

SENATE BILL No. 478

By Senator Emler (By request)

1-31

AN ACT relating to sales taxation; exempting shipping pallets; amending K.S.A. 2001 Supp. 79-3602 and repealing the existing section.

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

Section 1. K.S.A. 2001 Supp. 79-3602 is hereby amended to read as follows: 79-3602. (a) "Persons" means any individual, firm, copartnership, joint adventure, association, corporation, estate or trust, receiver or trustee, or any group or combination acting as a unit, and the plural as well as the singular number; and shall specifically mean any city or other political subdivision of the state of Kansas engaging in a business or providing a service specifically taxable under the provisions of this act.

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

(c) "Sale" or "sales" means the exchange of tangible personal property, as well as the sale thereof for money, and every transaction, conditional or otherwise, for a consideration, constituting a sale, including the sale or furnishing of electrical energy, gas, water, services or entertainment taxable under the terms of this act and including, except as provided in the following provision, the sale of the use of tangible personal property by way of a lease, license to use or the rental thereof regardless of the method by which the title, possession or right to use the tangible personal property is transferred. The term "sale" or "sales" shall not mean the sale of the use of any tangible personal property used as a dwelling by way of a lease or rental thereof for a term of more than 28 consecutive days.

(d) "Retailer" means a person regularly engaged in the business of selling tangible personal property at retail or furnishing electrical energy, gas, water, services or entertainment, and selling only to the user or consumer and not for resale.

(e) "Retail sale" or "sale at retail" means all sales made within the state of tangible personal property or electrical energy, gas, water, services or entertainment for use or consumption and not for resale.

(f) "Tangible personal property" means corporeal personal property. Such term shall include: (1) Any computer software program which is not a custom computer software program, as described by subsection (s) of K.S.A. 79-3603, and amendments thereto; and (2) any prepaid telephone calling card or prepaid authorization number, or recharge of such card

1 or number, as described by subsection (b) of K.S.A. 79-3603, and amend-
2 ments thereto.

3 (g) "Selling price" means the total cost to the consumer exclusive of
4 discounts allowed and credited, but including freight and transportation
5 charges from retailer to consumer.

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

14 (i) "Taxpayer" means any person obligated to account to the director
15 for taxes collected under the terms of this act.

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

31 (k) "Service" means those services described in and taxed under the
32 provisions of K.S.A. 79-3603 and amendments thereto.

33 (l) "Ingredient or component part" means tangible personal property
34 which is necessary or essential to, and which is actually used in and be-
35 comes an integral and material part of tangible personal property or serv-
36 ices produced, manufactured or compounded for sale by the producer,
37 manufacturer or compounder in its regular course of business. The fol-
38 lowing items of tangible personal property are hereby declared to be
39 ingredients or component parts, but the listing of such property shall not
40 be deemed to be exclusive nor shall such listing be construed to be a
41 restriction upon, or an indication of, the type or types of property to be
42 included within the definition of "ingredient or component part" as
43 herein set forth:

1 (1) (A) Containers, labels and shipping cases used in the distribution
2 of property produced, manufactured or compounded for sale which are
3 not to be returned to the producer, manufacturer or compounder for
4 reuse; and (B) shipping pallets.

5 (2) Containers, labels, shipping cases, paper bags, drinking straws,
6 paper plates, paper cups, twine and wrapping paper used in the distri-
7 bution and sale of property taxable under the provisions of this act by
8 wholesalers and retailers and which is not to be returned to such whole-
9 saler or retailer for reuse.

10 (3) Seeds and seedlings for the production of plants and plant prod-
11 ucts produced for resale.

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

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

15 (6) Feed for animals, fowl and aquatic plants and animals, the primary
16 purpose of which is use in agriculture or aquaculture, as defined in K.S.A.
17 47-1901, and amendments thereto, the production of food for human
18 consumption, the production of animal, dairy, poultry or aquatic plant
19 and animal products, fiber, fur, or the production of offspring for use for
20 any such purpose or purposes.

21 (m) "Property which is consumed" means tangible personal property
22 which is essential or necessary to and which is used in the actual process
23 of and consumed, depleted or dissipated within one year in (1) the pro-
24 duction, manufacture, processing, mining, drilling, refining or compound-
25 ing of tangible personal property, (2) the providing of services, (3) the
26 irrigation of crops, for sale in the regular course of business, or (4) the
27 storage or processing of grain by a public grain warehouse or other grain
28 storage facility, and which is not reusable for such purpose. The following
29 is a listing of tangible personal property, included by way of illustration
30 but not of limitation, which qualifies as property which is consumed:

31 (A) Insecticides, herbicides, germicides, pesticides, fungicides, fu-
32 migants, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals
33 for use in commercial or agricultural production, processing or storage of
34 fruit, vegetables, feeds, seeds, grains, animals or animal products whether
35 fed, injected, applied, combined with or otherwise used;

36 (B) electricity, gas and water; and

37 (C) petroleum products, lubricants, chemicals, solvents, reagents and
38 catalysts.

39 (n) "Political subdivision" means any municipality, agency or subdivi-
40 sion of the state which is, or shall hereafter be, authorized to levy taxes
41 upon tangible property within the state or which certifies a levy to a
42 municipality, agency or subdivision of the state which is, or shall hereafter
43 be, authorized to levy taxes upon tangible property within the state. Such

1 term also shall include any public building commission, housing, airport,
2 port, metropolitan transit or similar authority established pursuant to law.

3 (o) "Municipal corporation" means any city incorporated under the
4 laws of Kansas.

5 (p) "Quasi-municipal corporation" means any county, township,
6 school district, drainage district or any other governmental subdivision in
7 the state of Kansas having authority to receive or hold moneys or funds.

8 (q) "Nonprofit blood bank" means any nonprofit place, organization,
9 institution or establishment that is operated wholly or in part for the
10 purpose of obtaining, storing, processing, preparing for transfusing, fur-
11 nishing, donating or distributing human blood or parts or fractions of
12 single blood units or products derived from single blood units, whether
13 or not any remuneration is paid therefor, or whether such procedures are
14 done for direct therapeutic use or for storage for future use of such
15 products.

16 (r) "Educational institution" means any nonprofit school, college and
17 university that offers education at a level above the twelfth grade, and
18 conducts regular classes and courses of study required for accreditation
19 by, or membership in, the North Central Association of Colleges and
20 Schools, the state board of education, or that otherwise qualify as an
21 "educational institution," as defined by K.S.A. 74-50,103, and amend-
22 ments thereto. Such phrase shall include: (1) A group of educational in-
23 stitutions that operates exclusively for an educational purpose; (2) non-
24 profit endowment associations and foundations organized and operated
25 exclusively to receive, hold, invest and administer moneys and property
26 as a permanent fund for the support and sole benefit of an educational
27 institution; (3) nonprofit trusts, foundations and other entities organized
28 and operated principally to hold and own receipts from intercollegiate
29 sporting events and to disburse such receipts, as well as grants and gifts,
30 in the interest of collegiate and intercollegiate athletic programs for the
31 support and sole benefit of an educational institution; and (4) nonprofit
32 trusts, foundations and other entities organized and operated for the pri-
33 mary purpose of encouraging, fostering and conducting scholarly inves-
34 tigation and industrial and other types of research for the support and
35 sole benefit of an educational institution.

36 Sec. 2. K.S.A. 2001 Supp. 79-3602 is hereby repealed.

37 Sec. 3. This act shall take effect and be in force from and after its
38 publication in the statute book.

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