

HOUSE BILL No. 2238

By Committee on Taxation

2-7

AN ACT concerning sales taxation; relating to exemption for Dream Work, Inc.; 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. For the purposes of this subsection, the term prosthetic and
43 orthopedic appliances means any apparatus, instrument, device, or equip-

1 ment used to replace or substitute for any missing part of the body; used
2 to alleviate the malfunction of any part of the body; or used to assist any
3 disabled person in leading a normal life by facilitating such person's mo-
4 bility; such term shall include accessories attached or to be attached to
5 motor vehicles, but such term shall not include motor vehicles or personal
6 property which when installed becomes a fixture to real property;

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

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

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

36 (v) all sales of food products to any contractor for use in preparing
37 meals for delivery to homebound elderly persons over 60 years of age and
38 to homebound disabled persons or to be served at a group-sitting at a
39 location outside of the home to otherwise homebound elderly persons
40 over 60 years of age and to otherwise homebound disabled persons, as
41 all or part of any food service project funded in whole or in part by
42 government or as part of a private nonprofit food service project available
43 to all such elderly or disabled persons residing within an area of service

1 designated by the private nonprofit organization, and all sales of food
2 products for use in preparing meals for consumption by indigent or home-
3 less individuals whether or not such meals are consumed at a place des-
4 ignated for such purpose;

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

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

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

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

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

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

34 (cc) all sales of tangible personal property or services purchased for
35 the purpose of and in conjunction with constructing, reconstructing, en-
36 larging or remodeling a business or retail business which meets the
37 requirements established in K.S.A. 74-50,115 and amendments thereto,
38 and the sale and installation of machinery and equipment purchased for
39 installation at any such business or retail business. When a person shall
40 contract for the construction, reconstruction, enlargement or remodeling
41 of any such business or retail business, such person shall obtain from the
42 state and furnish to the contractor an exemption certificate for the project
43 involved, and the contractor may purchase materials, machinery and

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

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

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

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

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

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

38 (ii) all sales of tangible personal property purchased directly by a nonprofit
39 organization for nonsectarian comprehensive multidiscipline youth
40 development programs and activities provided or sponsored by such organization,
41 and all sales of tangible personal property by or on behalf of
42 any such organization. This exemption shall not apply to tangible personal
43 property customarily used for human habitation purposes;

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

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

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

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

15 (2) For purposes of this subsection:

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

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

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

40 (D) “manufacturing or processing business” means a business that
41 utilizes an integrated production operation to manufacture, process, fab-
42 ricate, finish, or assemble items for wholesale and retail distribution as
43 part of what is commonly regarded by the general public as an industrial

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

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

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

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

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

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

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

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

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

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

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

19 (H) to package the property being manufactured or processed in a
20 container or wrapping in which such property is normally sold or
21 transported;

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

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

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

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

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

38 (4) The following machinery, equipment and materials shall be
39 deemed to be exempt even though it may not otherwise qualify as ma-
40 chinery and equipment used as an integral or essential part of an inte-
41 grated production operation: (A) Computers and related peripheral
42 equipment that are utilized by a manufacturing or processing business
43 for engineering of the finished product or for research and development

1 or product design; (B) machinery and equipment that is utilized by a
2 manufacturing or processing business to manufacture or rebuild tangible
3 personal property that is used in manufacturing or processing operations,
4 including tools, dies, molds, forms and other parts of qualifying machinery
5 and equipment; (C) portable plants for aggregate concrete, bulk cement
6 and asphalt including cement mixing drums to be attached to a motor
7 vehicle; (D) industrial fixtures, devices, support facilities and special foun-
8 dations necessary for manufacturing and production operations, and ma-
9 terials and other tangible personal property sold for the purpose of fab-
10 ricating such fixtures, devices, facilities and foundations. An exemption
11 certificate for such purchases shall be signed by the manufacturer or
12 processor. If the fabricator purchases such material, the fabricator shall
13 also sign the exemption certificate; and (E) a manufacturing or processing
14 business' laboratory equipment that is not located at the plant or facility,
15 but that would otherwise qualify for exemption under subsection (3)(E).

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

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

23 (B) machinery, equipment and tools used primarily in maintaining
24 and repairing any type of machinery and equipment or the building and
25 plant;

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

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

34 (E) furniture and other furnishings;

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

38 (G) building fixtures that are not integral to the manufacturing op-
39 eration, such as utility systems for heating, ventilation, air conditioning,
40 communications, plumbing or electrical;

41 (H) machinery and equipment used for general plant heating, cooling
42 and lighting;

43 (I) motor vehicles that are registered for operation on public high-

1 ways; or

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

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

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

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

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

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

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

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

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

38 (rr) all sales of tangible personal property which will admit the pur-
39 chaser thereof to any annual event sponsored by a nonprofit organization
40 which is exempt from federal income taxation pursuant to section
41 501(c)(3) of the federal internal revenue code of 1986;

42 (ss) all sales of tangible personal property and services purchased by
43 a public broadcasting station licensed by the federal communications

- 1 commission as a noncommercial educational television or radio station;
- 2 (tt) all sales of tangible personal property and services purchased by
3 or on behalf of a not-for-profit corporation which is exempt from federal
4 income taxation pursuant to section 501(c)(3) of the federal internal rev-
5 enue code of 1986, for the sole purpose of constructing a Kansas Korean
6 War memorial;
- 7 (uu) all sales of tangible personal property and services purchased by
8 or on behalf of any rural volunteer fire-fighting organization for use ex-
9 clusively in the performance of its duties and functions;
- 10 (vv) all sales of tangible personal property purchased by any of the
11 following organizations which are exempt from federal income taxation
12 pursuant to section 501 (c)(3) of the federal internal revenue code of
13 1986, for the following purposes, and all sales of any such property by or
14 on behalf of any such organization for any such purpose:
- 15 (1) The American Heart Association, Kansas Affiliate, Inc. for the
16 purposes of providing education, training, certification in emergency car-
17 diac care, research and other related services to reduce disability and
18 death from cardiovascular diseases and stroke;
- 19 (2) the Kansas Alliance for the Mentally Ill, Inc. for the purpose of
20 advocacy for persons with mental illness and to education, research and
21 support for their families;
- 22 (3) the Kansas Mental Illness Awareness Council for the purposes of
23 advocacy for persons who are mentally ill and to education, research and
24 support for them and their families;
- 25 (4) the American Diabetes Association Kansas Affiliate, Inc. for the
26 purpose of eliminating diabetes through medical research, public edu-
27 cation focusing on disease prevention and education, patient education
28 including information on coping with diabetes, and professional education
29 and training;
- 30 (5) the American Lung Association of Kansas, Inc. for the purpose of
31 eliminating all lung diseases through medical research, public education
32 including information on coping with lung diseases, professional educa-
33 tion and training related to lung disease and other related services to
34 reduce the incidence of disability and death due to lung disease;
- 35 (6) the Kansas chapters of the Alzheimer's Disease and Related Dis-
36 orders Association, Inc. for the purpose of providing assistance and sup-
37 port to persons in Kansas with Alzheimer's disease, and their families and
38 caregivers;
- 39 (7) the Kansas chapters of the Parkinson's disease association for the
40 purpose of eliminating Parkinson's disease through medical research and
41 public and professional education related to such disease; ~~and~~
- 42 (8) the National Kidney Foundation of Kansas and Western Missouri
43 for the purpose of eliminating kidney disease through medical research

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

1 tificate 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 per-
13 sonal 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 con-
29 structing, 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 or-
36 ganization. When any such organization shall contract for the purpose of
37 constructing, equipping, reconstructing, maintaining, repairing, enlarg-
38 ing, 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 pro-
41 ject. The contractor shall furnish the number of such certificate to all
42 suppliers from whom such purchases are made, and such suppliers shall
43 execute invoices covering the same bearing the number of such certifi-

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

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

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

1 tion 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 subsec-
22 tion. 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 incorpo-
25 rated 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 pro-
28 ject 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 con-
32 cerned 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, em-
35 ployee 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 sales of materials and services purchased by any class II or III railroad as

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

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

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

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

35 Sec. 2. K.S.A. 2002 Supp. 79-3606 is hereby repealed.

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

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