

## HOUSE BILL No. 2322

By Committee on Taxation

2-12

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AN ACT concerning sales taxation; imposition of tax; computer software; amending K.S.A. 2002 Supp. 79-3603 and repealing the existing section.

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

Section 1. K.S.A. 2002 Supp. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 5.3% on and after July 1, 2002, and before July 1, 2004, 5.2% on and after July 1, 2004, and before July 1, 2005, and 5% on and after July 1, 2005, and, within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

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

(b) (1) the gross receipts from intrastate telephone or telegraph services; (2) the gross receipts received from the sale of interstate telephone or telegraph services, which (A) originate within this state and terminate outside the state and are billed to a customer's telephone number or account in this state; or (B) originate outside this state and terminate within this state and are billed to a customer's telephone number or account in this state except that the sale of interstate telephone or telegraph service does not include: (A) Any interstate incoming or outgoing wide area telephone service or wide area transmission type service which entitles the subscriber to make or receive an unlimited number of communications to or from persons having telephone service in a specified area which is outside the state in which the station provided this service is located; (B) any interstate private communications service to the persons contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of

1 channels between exchanges; (C) any value-added nonvoice service in  
2 which computer processing applications are used to act on the form, con-  
3 tent, code or protocol of the information to be transmitted; (D) any tel-  
4 ecommunication service to a provider of telecommunication services  
5 which will be used to render telecommunications services, including car-  
6 rier access services; or (E) any service or transaction defined in this sec-  
7 tion among entities classified as members of an affiliated group as pro-  
8 vided by section 1504 of the federal internal revenue code of 1986, as in  
9 effect on January 1, 2001. For the purposes of this subsection the term  
10 gross receipts does not include purchases of telephone, telegraph or tel-  
11 ecommunications using a prepaid telephone calling card or prepaid au-  
12 thorization number. As used in this subsection, a prepaid telephone call-  
13 ing card or prepaid authorization number means the right to exclusively  
14 make telephone calls, paid for in advance, that enables the origination of  
15 calls using an access number or authorization code or both, whether man-  
16 ually or electronically dialed; and (3) the gross receipts from the provision  
17 of services taxable under this subsection which are billed on a combined  
18 basis with nontaxable services, shall be accounted for and the tax remitted  
19 as follows: The taxable portion of the selling price of those combined  
20 services shall include only those charges for taxable services if the selling  
21 price for the taxable services can be readily distinguishable in the retailer's  
22 books and records from the selling price for the nontaxable services. Oth-  
23 erwise, the gross receipts from the sale of both taxable and nontaxable  
24 services billed on a combined basis shall be deemed attributable to the  
25 taxable services included therein. Within 90 days of billing taxable services  
26 on a combined basis with nontaxable services, the retailer shall enter into  
27 a written agreement with the secretary identifying the methodology to be  
28 used in determining the taxable portion of the selling price of those com-  
29 bined services. The burden of proving that any receipt or charge is not  
30 taxable shall be upon the retailer. Upon request from the customer, the  
31 retailer shall disclose to the customer the selling price for the taxable  
32 services included in the selling price for the taxable and nontaxable serv-  
33 ices billed on a combined basis;

34 (c) the gross receipts from the sale or furnishing of gas, water, elec-  
35 tricity and heat, which sale is not otherwise exempt from taxation under  
36 the provisions of this act, and whether furnished by municipally or pri-  
37 vately owned utilities but such tax shall not be levied and collected upon  
38 the gross receipts from: (1) The sale of a rural water district benefit unit;  
39 (2) a water system impact fee, system enhancement fee or similar fee  
40 collected by a water supplier as a condition for establishing service; or (3)  
41 connection or reconnection fees collected by a water supplier;

42 (d) the gross receipts from the sale of meals or drinks furnished at  
43 any private club, drinking establishment, catered event, restaurant, eating

1 house, dining car, hotel, drugstore or other place where meals or drinks  
2 are regularly sold to the public;

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

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

11 (g) the gross receipts from the service of renting of rooms by hotels,  
12 as defined by K.S.A. 36-501 and amendments thereto, or by accommo-  
13 dation brokers, as defined by K.S.A. 12-1692, and amendments thereto  
14 but such tax shall not be levied and collected upon the gross receipts  
15 received from sales of such service to the federal government and any  
16 agency, officer or employee thereof in association with the performance  
17 of official government duties;

18 (h) the gross receipts from the service of renting or leasing of tangible  
19 personal property except such tax shall not apply to the renting or leasing  
20 of machinery, equipment or other personal property owned by a city and  
21 purchased from the proceeds of industrial revenue bonds issued prior to  
22 July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through  
23 12-1749, and amendments thereto, and any city or lessee renting or leas-  
24 ing such machinery, equipment or other personal property purchased  
25 with the proceeds of such bonds who shall have paid a tax under the  
26 provisions of this section upon sales made prior to July 1, 1973, shall be  
27 entitled to a refund from the sales tax refund fund of all taxes paid  
28 thereon;

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

32 (j) the gross receipts from the rendering of the services of washing  
33 and washing and waxing of vehicles;

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

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

41 (2) Any such contractor, subcontractor or repairman who maintains  
42 an inventory of such property both for sale at retail and for use by them  
43 for the purposes described by paragraph (1) shall be deemed a retailer

1 with respect to purchases for and sales from such inventory, except that  
2 the gross receipts received from any such sale, other than a sale at retail,  
3 shall be equal to the total purchase price paid for such property and the  
4 tax imposed thereon shall be paid by the deemed retailer;

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

9 (1) Fees and charges by any political subdivision, by any organization  
10 exempt from property taxation pursuant to paragraph *Ninth* of K.S.A. 79-  
11 201, and amendments thereto, or by any youth recreation organization  
12 exclusively providing services to persons 18 years of age or younger which  
13 is exempt from federal income taxation pursuant to section 501(c)(3) of  
14 the federal internal revenue code of 1986, for participation in sports,  
15 games and other recreational activities; and (2) entry fees and charges for  
16 participation in a special event or tournament sanctioned by a national  
17 sporting association to which spectators are charged an admission which  
18 is taxable pursuant to subsection (e);

19 (n) the gross receipts received from dues charged by public and pri-  
20 vate clubs, drinking establishments, organizations and businesses, pay-  
21 ment of which entitles a member to the use of facilities for recreation or  
22 entertainment, but such tax shall not be levied and collected upon the  
23 gross receipts received from: (1) Dues charged by any organization ex-  
24 empt from property taxation pursuant to paragraphs *Eighth* and *Ninth* of  
25 K.S.A. 79-201, and amendments thereto; and (2) sales of memberships  
26 in a nonprofit organization which is exempt from federal income taxation  
27 pursuant to section 501 (c)(3) of the federal internal revenue code of  
28 1986, and whose purpose is to support the operation of a nonprofit zoo;

29 (o) the gross receipts received from the isolated or occasional sale of  
30 motor vehicles or trailers but not including: (1) The transfer of motor  
31 vehicles or trailers by a person to a corporation or limited liability com-  
32 pany solely in exchange for stock securities or membership interest in  
33 such corporation or limited liability company; or (2) the transfer of motor  
34 vehicles or trailers by one corporation or limited liability company to  
35 another when all of the assets of such corporation or limited liability  
36 company are transferred to such other corporation or limited liability  
37 company; or (3) the sale of motor vehicles or trailers which are subject  
38 to taxation pursuant to the provisions of K.S.A. 79-5101 *et seq.*, and  
39 amendments thereto, by an immediate family member to another im-  
40 mediate family member. For the purposes of clause (3), immediate family  
41 member means lineal ascendants or descendants, and their spouses. In  
42 determining the base for computing the tax on such isolated or occasional  
43 sale, the fair market value of any motor vehicle or trailer traded in by the

1 purchaser to the seller may be deducted from the selling price;

2 (p) the gross receipts received for the service of installing or applying  
3 tangible personal property which when installed or applied is not being  
4 held for sale in the regular course of business, and whether or not such  
5 tangible personal property when installed or applied remains tangible  
6 personal property or becomes a part of real estate, except that no tax shall  
7 be imposed upon the service of installing or applying tangible personal  
8 property in connection with the original construction of a building or  
9 facility, the original construction, reconstruction, restoration, remodeling,  
10 renovation, repair or replacement of a residence or the construction, re-  
11 construction, restoration, replacement or repair of a bridge or highway.

12 For the purposes of this subsection:

13 (1) "Original construction" shall mean the first or initial construction  
14 of a new building or facility. The term "original construction" shall include  
15 the addition of an entire room or floor to any existing building or facility,  
16 the completion of any unfinished portion of any existing building or fa-  
17 cility and the restoration, reconstruction or replacement of a building or  
18 facility damaged or destroyed by fire, flood, tornado, lightning, explosion  
19 or earthquake, but such term, except with regard to a residence, shall not  
20 include replacement, remodeling, restoration, renovation or reconstruc-  
21 tion under any other circumstances;

22 (2) "building" shall mean only those enclosures within which individ-  
23 uals customarily are employed, or which are customarily used to house  
24 machinery, equipment or other property, and including the land improve-  
25 ments immediately surrounding such building;

26 (3) "facility" shall mean a mill, plant, refinery, oil or gas well, water  
27 well, feedlot or any conveyance, transmission or distribution line of any  
28 cooperative, nonprofit, membership corporation organized under or sub-  
29 ject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto,  
30 or of any municipal or quasi-municipal corporation, including the land  
31 improvements immediately surrounding such facility; and

32 (4) "residence" shall mean only those enclosures within which indi-  
33 viduals customarily live;

34 (q) the gross receipts received for the service of repairing, servicing,  
35 altering or maintaining tangible personal property, *except computer soft-*  
36 *ware described in subsection (s)*, which when such services are rendered  
37 is not being held for sale in the regular course of business, and whether  
38 or not any tangible personal property is transferred in connection there-  
39 with. The tax imposed by this subsection shall be applicable to the services  
40 of repairing, servicing, altering or maintaining an item of tangible personal  
41 property which has been and is fastened to, connected with or built into  
42 real property;

43 (r) the gross receipts from fees or charges made under service or

1 maintenance agreement contracts for services, charges for the providing  
2 of which are taxable under the provisions of subsection (p) or (q);

3 (s) the gross receipts received from the sale of computer software,  
4 and the sale of the services of modifying, altering, updating or maintaining  
5 computer software. As used in this subsection, "computer software"  
6 means information and directions loaded into a computer which dictate  
7 different functions to be performed by the computer. Computer software  
8 includes any canned or prewritten program which is held or existing for  
9 general or repeated sale, even if the program was originally developed  
10 for a single end user as custom computer software. *The sale of computer  
11 software or services does not include: (1) The initial sale of any custom  
12 computer program which is originally developed for the exclusive use of  
13 a single end user; or (2) those services rendered in the modification of  
14 computer software when the modification is developed exclusively for a  
15 single end user only to the extent of the modification and only to the extent  
16 that the actual amount charged for the modification is separately stated  
17 on invoices, statements and other billing documents provided to the end  
18 user. The services of modification, alteration, updating and maintenance  
19 of computer software shall only include the modification, alteration, up-  
20 dating and maintenance of computer software taxable under this subsec-  
21 tion whether or not the services are actually provided;*

22 (t) the gross receipts received for telephone answering services, mo-  
23 bile telecommunication services, beeper services and other similar serv-  
24 ices. On and after August 1, 2002, the provisions of the federal mobile  
25 telecommunications sourcing act as in effect on January 1, 2002, shall be  
26 applicable to all sales of mobile telecommunication services taxable pur-  
27 suant to this subsection. The secretary of revenue is hereby authorized  
28 and directed to perform any act deemed necessary to properly implement  
29 such provisions;

30 (u) the gross receipts received from the sale of prepaid telephone  
31 calling cards or prepaid authorization numbers and the recharge of such  
32 cards or numbers. A prepaid telephone calling card or prepaid authori-  
33 zation number means the right to exclusively make telephone calls, paid  
34 for in advance, that enables the origination of calls using an access number  
35 or authorization code or both, whether manually or electronically dialed.  
36 If the sale or recharge of such card or number does not take place at the  
37 vendor's place of business, it shall be conclusively determined to take  
38 place at the customer's shipping address; if there is no item shipped then  
39 it shall be the customer's billing address; and

40 (v) the gross receipts received from the sales of bingo cards, bingo  
41 faces and instant bingo tickets by licensees under K.S.A. 79-4701, *et seq.*,  
42 and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1,  
43 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before

1 July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo  
2 faces and instant bingo tickets by licensees under K.S.A. 79-4701 *et seq.*,  
3 and amendments thereto, shall be exempt from taxes imposed pursuant  
4 to this section.

5 Sec. 2. K.S.A. 2002 Supp. 79-3603 is hereby repealed.

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

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