooms by hotels,
34 as defined by K.S.A. 36-501 and amendments thereto, or by accommo-
35 dation brokers, as defined by K.S.A. 12-1692, and amendments thereto;

36 (h) the gross receipts from the service of renting or leasing of tangible
37 personal property except such tax shall not apply to the renting or leasing
38 of machinery, equipment or other personal property owned by a city and
39 purchased from the proceeds of industrial revenue bonds issued prior to
40 July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through
41 12-1749, and amendments thereto, and any city or lessee renting or leas-
42 ing such machinery, equipment or other personal property purchased
43 with the proceeds of such bonds who shall have paid a tax under the

1 provisions of this section upon sales made prior to July 1, 1973, shall be
2 entitled to a refund from the sales tax refund fund of all taxes paid
3 thereon;

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

7 (j) the gross receipts from the rendering of the services of washing
8 and washing and waxing of vehicles;

9 (k) the gross receipts from cable, community antennae and other sub-
10 scriber radio and television services;

11 (l) (1) except as otherwise provided by paragraph (2), the gross re-
12 cepts received from the sales of tangible personal property to all con-
13 tractors, subcontractors or repairmen for use by them in erecting struc-
14 tures, or building on, or otherwise improving, altering, or repairing real
15 or personal property.

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

23 (m) the gross receipts received from fees and charges by public and
24 private clubs, drinking establishments, organizations and businesses for
25 participation in sports, games and other recreational activities, but such
26 tax shall not be levied and collected upon the gross receipts received from:

27 (1) Fees and charges by any political subdivision, by any organization
28 exempt from property taxation pursuant to paragraph *Ninth* of K.S.A. 79-
29 201, and amendments thereto, or by any youth recreation organization
30 exclusively providing services to persons 18 years of age or younger which
31 is exempt from federal income taxation pursuant to section 501(c)(3) of
32 the federal internal revenue code of 1986, for participation in sports,
33 games and other recreational activities; and (2) entry fees and charges for
34 participation in a special event or tournament sanctioned by a national
35 sporting association to which spectators are charged an admission which
36 is taxable pursuant to subsection (e);

37 (n) the gross receipts received from dues charged by public and pri-
38 vate clubs, drinking establishments, organizations and businesses, pay-
39 ment of which entitles a member to the use of facilities for recreation or
40 entertainment, but such tax shall not be levied and collected upon the
41 gross receipts received from: (1) Dues charged by any organization ex-
42 empt from property taxation pursuant to paragraphs *Eighth* and *Ninth* of
43 K.S.A. 79-201, and amendments thereto; and (2) sales of memberships

1 in a nonprofit organization which is exempt from federal income taxation
2 pursuant to section 501 (c)(3) of the federal internal revenue code of
3 1986, and whose purpose is to support the operation of a nonprofit zoo;

4 (o) the gross receipts received from the isolated or occasional sale of
5 motor vehicles or trailers but not including: (1) The transfer of motor
6 vehicles or trailers by a person to a corporation *or limited liability com-*
7 *pany* solely in exchange for stock securities *or membership interest* in
8 such corporation *or limited liability company*; or (2) the transfer of motor
9 vehicles or trailers by one corporation *or limited liability company* to
10 another when all of the assets of such corporation *or limited liability*
11 *company* are transferred to such other corporation *or limited liability*
12 *company*; or (3) the sale of motor vehicles or trailers which are subject
13 to taxation pursuant to the provisions of K.S.A. 79-5101 *et seq.*, and
14 amendments thereto, by an immediate family member to another im-
15 mediate family member. For the purposes of clause (3), immediate family
16 member means lineal ascendants or descendants, and their spouses. In
17 determining the base for computing the tax on such isolated or occasional
18 sale, the fair market value of any motor vehicle or trailer traded in by the
19 purchaser to the seller may be deducted from the selling price;

20 (p) the gross receipts received for the service of installing or applying
21 tangible personal property which when installed or applied is not being
22 held for sale in the regular course of business, and whether or not such
23 tangible personal property when installed or applied remains tangible
24 personal property or becomes a part of real estate, except that no tax shall
25 be imposed upon the service of installing or applying tangible personal
26 property in connection with the original construction of a building or
27 facility, the original construction, reconstruction, restoration, remodeling,
28 renovation, repair or replacement of a residence or the construction, re-
29 construction, restoration, replacement or repair of a bridge or highway.

30 For the purposes of this subsection:

31 (1) “Original construction” shall mean the first or initial construction
32 of a new building or facility. The term “original construction” shall include
33 the addition of an entire room or floor to any existing building or facility,
34 the completion of any unfinished portion of any existing building or fa-
35 cility and the restoration, reconstruction or replacement of a building or
36 facility damaged or destroyed by fire, flood, tornado, lightning, explosion
37 or earthquake, but such term, except with regard to a residence, shall not
38 include replacement, remodeling, restoration, renovation or reconstruc-
39 tion under any other circumstances;

40 (2) “building” shall mean only those enclosures within which individ-
41 uals customarily are employed, or which are customarily used to house
42 machinery, equipment or other property, and including the land improve-
43 ments immediately surrounding such building;

1 (3) “facility” shall mean a mill, plant, refinery, oil or gas well, water
2 well, feedlot or any conveyance, transmission or distribution line of any
3 cooperative, nonprofit, membership corporation organized under or sub-
4 ject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto,
5 or of any municipal or quasi-municipal corporation, including the land
6 improvements immediately surrounding such facility; and

7 (4) “residence” shall mean only those enclosures within which indi-
8 viduals customarily live;

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

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

21 (s) the gross receipts received from the sale of computer software,
22 and the sale of the services of modifying, altering, updating or maintaining
23 computer software. As used in this subsection, “computer software”
24 means information and directions loaded into a computer which dictate
25 different functions to be performed by the computer. Computer software
26 includes any canned or prewritten program which is held or existing for
27 general or repeated sale, even if the program was originally developed
28 for a single end user as custom computer software. The sale of computer
29 software or services does not include: (1) The initial sale of any custom
30 computer program which is originally developed for the exclusive use of
31 a single end user; or (2) those services rendered in the modification of
32 computer software when the modification is developed exclusively for a
33 single end user only to the extent of the modification and only to the
34 extent that the actual amount charged for the modification is separately
35 stated on invoices, statements and other billing documents provided to
36 the end user. The services of modification, alteration, updating and main-
37 tenance of computer software shall only include the modification, alter-
38 ation, updating and maintenance of computer software taxable under this
39 subsection whether or not the services are actually provided; and

40 (t) the gross receipts received for telephone answering services, in-
41 cluding mobile phone services, beeper services and other similar services;
42 and

43 (u) the gross receipts received from the sale of prepaid telephone

1 calling cards or prepaid authorization numbers and the recharge of such
2 cards or numbers. A prepaid telephone calling card or prepaid authori-
3 zation number means the right to exclusively make telephone calls, paid
4 for in advance, with the prepaid value measured in minutes or other time
5 units, that enables the origination of calls using an access number or
6 authorization code or both, whether manually or electronically dialed. If
7 the sale or recharge of such card or number does not take place at the
8 vendor's place of business, it shall be conclusively determined to take
9 place at the customer's shipping address; if there is no item shipped then
10 it shall be the customer's billing address.

11 **New Sec. 2. Notwithstanding the provisions of any law to the**
12 **contrary, the tax imposed upon a motor vehicle pursuant to K.S.A.**
13 **79-5101 *et seq.*, and amendments thereto, which is delinquent and**
14 **more than one year past due, and any penalty and interest result-**
15 **ing from such delinquency, shall be canceled and forgiven if such**
16 **vehicle is donated to a nonprofit charitable organization which is**
17 **exempt from payment of federal income tax. In the event any such**
18 **vehicle is purchased from any such organization by the donor, or**
19 **on behalf of the donor, of such vehicle, liability for all such tax,**
20 **interest and penalty shall vest in such purchaser, and shall be col-**
21 **lected in the manner prescribed by K.S.A. 79-5116, and amend-**
22 **ments thereto.**

23 Sec. ~~2~~ 3. K.S.A. 2000 Supp. 79-3603 is hereby repealed.

24 Sec. ~~3~~ 4. This act shall take effect and be in force from and after its
25 publication in the statute book.

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