

## HOUSE BILL No. 2084

By Representative Flaherty

1-28

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AN ACT concerning taxation; relating to sales tax exemptions; exempting certain sales of hearing aids; amending K.S.A. 2002 Supp. 79-3606 and repealing the existing section.

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

Section 1. K.S.A. 2002 Supp. 79-3606 is hereby amended to read as follows: 79-3606. The following shall be exempt from the tax imposed by this act:

(a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, not subject to refund, under the laws of this state except cigarettes as defined by K.S.A. 79-3301 and amendments thereto, cereal malt beverages and malt products as defined by K.S.A. 79-3817 and amendments thereto, including wort, liquid malt, malt syrup and malt extract, which is not subject to taxation under the provisions of K.S.A. 79-41a02 and amendments thereto, motor vehicles taxed pursuant to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to K.S.A. 65-3424d, and amendments thereto, and drycleaning and laundry services taxed pursuant to K.S.A. 65-34,150, and amendments thereto;

(b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or public hospital authority or nonprofit blood, tissue or organ bank and used exclusively for state, political subdivision, hospital or public hospital authority or nonprofit blood, tissue or organ bank purposes, except when: (1) Such state, hospital or public hospital authority is engaged or proposes to engage in any business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business, or (2) such political subdivision is engaged or proposes to engage in the business of furnishing gas, electricity or heat to others and such items of personal property or service are used or proposed to be used in such business;

(c) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private

1 nonprofit educational institution and used primarily by such school or  
2 institution for nonsectarian programs and activities provided or sponsored  
3 by such school or institution or in the erection, repair or enlargement of  
4 buildings to be used for such purposes. The exemption herein provided  
5 shall not apply to erection, construction, repair, enlargement or equip-  
6 ment of buildings used primarily for human habitation;

7 (d) all sales of tangible personal property or services purchased by a  
8 contractor for the purpose of constructing, equipping, reconstructing,  
9 maintaining, repairing, enlarging, furnishing or remodeling facilities for  
10 any public or private nonprofit hospital or public hospital authority, public  
11 or private elementary or secondary school or a public or private nonprofit  
12 educational institution, which would be exempt from taxation under the  
13 provisions of this act if purchased directly by such hospital or public hos-  
14 pital authority, school or educational institution; and all sales of tangible  
15 personal property or services purchased by a contractor for the purpose  
16 of constructing, equipping, reconstructing, maintaining, repairing, en-  
17 larging, furnishing or remodeling facilities for any political subdivision of  
18 the state or district described in subsection (s), the total cost of which is  
19 paid from funds of such political subdivision or district and which would  
20 be exempt from taxation under the provisions of this act if purchased  
21 directly by such political subdivision or district. Nothing in this subsection  
22 or in the provisions of K.S.A. 12-3418 and amendments thereto, shall be  
23 deemed to exempt the purchase of any construction machinery, equip-  
24 ment or tools used in the constructing, equipping, reconstructing, main-  
25 taining, repairing, enlarging, furnishing or remodeling facilities for any  
26 political subdivision of the state or any such district. As used in this sub-  
27 section, K.S.A. 12-3418 and 79-3640, and amendments thereto, "funds  
28 of a political subdivision" shall mean general tax revenues, the proceeds  
29 of any bonds and gifts or grants-in-aid. Gifts shall not mean funds used  
30 for the purpose of constructing, equipping, reconstructing, repairing, en-  
31 larging, furnishing or remodeling facilities which are to be leased to the  
32 donor. When any political subdivision of the state, district described in  
33 subsection (s), public or private nonprofit hospital or public hospital au-  
34 thority, public or private elementary or secondary school or public or  
35 private nonprofit educational institution shall contract for the purpose of  
36 constructing, equipping, reconstructing, maintaining, repairing, enlarg-  
37 ing, furnishing or remodeling facilities, it shall obtain from the state and  
38 furnish to the contractor an exemption certificate for the project involved,  
39 and the contractor may purchase materials for incorporation in such pro-  
40 ject. The contractor shall furnish the number of such certificate to all  
41 suppliers from whom such purchases are made, and such suppliers shall  
42 execute invoices covering the same bearing the number of such certifi-  
43 cate. Upon completion of the project the contractor shall furnish to the

1 political subdivision, district described in subsection (s), hospital or public  
2 hospital authority, school or educational institution concerned a sworn  
3 statement, on a form to be provided by the director of taxation, that all  
4 purchases so made were entitled to exemption under this subsection. As  
5 an alternative to the foregoing procedure, any such contracting entity may  
6 apply to the secretary of revenue for agent status for the sole purpose of  
7 issuing and furnishing project exemption certificates to contractors pur-  
8 suant to rules and regulations adopted by the secretary establishing con-  
9 ditions and standards for the granting and maintaining of such status. All  
10 invoices shall be held by the contractor for a period of five years and shall  
11 be subject to audit by the director of taxation. If any materials purchased  
12 under such a certificate are found not to have been incorporated in the  
13 building or other project or not to have been returned for credit or the  
14 sales or compensating tax otherwise imposed upon such materials which  
15 will not be so incorporated in the building or other project reported and  
16 paid by such contractor to the director of taxation not later than the 20th  
17 day of the month following the close of the month in which it shall be  
18 determined that such materials will not be used for the purpose for which  
19 such certificate was issued, the political subdivision, district described in  
20 subsection (s), hospital or public hospital authority, school or educational  
21 institution concerned shall be liable for tax on all materials purchased for  
22 the project, and upon payment thereof it may recover the same from the  
23 contractor together with reasonable attorney fees. Any contractor or any  
24 agent, employee or subcontractor thereof, who shall use or otherwise  
25 dispose of any materials purchased under such a certificate for any pur-  
26 pose other than that for which such a certificate is issued without the  
27 payment of the sales or compensating tax otherwise imposed upon such  
28 materials, shall be guilty of a misdemeanor and, upon conviction therefor,  
29 shall be subject to the penalties provided for in subsection (g) of K.S.A.  
30 79-3615, and amendments thereto;

31 (e) all sales of tangible personal property or services purchased by a  
32 contractor for the erection, repair or enlargement of buildings or other  
33 projects for the government of the United States, its agencies or instru-  
34 mentalities, which would be exempt from taxation if purchased directly  
35 by the government of the United States, its agencies or instrumentalities.  
36 When the government of the United States, its agencies or instrumen-  
37 talities shall contract for the erection, repair, or enlargement of any build-  
38 ing or other project, it shall obtain from the state and furnish to the  
39 contractor an exemption certificate for the project involved, and the con-  
40 tractor may purchase materials for incorporation in such project. The  
41 contractor shall furnish the number of such certificates to all suppliers  
42 from whom such purchases are made, and such suppliers shall execute  
43 invoices covering the same bearing the number of such certificate. Upon

1 completion of the project the contractor shall furnish to the government  
2 of the United States, its agencies or instrumentalities concerned a sworn  
3 statement, on a form to be provided by the director of taxation, that all  
4 purchases so made were entitled to exemption under this subsection. As  
5 an alternative to the foregoing procedure, any such contracting entity may  
6 apply to the secretary of revenue for agent status for the sole purpose of  
7 issuing and furnishing project exemption certificates to contractors pur-  
8 suant to rules and regulations adopted by the secretary establishing con-  
9 ditions and standards for the granting and maintaining of such status. All  
10 invoices shall be held by the contractor for a period of five years and shall  
11 be subject to audit by the director of taxation. Any contractor or any agent,  
12 employee or subcontractor thereof, who shall use or otherwise dispose of  
13 any materials purchased under such a certificate for any purpose other  
14 than that for which such a certificate is issued without the payment of  
15 the sales or compensating tax otherwise imposed upon such materials,  
16 shall be guilty of a misdemeanor and, upon conviction therefor, shall be  
17 subject to the penalties provided for in subsection (g) of K.S.A. 79-3615  
18 and amendments thereto;

19 (f) tangible personal property purchased by a railroad or public utility  
20 for consumption or movement directly and immediately in interstate  
21 commerce;

22 (g) sales of aircraft including remanufactured and modified aircraft,  
23 sales of aircraft repair, modification and replacement parts and sales of  
24 services employed in the remanufacture, modification and repair of air-  
25 craft sold to persons using directly or through an authorized agent such  
26 aircraft and aircraft repair, modification and replacement parts as certified  
27 or licensed carriers of persons or property in interstate or foreign com-  
28 merce under authority of the laws of the United States or any foreign  
29 government or sold to any foreign government or agency or instrumen-  
30 tality of such foreign government and all sales of aircraft, aircraft parts,  
31 replacement parts and services employed in the remanufacture, modifi-  
32 cation and repair of aircraft for use outside of the United States;

33 (h) all rentals of nonsectarian textbooks by public or private elemen-  
34 tary or secondary schools;

35 (i) the lease or rental of all films, records, tapes, or any type of sound  
36 or picture transcriptions used by motion picture exhibitors;

37 (j) meals served without charge or food used in the preparation of  
38 such meals to employees of any restaurant, eating house, dining car, hotel,  
39 drugstore or other place where meals or drinks are regularly sold to the  
40 public if such employees' duties are related to the furnishing or sale of  
41 such meals or drinks;

42 (k) any motor vehicle, semitrailer or pole trailer, as such terms are  
43 defined by K.S.A. 8-126 and amendments thereto, or aircraft sold and

1 delivered in this state to a bona fide resident of another state, which motor  
2 vehicle, semitrailer, pole trailer or aircraft is not to be registered or based  
3 in this state and which vehicle, semitrailer, pole trailer or aircraft will not  
4 remain in this state more than 10 days;

5 (l) all isolated or occasional sales of tangible personal property, serv-  
6 ices, substances or things, except isolated or occasional sale of motor  
7 vehicles specifically taxed under the provisions of subsection (o) of K.S.A.  
8 79-3603 and amendments thereto;

9 (m) all sales of tangible personal property which become an ingre-  
10 dient or component part of tangible personal property or services pro-  
11 duced, manufactured or compounded for ultimate sale at retail within or  
12 without the state of Kansas; and any such producer, manufacturer or  
13 compounder may obtain from the director of taxation and furnish to the  
14 supplier an exemption certificate number for tangible personal property  
15 for use as an ingredient or component part of the property or services  
16 produced, manufactured or compounded;

17 (n) all sales of tangible personal property which is consumed in the  
18 production, manufacture, processing, mining, drilling, refining or com-  
19 pounding of tangible personal property, the treating of by-products or  
20 wastes derived from any such production process, the providing of serv-  
21 ices or the irrigation of crops for ultimate sale at retail within or without  
22 the state of Kansas; and any purchaser of such property may obtain from  
23 the director of taxation and furnish to the supplier an exemption certifi-  
24 cate number for tangible personal property for consumption in such pro-  
25 duction, manufacture, processing, mining, drilling, refining, compound-  
26 ing, treating, irrigation and in providing such services;

27 (o) all sales of animals, fowl and aquatic plants and animals, the pri-  
28 mary purpose of which is use in agriculture or aquaculture, as defined in  
29 K.S.A. 47-1901, and amendments thereto, the production of food for  
30 human consumption, the production of animal, dairy, poultry or aquatic  
31 plant and animal products, fiber or fur, or the production of offspring for  
32 use for any such purpose or purposes;

33 (p) all sales of drugs, as defined by K.S.A. 65-1626 and amendments  
34 thereto, dispensed pursuant to a prescription order, as defined by K.S.A.  
35 65-1626 and amendments thereto, by a licensed practitioner or a mid-  
36 level practitioner as defined by K.S.A. 65-1626, and amendments thereto;

37 (q) all sales of insulin dispensed by a person licensed by the state  
38 board of pharmacy to a person for treatment of diabetes at the direction  
39 of a person licensed to practice medicine by the board of healing arts;

40 (r) all sales of prosthetic and orthopedic appliances prescribed in  
41 writing by a person licensed to practice the healing arts, dentistry or  
42 optometry, *and in addition to such sales, all sales of hearing aids, as*  
43 *defined by subsection (c) of K.S.A. 74-5807, and amendments thereto, and*

1 *replacement parts therefor, including batteries, by a person licensed in*  
2 *the practice of dispensing and fitting hearing aids pursuant to the pro-*  
3 *visions of K.S.A. 74-5808, and amendments thereto.* For the purposes of  
4 this subsection, the term prosthetic and orthopedic appliances means any  
5 apparatus, instrument, device, or equipment used to replace or substitute  
6 for any missing part of the body; used to alleviate the malfunction of any  
7 part of the body; or used to assist any disabled person in leading a normal  
8 life by facilitating such person's mobility; such term shall include acces-  
9 sories attached or to be attached to motor vehicles, but such term shall  
10 not include motor vehicles or personal property which when installed  
11 becomes a fixture to real property;

12 (s) except as provided in K.S.A. 2002 Supp. 82a-2101, and amend-  
13 ments thereto, all sales of tangible personal property or services pur-  
14 chased directly or indirectly by a groundwater management district or-  
15 ganized or operating under the authority of K.S.A. 82a-1020 *et seq.* and  
16 amendments thereto, by a rural water district organized or operating un-  
17 der the authority of K.S.A. 82a-612, and amendments thereto, or by a  
18 water supply district organized or operating under the authority of K.S.A.  
19 19-3501 *et seq.*, 19-3522 *et seq.* or 19-3545, and amendments thereto,  
20 which property or services are used in the construction activities, opera-  
21 tion or maintenance of the district;

22 (t) all sales of farm machinery and equipment or aquaculture ma-  
23 chinery and equipment, repair and replacement parts therefor and serv-  
24 ices performed in the repair and maintenance of such machinery and  
25 equipment. For the purposes of this subsection the term "farm machinery  
26 and equipment or aquaculture machinery and equipment" shall include  
27 machinery and equipment used in the operation of Christmas tree farm-  
28 ing but shall not include any passenger vehicle, truck, truck tractor, trailer,  
29 semitrailer or pole trailer, other than a farm trailer, as such terms are  
30 defined by K.S.A. 8-126 and amendments thereto. Each purchaser of  
31 farm machinery and equipment or aquaculture machinery and equipment  
32 exempted herein must certify in writing on the copy of the invoice or  
33 sales ticket to be retained by the seller that the farm machinery and  
34 equipment or aquaculture machinery and equipment purchased will be  
35 used only in farming, ranching or aquaculture production. Farming or  
36 ranching shall include the operation of a feedlot and farm and ranch work  
37 for hire and the operation of a nursery;

38 (u) all leases or rentals of tangible personal property used as a dwell-  
39 ing if such tangible personal property is leased or rented for a period of  
40 more than 28 consecutive days;

41 (v) all sales of food products to any contractor for use in preparing  
42 meals for delivery to homebound elderly persons over 60 years of age and  
43 to homebound disabled persons or to be served at a group-sitting at a

1 location outside of the home to otherwise homebound elderly persons  
2 over 60 years of age and to otherwise homebound disabled persons, as  
3 all or part of any food service project funded in whole or in part by  
4 government or as part of a private nonprofit food service project available  
5 to all such elderly or disabled persons residing within an area of service  
6 designated by the private nonprofit organization, and all sales of food  
7 products for use in preparing meals for consumption by indigent or home-  
8 less individuals whether or not such meals are consumed at a place des-  
9 ignated for such purpose;

10 (w) all sales of natural gas, electricity, heat and water delivered  
11 through mains, lines or pipes: (1) To residential premises for noncom-  
12 mercial use by the occupant of such premises; (2) for agricultural use and  
13 also, for such use, all sales of propane gas; (3) for use in the severing of  
14 oil; and (4) to any property which is exempt from property taxation pur-  
15 suant to K.S.A. 79-201b *Second* through *Sixth*. As used in this paragraph,  
16 “severing” shall have the meaning ascribed thereto by subsection (k) of  
17 K.S.A. 79-4216, and amendments thereto;

18 (x) all sales of propane gas, LP-gas, coal, wood and other fuel sources  
19 for the production of heat or lighting for noncommercial use of an oc-  
20 cupant of residential premises;

21 (y) all sales of materials and services used in the repairing, servicing,  
22 altering, maintaining, manufacturing, remanufacturing, or modification of  
23 railroad rolling stock for use in interstate or foreign commerce under  
24 authority of the laws of the United States;

25 (z) all sales of tangible personal property and services purchased di-  
26 rectly by a port authority or by a contractor therefor as provided by the  
27 provisions of K.S.A. 12-3418 and amendments thereto;

28 (aa) all sales of materials and services applied to equipment which is  
29 transported into the state from without the state for repair, service, al-  
30 teration, maintenance, remanufacture or modification and which is sub-  
31 sequently transported outside the state for use in the transmission of  
32 liquids or natural gas by means of pipeline in interstate or foreign com-  
33 merce under authority of the laws of the United States;

34 (bb) all sales of used mobile homes or manufactured homes. As used  
35 in this subsection: (1) “Mobile homes” and “manufactured homes” shall  
36 have the meanings ascribed thereto by K.S.A. 58-4202 and amendments  
37 thereto; and (2) “sales of used mobile homes or manufactured homes”  
38 means sales other than the original retail sale thereof;

39 (cc) all sales of tangible personal property or services purchased for  
40 the purpose of and in conjunction with constructing, reconstructing, en-  
41 larging or remodeling a business or retail business which meets the  
42 requirements established in K.S.A. 74-50,115 and amendments thereto,  
43 and the sale and installation of machinery and equipment purchased for

1 installation at any such business or retail business. When a person shall  
2 contract for the construction, reconstruction, enlargement or remodeling  
3 of any such business or retail business, such person shall obtain from the  
4 state and furnish to the contractor an exemption certificate for the project  
5 involved, and the contractor may purchase materials, machinery and  
6 equipment for incorporation in such project. The contractor shall furnish  
7 the number of such certificates to all suppliers from whom such purchases  
8 are made, and such suppliers shall execute invoices covering the same  
9 bearing the number of such certificate. Upon completion of the project  
10 the contractor shall furnish to the owner of the business or retail business  
11 a sworn statement, on a form to be provided by the director of taxation,  
12 that all purchases so made were entitled to exemption under this subsection.  
13 All invoices shall be held by the contractor for a period of five years  
14 and shall be subject to audit by the director of taxation. Any contractor  
15 or any agent, employee or subcontractor thereof, who shall use or otherwise  
16 dispose of any materials, machinery or equipment purchased under  
17 such a certificate for any purpose other than that for which such a  
18 certificate is issued without the payment of the sales or compensating tax  
19 otherwise imposed thereon, shall be guilty of a misdemeanor and, upon  
20 conviction therefor, shall be subject to the penalties provided for in subsection  
21 (g) of K.S.A. 79-3615 and amendments thereto. As used in this  
22 subsection, "business" and "retail business" have the meanings respectively  
23 ascribed thereto by K.S.A. 74-50,114 and amendments thereto;

24 (dd) all sales of tangible personal property purchased with food  
25 stamps issued by the United States department of agriculture;

26 (ee) all sales of lottery tickets and shares made as part of a lottery  
27 operated by the state of Kansas;

28 (ff) on and after July 1, 1988, all sales of new mobile homes or manufactured  
29 homes to the extent of 40% of the gross receipts, determined  
30 without regard to any trade-in allowance, received from such sale. As used  
31 in this subsection, "mobile homes" and "manufactured homes" shall have  
32 the meanings ascribed thereto by K.S.A. 58-4202 and amendments  
33 thereto;

34 (gg) all sales of tangible personal property purchased in accordance  
35 with vouchers issued pursuant to the federal special supplemental food  
36 program for women, infants and children;

37 (hh) all sales of medical supplies and equipment purchased directly  
38 by a nonprofit skilled nursing home or nonprofit intermediate nursing  
39 care home, as defined by K.S.A. 39-923, and amendments thereto, for  
40 the purpose of providing medical services to residents thereof. This exemption  
41 shall not apply to tangible personal property customarily used  
42 for human habitation purposes;

43 (ii) all sales of tangible personal property purchased directly by a non-



1 profit organization for nonsectarian comprehensive multidiscipline youth  
2 development programs and activities provided or sponsored by such or-  
3 ganization, and all sales of tangible personal property by or on behalf of  
4 any such organization. This exemption shall not apply to tangible personal  
5 property customarily used for human habitation purposes;

6 (jj) all sales of tangible personal property or services, including the  
7 renting and leasing of tangible personal property, purchased directly on  
8 behalf of a community-based mental retardation facility or mental health  
9 center organized pursuant to K.S.A. 19-4001 *et seq.*, and amendments  
10 thereto, and licensed in accordance with the provisions of K.S.A. 75-  
11 3307b and amendments thereto. This exemption shall not apply to tan-  
12 gible personal property customarily used for human habitation purposes;

13 (kk) (1) (A) all sales of machinery and equipment which are used  
14 in this state as an integral or essential part of an integrated production  
15 operation by a manufacturing or processing plant or facility;

16 (B) all sales of installation, repair and maintenance services per-  
17 formed on such machinery and equipment; and

18 (C) all sales of repair and replacement parts and accessories pur-  
19 chased for such machinery and equipment.

20 (2) For purposes of this subsection:

21 (A) “Integrated production operation” means an integrated series of  
22 operations engaged in at a manufacturing or processing plant or facility  
23 to process, transform or convert tangible personal property by physical,  
24 chemical or other means into a different form, composition or character  
25 from that in which it originally existed. Integrated production operations  
26 shall include: (i) Production line operations, including packaging opera-  
27 tions; (ii) preproduction operations to handle, store and treat raw mate-  
28 rials; (iii) post production handling, storage, warehousing and distribution  
29 operations; and (iv) waste, pollution and environmental control opera-  
30 tions, if any;

31 (B) “production line” means the assemblage of machinery and equip-  
32 ment at a manufacturing or processing plant or facility where the actual  
33 transformation or processing of tangible personal property occurs;

34 (C) “manufacturing or processing plant or facility” means a single,  
35 fixed location owned or controlled by a manufacturing or processing busi-  
36 ness that consists of one or more structures or buildings in a contiguous  
37 area where integrated production operations are conducted to manufac-  
38 ture or process tangible personal property to be ultimately sold at retail.  
39 Such term shall not include any facility primarily operated for the purpose  
40 of conveying or assisting in the conveyance of natural gas, electricity, oil  
41 or water. A business may operate one or more manufacturing or proc-  
42 essing plants or facilities at different locations to manufacture or process  
43 a single product of tangible personal property to be ultimately sold at

1 retail;

2 (D) “manufacturing or processing business” means a business that  
3 utilizes an integrated production operation to manufacture, process, fab-  
4 ricate, finish, or assemble items for wholesale and retail distribution as  
5 part of what is commonly regarded by the general public as an industrial  
6 manufacturing or processing operation or an agricultural commodity  
7 processing operation. (i) Industrial manufacturing or processing opera-  
8 tions include, by way of illustration but not of limitation, the fabrication  
9 of automobiles, airplanes, machinery or transportation equipment, the  
10 fabrication of metal, plastic, wood, or paper products, electricity power  
11 generation, water treatment, petroleum refining, chemical production,  
12 wholesale bottling, newspaper printing, ready mixed concrete production,  
13 and the remanufacturing of used parts for wholesale or retail sale. Such  
14 processing operations shall include operations at an oil well, gas well, mine  
15 or other excavation site where the oil, gas, minerals, coal, clay, stone, sand  
16 or gravel that has been extracted from the earth is cleaned, separated,  
17 crushed, ground, milled, screened, washed, or otherwise treated or pre-  
18 pared before its transmission to a refinery or before any other wholesale  
19 or retail distribution. (ii) Agricultural commodity processing operations  
20 include, by way of illustration but not of limitation, meat packing, poultry  
21 slaughtering and dressing, processing and packaging farm and dairy prod-  
22 ucts in sealed containers for wholesale and retail distribution, feed grind-  
23 ing, grain milling, frozen food processing, and grain handling, cleaning,  
24 blending, fumigation, drying and aeration operations engaged in by grain  
25 elevators or other grain storage facilities. (iii) Manufacturing or processing  
26 businesses do not include, by way of illustration but not of limitation,  
27 nonindustrial businesses whose operations are primarily retail and that  
28 produce or process tangible personal property as an incidental part of  
29 conducting the retail business, such as retailers who bake, cook or prepare  
30 food products in the regular course of their retail trade, grocery stores,  
31 meat lockers and meat markets that butcher or dress livestock or poultry  
32 in the regular course of their retail trade, contractors who alter, service,  
33 repair or improve real property, and retail businesses that clean, service  
34 or refurbish and repair tangible personal property for its owner;

35 (E) “repair and replacement parts and accessories” means all parts  
36 and accessories for exempt machinery and equipment, including, but not  
37 limited to, dies, jigs, molds, patterns and safety devices that are attached  
38 to exempt machinery or that are otherwise used in production, and parts  
39 and accessories that require periodic replacement such as belts, drill bits,  
40 grinding wheels, grinding balls, cutting bars, saws, refractory brick and  
41 other refractory items for exempt kiln equipment used in production  
42 operations;

43 (F) “primary” or “primarily” mean more than 50% of the time.

1 (3) For purposes of this subsection, machinery and equipment shall  
2 be deemed to be used as an integral or essential part of an integrated  
3 production operation when used:

4 (A) To receive, transport, convey, handle, treat or store raw materials  
5 in preparation of its placement on the production line;

6 (B) to transport, convey, handle or store the property undergoing  
7 manufacturing or processing at any point from the beginning of the pro-  
8 duction line through any warehousing or distribution operation of the  
9 final product that occurs at the plant or facility;

10 (C) to act upon, effect, promote or otherwise facilitate a physical  
11 change to the property undergoing manufacturing or processing;

12 (D) to guide, control or direct the movement of property undergoing  
13 manufacturing or processing;

14 (E) to test or measure raw materials, the property undergoing man-  
15 ufacturing or processing or the finished product, as a necessary part of  
16 the manufacturer's integrated production operations;

17 (F) to plan, manage, control or record the receipt and flow of inven-  
18 tories of raw materials, consumables and component parts, the flow of  
19 the property undergoing manufacturing or processing and the manage-  
20 ment of inventories of the finished product;

21 (G) to produce energy for, lubricate, control the operating of or oth-  
22 erwise enable the functioning of other production machinery and equip-  
23 ment and the continuation of production operations;

24 (H) to package the property being manufactured or processed in a  
25 container or wrapping in which such property is normally sold or  
26 transported;

27 (I) to transmit or transport electricity, coke, gas, water, steam or sim-  
28 ilar substances used in production operations from the point of genera-  
29 tion, if produced by the manufacturer or processor at the plant site, to  
30 that manufacturer's production operation; or, if purchased or delivered  
31 from offsite, from the point where the substance enters the site of the  
32 plant or facility to that manufacturer's production operations;

33 (J) to cool, heat, filter, refine or otherwise treat water, steam, acid,  
34 oil, solvents or other substances that are used in production operations;

35 (K) to provide and control an environment required to maintain cer-  
36 tain levels of air quality, humidity or temperature in special and limited  
37 areas of the plant or facility, where such regulation of temperature or  
38 humidity is part of and essential to the production process;

39 (L) to treat, transport or store waste or other byproducts of produc-  
40 tion operations at the plant or facility; or

41 (M) to control pollution at the plant or facility where the pollution is  
42 produced by the manufacturing or processing operation.

43 (4) The following machinery, equipment and materials shall be

1 deemed to be exempt even though it may not otherwise qualify as ma-  
2 chinery and equipment used as an integral or essential part of an inte-  
3 grated production operation: (A) Computers and related peripheral  
4 equipment that are utilized by a manufacturing or processing business  
5 for engineering of the finished product or for research and development  
6 or product design; (B) machinery and equipment that is utilized by a  
7 manufacturing or processing business to manufacture or rebuild tangible  
8 personal property that is used in manufacturing or processing operations,  
9 including tools, dies, molds, forms and other parts of qualifying machinery  
10 and equipment; (C) portable plants for aggregate concrete, bulk cement  
11 and asphalt including cement mixing drums to be attached to a motor  
12 vehicle; (D) industrial fixtures, devices, support facilities and special foun-  
13 dations necessary for manufacturing and production operations, and ma-  
14 terials and other tangible personal property sold for the purpose of fab-  
15 ricating such fixtures, devices, facilities and foundations. An exemption  
16 certificate for such purchases shall be signed by the manufacturer or  
17 processor. If the fabricator purchases such material, the fabricator shall  
18 also sign the exemption certificate; and (E) a manufacturing or processing  
19 business' laboratory equipment that is not located at the plant or facility,  
20 but that would otherwise qualify for exemption under subsection (3)(E).

21 (5) "Machinery and equipment used as an integral or essential part  
22 of an integrated production operation" shall not include:

23 (A) Machinery and equipment used for nonproduction purposes, in-  
24 cluding, but not limited to, machinery and equipment used for plant se-  
25 curity, fire prevention, first aid, accounting, administration, record keep-  
26 ing, advertising, marketing, sales or other related activities, plant cleaning,  
27 plant communications, and employee work scheduling;

28 (B) machinery, equipment and tools used primarily in maintaining  
29 and repairing any type of machinery and equipment or the building and  
30 plant;

31 (C) transportation, transmission and distribution equipment not pri-  
32 marily used in a production, warehousing or material handling operation  
33 at the plant or facility, including the means of conveyance of natural gas,  
34 electricity, oil or water, and equipment related thereto, located outside  
35 the plant or facility;

36 (D) office machines and equipment including computers and related  
37 peripheral equipment not used directly and primarily to control or mea-  
38 sure the manufacturing process;

39 (E) furniture and other furnishings;

40 (F) buildings, other than exempt machinery and equipment that is  
41 permanently affixed to or becomes a physical part of the building, and  
42 any other part of real estate that is not otherwise exempt;

43 (G) building fixtures that are not integral to the manufacturing op-

1 eration, such as utility systems for heating, ventilation, air conditioning,  
2 communications, plumbing or electrical;

3 (H) machinery and equipment used for general plant heating, cooling  
4 and lighting;

5 (I) motor vehicles that are registered for operation on public high-  
6 ways; or

7 (J) employee apparel, except safety and protective apparel that is pur-  
8 chased by an employer and furnished gratuitously to employees who are  
9 involved in production or research activities.

10 (6) Subsections (3) and (5) shall not be construed as exclusive listings  
11 of the machinery and equipment that qualify or do not qualify as an  
12 integral or essential part of an integrated production operation. When  
13 machinery or equipment is used as an integral or essential part of pro-  
14 duction operations part of the time and for nonproduction purpose at  
15 other times, the primary use of the machinery or equipment shall deter-  
16 mine whether or not such machinery or equipment qualifies for  
17 exemption.

18 (7) The secretary of revenue shall adopt rules and regulations nec-  
19 essary to administer the provisions of this subsection;

20 (ll) all sales of educational materials purchased for distribution to the  
21 public at no charge by a nonprofit corporation organized for the purpose  
22 of encouraging, fostering and conducting programs for the improvement  
23 of public health;

24 (mm) all sales of seeds and tree seedlings; fertilizers, insecticides,  
25 herbicides, germicides, pesticides and fungicides; and services, purchased  
26 and used for the purpose of producing plants in order to prevent soil  
27 erosion on land devoted to agricultural use;

28 (nn) except as otherwise provided in this act, all sales of services ren-  
29 dered by an advertising agency or licensed broadcast station or any mem-  
30 ber, agent or employee thereof;

31 (oo) all sales of tangible personal property purchased by a community  
32 action group or agency for the exclusive purpose of repairing or weath-  
33 erizing housing occupied by low income individuals;

34 (pp) all sales of drill bits and explosives actually utilized in the explo-  
35 ration and production of oil or gas;

36 (qq) all sales of tangible personal property and services purchased by  
37 a nonprofit museum or historical society or any combination thereof, in-  
38 cluding a nonprofit organization which is organized for the purpose of  
39 stimulating public interest in the exploration of space by providing edu-  
40 cational information, exhibits and experiences, which is exempt from fed-  
41 eral income taxation pursuant to section 501(c)(3) of the federal internal  
42 revenue code of 1986;

43 (rr) all sales of tangible personal property which will admit the pur-

1 chaser thereof to any annual event sponsored by a nonprofit organization  
2 which is exempt from federal income taxation pursuant to section  
3 501(c)(3) of the federal internal revenue code of 1986;

4 (ss) all sales of tangible personal property and services purchased by  
5 a public broadcasting station licensed by the federal communications  
6 commission as a noncommercial educational television or radio station;

7 (tt) all sales of tangible personal property and services purchased by  
8 or on behalf of a not-for-profit corporation which is exempt from federal  
9 income taxation pursuant to section 501(c)(3) of the federal internal rev-  
10 enue code of 1986, for the sole purpose of constructing a Kansas Korean  
11 War memorial;

12 (uu) all sales of tangible personal property and services purchased by  
13 or on behalf of any rural volunteer fire-fighting organization for use ex-  
14 clusively in the performance of its duties and functions;

15 (vv) all sales of tangible personal property purchased by any of the  
16 following organizations which are exempt from federal income taxation  
17 pursuant to section 501 (c)(3) of the federal internal revenue code of  
18 1986, for the following purposes, and all sales of any such property by or  
19 on behalf of any such organization for any such purpose:

20 (1) The American Heart Association, Kansas Affiliate, Inc. for the  
21 purposes of providing education, training, certification in emergency car-  
22 diac care, research and other related services to reduce disability and  
23 death from cardiovascular diseases and stroke;

24 (2) the Kansas Alliance for the Mentally Ill, Inc. for the purpose of  
25 advocacy for persons with mental illness and to education, research and  
26 support for their families;

27 (3) the Kansas Mental Illness Awareness Council for the purposes of  
28 advocacy for persons who are mentally ill and to education, research and  
29 support for them and their families;

30 (4) the American Diabetes Association Kansas Affiliate, Inc. for the  
31 purpose of eliminating diabetes through medical research, public edu-  
32 cation focusing on disease prevention and education, patient education  
33 including information on coping with diabetes, and professional education  
34 and training;

35 (5) the American Lung Association of Kansas, Inc. for the purpose of  
36 eliminating all lung diseases through medical research, public education  
37 including information on coping with lung diseases, professional educa-  
38 tion and training related to lung disease and other related services to  
39 reduce the incidence of disability and death due to lung disease;

40 (6) the Kansas chapters of the Alzheimer's Disease and Related Dis-  
41 orders Association, Inc. for the purpose of providing assistance and sup-  
42 port to persons in Kansas with Alzheimer's disease, and their families and  
43 caregivers;

1 (7) the Kansas chapters of the Parkinson's disease association for the  
2 purpose of eliminating Parkinson's disease through medical research and  
3 public and professional education related to such disease; and

4 (8) the National Kidney Foundation of Kansas and Western Missouri  
5 for the purpose of eliminating kidney disease through medical research  
6 and public and private education related to such disease;

7 (ww) all sales of tangible personal property purchased by the Habitat  
8 for Humanity for the exclusive use of being incorporated within a housing  
9 project constructed by such organization;

10 (xx) all sales of tangible personal property and services purchased by  
11 a nonprofit zoo which is exempt from federal income taxation pursuant  
12 to section 501(c)(3) of the federal internal revenue code of 1986, or on  
13 behalf of such zoo by an entity itself exempt from federal income taxation  
14 pursuant to section 501(c)(3) of the federal internal revenue code of 1986  
15 contracted with to operate such zoo and all sales of tangible personal  
16 property or services purchased by a contractor for the purpose of con-  
17 structing, equipping, reconstructing, maintaining, repairing, enlarging,  
18 furnishing or remodeling facilities for any nonprofit zoo which would be  
19 exempt from taxation under the provisions of this section if purchased  
20 directly by such nonprofit zoo or the entity operating such zoo. Nothing  
21 in this subsection shall be deemed to exempt the purchase of any con-  
22 struction machinery, equipment or tools used in the constructing, equip-  
23 ping, reconstructing, maintaining, repairing, enlarging, furnishing or re-  
24 modeling facilities for any nonprofit zoo. When any nonprofit zoo shall  
25 contract for the purpose of constructing, equipping, reconstructing, main-  
26 taining, repairing, enlarging, furnishing or remodeling facilities, it shall  
27 obtain from the state and furnish to the contractor an exemption certifi-  
28 cate for the project involved, and the contractor may purchase materials  
29 for incorporation in such project. The contractor shall furnish the number  
30 of such certificate to all suppliers from whom such purchases are made,  
31 and such suppliers shall execute invoices covering the same bearing the  
32 number of such certificate. Upon completion of the project the contractor  
33 shall furnish to the nonprofit zoo concerned a sworn statement, on a form  
34 to be provided by the director of taxation, that all purchases so made were  
35 entitled to exemption under this subsection. All invoices shall be held by  
36 the contractor for a period of five years and shall be subject to audit by  
37 the director of taxation. If any materials purchased under such a certifi-  
38 cate are found not to have been incorporated in the building or other  
39 project or not to have been returned for credit or the sales or compen-  
40 sating tax otherwise imposed upon such materials which will not be so  
41 incorporated in the building or other project reported and paid by such  
42 contractor to the director of taxation not later than the 20th day of the  
43 month following the close of the month in which it shall be determined

1 that such materials will not be used for the purpose for which such certificate was issued, the nonprofit zoo concerned shall be liable for tax on  
2 all materials purchased for the project, and upon payment thereof it may  
3 recover the same from the contractor together with reasonable attorney  
4 fees. Any contractor or any agent, employee or subcontractor thereof,  
5 who shall use or otherwise dispose of any materials purchased under such  
6 a certificate for any purpose other than that for which such a certificate  
7 is issued without the payment of the sales or compensating tax otherwise  
8 imposed upon such materials, shall be guilty of a misdemeanor and, upon  
9 conviction therefor, shall be subject to the penalties provided for in sub-  
10 section (g) of K.S.A. 79-3615, and amendments thereto;

11 (yy) all sales of tangible personal property and services purchased by  
12 a parent-teacher association or organization, and all sales of tangible personal  
13 property by or on behalf of such association or organization;

14 (zz) all sales of machinery and equipment purchased by over-the-air,  
15 free access radio or television station which is used directly and primarily  
16 for the purpose of producing a broadcast signal or is such that the failure  
17 of the machinery or equipment to operate would cause broadcasting to  
18 cease. For purposes of this subsection, machinery and equipment shall  
19 include, but not be limited to, that required by rules and regulations of  
20 the federal communications commission, and all sales of electricity which  
21 are essential or necessary for the purpose of producing a broadcast signal  
22 or is such that the failure of the electricity would cause broadcasting to  
23 cease;

24 (aaa) all sales of tangible personal property and services purchased  
25 by a religious organization which is exempt from federal income taxation  
26 pursuant to section 501(c)(3) of the federal internal revenue code, and  
27 used exclusively for religious purposes, and all sales of tangible personal  
28 property or services purchased by a contractor for the purpose of constructing,  
29 equipping, reconstructing, maintaining, repairing, enlarging,  
30 furnishing or remodeling facilities for any such organization which would  
31 be exempt from taxation under the provisions of this section if purchased  
32 directly by such organization. Nothing in this subsection shall be deemed  
33 to exempt the purchase of any construction machinery, equipment or  
34 tools used in the constructing, equipping, reconstructing, maintaining,  
35 repairing, enlarging, furnishing or remodeling facilities for any such organization.  
36 When any such organization shall contract for the purpose of  
37 constructing, equipping, reconstructing, maintaining, repairing, enlarging,  
38 furnishing or remodeling facilities, it shall obtain from the state and  
39 furnish to the contractor an exemption certificate for the project involved,  
40 and the contractor may purchase materials for incorporation in such project.  
41 The contractor shall furnish the number of such certificate to all  
42 suppliers from whom such purchases are made, and such suppliers shall  
43



1 execute invoices covering the same bearing the number of such certifi-  
2 cate. Upon completion of the project the contractor shall furnish to such  
3 organization concerned a sworn statement, on a form to be provided by  
4 the director of taxation, that all purchases so made were entitled to ex-  
5 emption under this subsection. All invoices shall be held by the contractor  
6 for a period of five years and shall be subject to audit by the director of  
7 taxation. If any materials purchased under such a certificate are found  
8 not to have been incorporated in the building or other project or not to  
9 have been returned for credit or the sales or compensating tax otherwise  
10 imposed upon such materials which will not be so incorporated in the  
11 building or other project reported and paid by such contractor to the  
12 director of taxation not later than the 20th day of the month following  
13 the close of the month in which it shall be determined that such materials  
14 will not be used for the purpose for which such certificate was issued,  
15 such organization concerned shall be liable for tax on all materials pur-  
16 chased for the project, and upon payment thereof it may recover the same  
17 from the contractor together with reasonable attorney fees. Any contrac-  
18 tor or any agent, employee or subcontractor thereof, who shall use or  
19 otherwise dispose of any materials purchased under such a certificate for  
20 any purpose other than that for which such a certificate is issued without  
21 the payment of the sales or compensating tax otherwise imposed upon  
22 such materials, shall be guilty of a misdemeanor and, upon conviction  
23 therefor, shall be subject to the penalties provided for in subsection (g)  
24 of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after  
25 July 1, 1998, but prior to the effective date of this act upon the gross  
26 receipts received from any sale exempted by the amendatory provisions  
27 of this subsection shall be refunded. Each claim for a sales tax refund  
28 shall be verified and submitted to the director of taxation upon forms  
29 furnished by the director and shall be accompanied by any additional  
30 documentation required by the director. The director shall review each  
31 claim and shall refund that amount of sales tax paid as determined under  
32 the provisions of this subsection. All refunds shall be paid from the sales  
33 tax refund fund upon warrants of the director of accounts and reports  
34 pursuant to vouchers approved by the director or the director's designee;

35 (bbb) all sales of food for human consumption by an organization  
36 which is exempt from federal income taxation pursuant to section 501  
37 (c)(3) of the federal internal revenue code of 1986, pursuant to a food  
38 distribution program which offers such food at a price below cost in  
39 exchange for the performance of community service by the purchaser  
40 thereof;

41 (ccc) on and after July 1, 1999, all sales of tangible personal property  
42 and services purchased by a primary care clinic or health center the pri-  
43 mary purpose of which is to provide services to medically underserved

1 individuals and families, and which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code, 2 and all sales of tangible personal property or services purchased by a 3 contractor for the purpose of constructing, equipping, reconstructing, 4 maintaining, repairing, enlarging, furnishing or remodeling facilities for 5 any such clinic or center which would be exempt from taxation under the 6 provisions of this section if purchased directly by such clinic or center. 7 Nothing in this subsection shall be deemed to exempt the purchase of 8 any construction machinery, equipment or tools used in the constructing, 9 equipping, reconstructing, maintaining, repairing, enlarging, furnishing 10 or remodeling facilities for any such clinic or center. When any such clinic 11 or center shall contract for the purpose of constructing, equipping, re- 12 constructing, maintaining, repairing, enlarging, furnishing or remodeling 13 facilities, it shall obtain from the state and furnish to the contractor an 14 exemption certificate for the project involved, and the contractor may 15 purchase materials for incorporation in such project. The contractor shall 16 furnish the number of such certificate to all suppliers from whom such 17 purchases are made, and such suppliers shall execute invoices covering 18 the same bearing the number of such certificate. Upon completion of the 19 project the contractor shall furnish to such clinic or center concerned a 20 sworn statement, on a form to be provided by the director of taxation, 21 that all purchases so made were entitled to exemption under this subsection. 22 All invoices shall be held by the contractor for a period of five years 23 and shall be subject to audit by the director of taxation. If any materials 24 purchased under such a certificate are found not to have been incorporated 25 in the building or other project or not to have been returned for 26 credit or the sales or compensating tax otherwise imposed upon such 27 materials which will not be so incorporated in the building or other project 28 reported and paid by such contractor to the director of taxation not 29 later than the 20th day of the month following the close of the month in 30 which it shall be determined that such materials will not be used for the 31 purpose for which such certificate was issued, such clinic or center concerned 32 shall be liable for tax on all materials purchased for the project, 33 and upon payment thereof it may recover the same from the contractor 34 together with reasonable attorney fees. Any contractor or any agent, employee 35 or subcontractor thereof, who shall use or otherwise dispose of 36 any materials purchased under such a certificate for any purpose other 37 than that for which such a certificate is issued without the payment of 38 the sales or compensating tax otherwise imposed upon such materials, 39 shall be guilty of a misdemeanor and, upon conviction therefor, shall be 40 subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, 41 and amendments thereto;

42 (ddd) on and after January 1, 1999, and before January 1, 2000, all 43

1 sales of materials and services purchased by any class II or III railroad as  
2 classified by the federal surface transportation board for the construction,  
3 renovation, repair or replacement of class II or III railroad track and  
4 facilities used directly in interstate commerce. In the event any such track  
5 or facility for which materials and services were purchased sales tax ex-  
6 empt is not operational for five years succeeding the allowance of such  
7 exemption, the total amount of sales tax which would have been payable  
8 except for the operation of this subsection shall be recouped in accord-  
9 ance with rules and regulations adopted for such purpose by the secretary  
10 of revenue;

11 (eee) on and after January 1, 1999, and before January 1, 2001, all  
12 sales of materials and services purchased for the original construction,  
13 reconstruction, repair or replacement of grain storage facilities, including  
14 railroad sidings providing access thereto;

15 (fff) all sales of material handling equipment, racking systems and  
16 other related machinery and equipment that is used for the handling,  
17 movement or storage of tangible personal property in a warehouse or  
18 distribution facility in this state; all sales of installation, repair and main-  
19 tenance services performed on such machinery and equipment; and all  
20 sales of repair and replacement parts for such machinery and equipment.  
21 For purposes of this subsection, a warehouse or distribution facility means  
22 a single, fixed location that consists of buildings or structures in a contig-  
23 uous area where storage or distribution operations are conducted that are  
24 separate and apart from the business' retail operations, if any, and which  
25 do not otherwise qualify for exemption as occurring at a manufacturing  
26 or processing plant or facility. Material handling and storage equipment  
27 shall include aeration, dust control, cleaning, handling and other such  
28 equipment that is used in a public grain warehouse or other commercial  
29 grain storage facility, whether used for grain handling, grain storage, grain  
30 refining or processing, or other grain treatment operation; and

31 (ggg) all sales of tangible personal property and services purchased  
32 by or on behalf of the Kansas Academy of Science which is exempt from  
33 federal income taxation pursuant to section 501(c)(3) of the federal in-  
34 ternal revenue code of 1986, and used solely by such academy for the  
35 preparation, publication and dissemination of education materials.

36 Sec. 2. K.S.A. 2002 Supp. 79-3606 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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