

HOUSE BILL No. 2866

By Committee on Taxation

2-12

9 AN ACT concerning sales taxation; relating to exemptions; meals deliv-
10 ered to certain persons at home; amending K.S.A. 2003 Supp. 79-3606
11 and repealing the existing section.
12

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

14 Section 1. K.S.A. 2003 Supp. 79-3606 is hereby amended to read as
15 follows: 79-3606. The following shall be exempt from the tax imposed by
16 this act:

17 (a) All sales of motor-vehicle fuel or other articles upon which a sales
18 or excise tax has been paid, not subject to refund, under the laws of this
19 state except cigarettes as defined by K.S.A. 79-3301 and amendments
20 thereto, cereal malt beverages and malt products as defined by K.S.A. 79-
21 3817 and amendments thereto, including wort, liquid malt, malt syrup
22 and malt extract, which is not subject to taxation under the provisions of
23 K.S.A. 79-41a02 and amendments thereto, motor vehicles taxed pursuant
24 to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to
25 K.S.A. 65-3424d, and amendments thereto, and drycleaning and laundry
26 services taxed pursuant to K.S.A. 65-34,150, and amendments thereto;

27 (b) all sales of tangible personal property or service, including the
28 renting and leasing of tangible personal property, purchased directly by
29 the state of Kansas, a political subdivision thereof, other than a school or
30 educational institution, or purchased by a public or private nonprofit hos-
31 pital or public hospital authority or nonprofit blood, tissue or organ bank
32 and used exclusively for state, political subdivision, hospital or public hos-
33 pital authority or nonprofit blood, tissue or organ bank purposes, except
34 when: (1) Such state, hospital or public hospital authority is engaged or
35 proposes to engage in any business specifically taxable under the provi-
36 sions of this act and such items of tangible personal property or service
37 are used or proposed to be used in such business, or (2) such political
38 subdivision is engaged or proposes to engage in the business of furnishing
39 gas, electricity or heat to others and such items of personal property or
40 service are used or proposed to be used in such business;

41 (c) all sales of tangible personal property or services, including the
42 renting and leasing of tangible personal property, purchased directly by
43 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 dispensed pursuant to a prescription order by a
34 licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-
35 1626, and amendments thereto. As used in this subsection, "drug" means
36 a compound, substance or preparation and any component of a com-
37 pound, substance or preparation, other than food and food ingredients,
38 dietary supplements or alcoholic beverages, recognized in the official
39 United States pharmacopoeia, official homeopathic pharmacopoeia of the
40 United States or official national formulary, and supplement to any of
41 them, intended for use in the diagnosis, cure, mitigation, treatment or
42 prevention of disease or intended to affect the structure or any function
43 of the body;

- 1 (q) all sales of insulin dispensed by a person licensed by the state
2 board of pharmacy to a person for treatment of diabetes at the direction
3 of a person licensed to practice medicine by the board of healing arts;
- 4 (r) all sales of prosthetic devices and mobility enhancing equipment
5 prescribed in writing by a person licensed to practice the healing arts,
6 dentistry or optometry. For the purposes of this subsection: (1) “Mobility
7 enhancing equipment” means equipment including repair and replace-
8 ment parts to same, but does not include durable medical equipment,
9 which is primarily and customarily used to provide or increase the ability
10 to move from one place to another and which is appropriate for use either
11 in a home or a motor vehicle; is not generally used by persons with normal
12 mobility; and does not include any motor vehicle or equipment on a motor
13 vehicle normally provided by a motor vehicle manufacturer; and (2)
14 “prosthetic device” means a replacement, corrective or supportive device
15 including repair and replacement parts for same worn on or in the body
16 to artificially replace a missing portion of the body, prevent or correct
17 physical deformity or malfunction or support a weak or deformed portion
18 of the body;
- 19 (s) except as provided in K.S.A. 2003 Supp. 82a-2101, and amend-
20 ments thereto, all sales of tangible personal property or services pur-
21 chased directly or indirectly by a groundwater management district or-
22 ganized or operating under the authority of K.S.A. 82a-1020 *et seq.* and
23 amendments thereto, by a rural water district organized or operating un-
24 der the authority of K.S.A. 82a-612, and amendments thereto, or by a
25 water supply district organized or operating under the authority of K.S.A.
26 19-3501 *et seq.*, 19-3522 *et seq.* or 19-3545, and amendments thereto,
27 which property or services are used in the construction activities, opera-
28 tion or maintenance of the district;
- 29 (t) all sales of farm machinery and equipment or aquaculture ma-
30 chinery and equipment, repair and replacement parts therefor and serv-
31 ices performed in the repair and maintenance of such machinery and
32 equipment. For the purposes of this subsection the term “farm machinery
33 and equipment or aquaculture machinery and equipment” shall include
34 machinery and equipment used in the operation of Christmas tree farm-
35 ing but shall not include any passenger vehicle, truck, truck tractor, trailer,
36 semitrailer or pole trailer, other than a farm trailer, as such terms are
37 defined by K.S.A. 8-126 and amendments thereto. Each purchaser of
38 farm machinery and equipment or aquaculture machinery and equipment
39 exempted herein must certify in writing on the copy of the invoice or
40 sales ticket to be retained by the seller that the farm machinery and
41 equipment or aquaculture machinery and equipment purchased will be
42 used only in farming, ranching or aquaculture production. Farming or
43 ranching shall include the operation of a feedlot and farm and ranch work

- 1 for hire and the operation of a nursery;
- 2 (u) all leases or rentals of tangible personal property used as a dwell-
3 ing if such tangible personal property is leased or rented for a period of
4 more than 28 consecutive days;
- 5 (v) all sales of ~~food products~~ *tangible personal property* to any con-
6 tractor for use in preparing meals for delivery to homebound elderly
7 persons over 60 years of age and to homebound disabled persons or to
8 be served at a group-sitting at a location outside of the home to otherwise
9 homebound elderly persons over 60 years of age and to otherwise home-
10 bound disabled persons, as all or part of any food service project funded
11 in whole or in part by government or as part of a private nonprofit food
12 service project available to all such elderly or disabled persons residing
13 within an area of service designated by the private nonprofit organization,
14 and all sales of ~~food products~~ *tangible personal property* for use in pre-
15 paring meals for consumption by indigent or homeless individuals
16 whether or not such meals are consumed at a place designated for such
17 purpose, *and all sales of food products by or on behalf of any such con-*
18 *tractor or organization for any such purpose;*
- 19 (w) all sales of natural gas, electricity, heat and water delivered
20 through mains, lines or pipes: (1) To residential premises for noncom-
21 mercial use by the occupant of such premises; (2) for agricultural use and
22 also, for such use, all sales of propane gas; (3) for use in the severing of
23 oil; and (4) to any property which is exempt from property taxation pur-
24 suant to K.S.A. 79-201b *Second* through *Sixth*. As used in this paragraph,
25 “severing” shall have the meaning ascribed thereto by subsection (k) of
26 K.S.A. 79-4216, and amendments thereto. For all sales of natural gas,
27 electricity and heat delivered through mains, lines or pipes pursuant to
28 the provisions of subsection (w)(1) and (w)(2), the provisions of this sub-
29 section shall expire on December 31, 2005;
- 30 (x) all sales of propane gas, LP-gas, coal, wood and other fuel sources
31 for the production of heat or lighting for noncommercial use of an oc-
32 cupant of residential premises occurring prior to January 1, 2006;
- 33 (y) all sales of materials and services used in the repairing, servicing,
34 altering, maintaining, manufacturing, remanufacturing, or modification of
35 railroad rolling stock for use in interstate or foreign commerce under
36 authority of the laws of the United States;
- 37 (z) all sales of tangible personal property and services purchased di-
38 rectly by a port authority or by a contractor therefor as provided by the
39 provisions of K.S.A. 12-3418 and amendments thereto;
- 40 (aa) all sales of materials and services applied to equipment which is
41 transported into the state from without the state for repair, service, al-
42 teration, maintenance, remanufacture or modification and which is sub-
43 sequently transported outside the state for use in the transmission of

1 liquids or natural gas by means of pipeline in interstate or foreign com-
2 merce under authority of the laws of the United States;

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

8 (cc) all sales of tangible personal property or services purchased for
9 the purpose of and in conjunction with constructing, reconstructing, en-
10 larging or remodeling a business or retail business which meets the
11 requirements established in K.S.A. 74-50,115 and amendments thereto,
12 and the sale and installation of machinery and equipment purchased for
13 installation at any such business or retail business. When a person shall
14 contract for the construction, reconstruction, enlargement or remodeling
15 of any such business or retail business, such person shall obtain from the
16 state and furnish to the contractor an exemption certificate for the project
17 involved, and the contractor may purchase materials, machinery and
18 equipment for incorporation in such project. The contractor shall furnish
19 the number of such certificates to all suppliers from whom such purchases
20 are made, and such suppliers shall execute invoices covering the same
21 bearing the number of such certificate. Upon completion of the project
22 the contractor shall furnish to the owner of the business or retail business
23 a sworn statement, on a form to be provided by the director of taxation,
24 that all purchases so made were entitled to exemption under this subsec-
25 tion. All invoices shall be held by the contractor for a period of five years
26 and shall be subject to audit by the director of taxation. Any contractor
27 or any agent, employee or subcontractor thereof, who shall use or oth-
28 erwise dispose of any materials, machinery or equipment purchased un-
29 der such a certificate for any purpose other than that for which such a
30 certificate is issued without the payment of the sales or compensating tax
31 otherwise imposed thereon, shall be guilty of a misdemeanor and, upon
32 conviction therefor, shall be subject to the penalties provided for in sub-
33 section (g) of K.S.A. 79-3615 and amendments thereto. As used in this
34 subsection, “business” and “retail business” have the meanings respec-
35 tively ascribed thereto by K.S.A. 74-50,114 and amendments thereto;

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

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

40 (ff) on and after July 1, 1988, all sales of new mobile homes or man-
41 ufactured homes to the extent of 40% of the gross receipts, determined
42 without regard to any trade-in allowance, received from such sale. As used
43 in this subsection, “mobile homes” and “manufactured homes” shall have

1 the meanings ascribed thereto by K.S.A. 58-4202 and amendments
2 thereto;

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

6 (hh) all sales of medical supplies and equipment, including durable
7 medical equipment, purchased directly by a nonprofit skilled nursing
8 home or nonprofit intermediate nursing care home, as defined by K.S.A.
9 39-923, and amendments thereto, for the purpose of providing medical
10 services to residents thereof. This exemption shall not apply to tangible
11 personal property customarily used for human habitation purposes. As
12 used in this subsection, “durable medical equipment” means equipment
13 including repair and replacement parts for such equipment, but does not
14 include mobility enhancing equipment as defined in subsection (r) which
15 can withstand repeated use, is primarily and customarily used to serve a
16 medical purpose, generally is not useful to a person in the absence of
17 illness or injury and is not worn in or on the body;

18 (ii) all sales of tangible personal property purchased directly by a non-
19 profit organization for nonsectarian comprehensive multidiscipline youth
20 development programs and activities provided or sponsored by such or-
21 ganization, and all sales of tangible personal property by or on behalf of
22 any such organization. This exemption shall not apply to tangible personal
23 property customarily used for human habitation purposes;

24 (jj) all sales of tangible personal property or services, including the
25 renting and leasing of tangible personal property, purchased directly on
26 behalf of a community-based mental retardation facility or mental health
27 center organized pursuant to K.S.A. 19-4001 *et seq.*, and amendments
28 thereto, and licensed in accordance with the provisions of K.S.A. 75-
29 3307b and amendments thereto. This exemption shall not apply to tan-
30 gible personal property customarily used for human habitation purposes;

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

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

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

38 (2) For purposes of this subsection:

39 (A) “Integrated production operation” means an integrated series of
40 operations engaged in at a manufacturing or processing plant or facility
41 to process, transform or convert tangible personal property by physical,
42 chemical or other means into a different form, composition or character
43 from that in which it originally existed. Integrated production operations

1 shall include: (i) Production line operations, including packaging opera-
2 tions; (ii) preproduction operations to handle, store and treat raw mate-
3 rials; (iii) post production handling, storage, warehousing and distribution
4 operations; and (iv) waste, pollution and environmental control opera-
5 tions, if any;

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

9 (C) “manufacturing or processing plant or facility” means a single,
10 fixed location owned or controlled by a manufacturing or processing busi-
11 ness that consists of one or more structures or buildings in a contiguous
12 area where integrated production operations are conducted to manufac-
13 ture or process tangible personal property to be ultimately sold at retail.
14 Such term shall not include any facility primarily operated for the purpose
15 of conveying or assisting in the conveyance of natural gas, electricity, oil
16 or water. A business may operate one or more manufacturing or proc-
17 essing plants or facilities at different locations to manufacture or process
18 a single product of tangible personal property to be ultimately sold at
19 retail;

20 (D) “manufacturing or processing business” means a business that
21 utilizes an integrated production operation to manufacture, process, fab-
22 ricate, finish, or assemble items for wholesale and retail distribution as
23 part of what is commonly regarded by the general public as an industrial
24 manufacturing or processing operation or an agricultural commodity
25 processing operation. (i) Industrial manufacturing or processing opera-
26 tions include, by way of illustration but not of limitation, the fabrication
27 of automobiles, airplanes, machinery or transportation equipment, the
28 fabrication of metal, plastic, wood, or paper products, electricity power
29 generation, water treatment, petroleum refining, chemical production,
30 wholesale bottling, newspaper printing, ready mixed concrete production,
31 and the remanufacturing of used parts for wholesale or retail sale. Such
32 processing operations shall include operations at an oil well, gas well, mine
33 or other excavation site where the oil, gas, minerals, coal, clay, stone, sand
34 or gravel that has been extracted from the earth is cleaned, separated,
35 crushed, ground, milled, screened, washed, or otherwise treated or pre-
36 pared before its transmission to a refinery or before any other wholesale
37 or retail distribution. (ii) Agricultural commodity processing operations
38 include, by way of illustration but not of limitation, meat packing, poultry
39 slaughtering and dressing, processing and packaging farm and dairy prod-
40 ucts in sealed containers for wholesale and retail distribution, feed grind-
41 ing, grain milling, frozen food processing, and grain handling, cleaning,
42 blending, fumigation, drying and aeration operations engaged in by grain
43 elevators or other grain storage facilities. (iii) Manufacturing or processing

1 businesses do not include, by way of illustration but not of limitation,
2 nonindustrial businesses whose operations are primarily retail and that
3 produce or process tangible personal property as an incidental part of
4 conducting the retail business, such as retailers who bake, cook or prepare
5 food products in the regular course of their retail trade, grocery stores,
6 meat lockers and meat markets that butcher or dress livestock or poultry
7 in the regular course of their retail trade, contractors who alter, service,
8 repair or improve real property, and retail businesses that clean, service
9 or refurbish and repair tangible personal property for its owner;

10 (E) “repair and replacement parts and accessories” means all parts
11 and accessories for exempt machinery and equipment, including, but not
12 limited to, dies, jigs, molds, patterns and safety devices that are attached
13 to exempt machinery or that are otherwise used in production, and parts
14 and accessories that require periodic replacement such as belts, drill bits,
15 grinding wheels, grinding balls, cutting bars, saws, refractory brick and
16 other refractory items for exempt kiln equipment used in production
17 operations;

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

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

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

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

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

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

32 (E) to test or measure raw materials, the property undergoing man-
33 ufacturing or processing or the finished product, as a necessary part of
34 the manufacturer’s integrated production operations;

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

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

42 (H) to package the property being manufactured or processed in a
43 container or wrapping in which such property is normally sold or

1 transported;

2 (I) to transmit or transport electricity, coke, gas, water, steam or sim-
3 ilar substances used in production operations from the point of genera-
4 tion, if produced by the manufacturer or processor at the plant site, to
5 that manufacturer's production operation; or, if purchased or delivered
6 from offsite, from the point where the substance enters the site of the
7 plant or facility to that manufacturer's production operations;

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

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

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

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

18 (4) The following machinery, equipment and materials shall be
19 deemed to be exempt even though it may not otherwise qualify as ma-
20 chinery and equipment used as an integral or essential part of an inte-
21 grated production operation: (A) Computers and related peripheral
22 equipment that are utilized by a manufacturing or processing business
23 for engineering of the finished product or for research and development
24 or product design; (B) machinery and equipment that is utilized by a
25 manufacturing or processing business to manufacture or rebuild tangible
26 personal property that is used in manufacturing or processing operations,
27 including tools, dies, molds, forms and other parts of qualifying machinery
28 and equipment; (C) portable plants for aggregate concrete, bulk cement
29 and asphalt including cement mixing drums to be attached to a motor
30 vehicle; (D) industrial fixtures, devices, support facilities and special foun-
31 dations necessary for manufacturing and production operations, and ma-
32 terials and other tangible personal property sold for the purpose of fab-
33 ricating such fixtures, devices, facilities and foundations. An exemption
34 certificate for such purchases shall be signed by the manufacturer or
35 processor. If the fabricator purchases such material, the fabricator shall
36 also sign the exemption certificate; and (E) a manufacturing or processing
37 business' laboratory equipment that is not located at the plant or facility,
38 but that would otherwise qualify for exemption under subsection (3)(E).

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

41 (A) Machinery and equipment used for nonproduction purposes, in-
42 cluding, but not limited to, machinery and equipment used for plant se-
43 curity, fire prevention, first aid, accounting, administration, record keep-

- 1 ing, advertising, marketing, sales or other related activities, plant cleaning,
2 plant communications, and employee work scheduling;
- 3 (B) machinery, equipment and tools used primarily in maintaining
4 and repairing any type of machinery and equipment or the building and
5 plant;
- 6 (C) transportation, transmission and distribution equipment not pri-
7 marily used in a production, warehousing or material handling operation
8 at the plant or facility, including the means of conveyance of natural gas,
9 electricity, oil or water, and equipment related thereto, located outside
10 the plant or facility;
- 11 (D) office machines and equipment including computers and related
12 peripheral equipment not used directly and primarily to control or mea-
13 sure the manufacturing process;
- 14 (E) furniture and other furnishings;
- 15 (F) buildings, other than exempt machinery and equipment that is
16 permanently affixed to or becomes a physical part of the building, and
17 any other part of real estate that is not otherwise exempt;
- 18 (G) building fixtures that are not integral to the manufacturing op-
19 eration, such as utility systems for heating, ventilation, air conditioning,
20 communications, plumbing or electrical;
- 21 (H) machinery and equipment used for general plant heating, cooling
22 and lighting;
- 23 (I) motor vehicles that are registered for operation on public high-
24 ways; or
- 25 (J) employee apparel, except safety and protective apparel that is pur-
26 chased by an employer and furnished gratuitously to employees who are
27 involved in production or research activities.
- 28 (6) Subsections (3) and (5) shall not be construed as exclusive listings
29 of the machinery and equipment that qualify or do not qualify as an
30 integral or essential part of an integrated production operation. When
31 machinery or equipment is used as an integral or essential part of pro-
32 duction operations part of the time and for nonproduction purpose at
33 other times, the primary use of the machinery or equipment shall deter-
34 mine whether or not such machinery or equipment qualifies for
35 exemption.
- 36 (7) The secretary of revenue shall adopt rules and regulations nec-
37 essary to administer the provisions of this subsection;
- 38 (ll) all sales of educational materials purchased for distribution to the
39 public at no charge by a nonprofit corporation organized for the purpose
40 of encouraging, fostering and conducting programs for the improvement
41 of public health;
- 42 (mm) all sales of seeds and tree seedlings; fertilizers, insecticides,
43 herbicides, germicides, pesticides and fungicides; and services, purchased

- 1 and used for the purpose of producing plants in order to prevent soil
2 erosion on land devoted to agricultural use;
- 3 (nn) except as otherwise provided in this act, all sales of services ren-
4 dered by an advertising agency or licensed broadcast station or any mem-
5 ber, agent or employee thereof;
- 6 (oo) all sales of tangible personal property purchased by a community
7 action group or agency for the exclusive purpose of repairing or weath-
8 erizing housing occupied by low income individuals;
- 9 (pp) all sales of drill bits and explosives actually utilized in the explo-
10 ration and production of oil or gas;
- 11 (qq) all sales of tangible personal property and services purchased by
12 a nonprofit museum or historical society or any combination thereof, in-
13 cluding a nonprofit organization which is organized for the purpose of
14 stimulating public interest in the exploration of space by providing edu-
15 cational information, exhibits and experiences, which is exempt from fed-
16 eral income taxation pursuant to section 501(c)(3) of the federal internal
17 revenue code of 1986;
- 18 (rr) all sales of tangible personal property which will admit the pur-
19 chaser thereof to any annual event sponsored by a nonprofit organization
20 which is exempt from federal income taxation pursuant to section
21 501(c)(3) of the federal internal revenue code of 1986;
- 22 (ss) all sales of tangible personal property and services purchased by
23 a public broadcasting station licensed by the federal communications
24 commission as a noncommercial educational television or radio station;
- 25 (tt) all sales of tangible personal property and services purchased by
26 or on behalf of a not-for-profit corporation which is exempt from federal
27 income taxation pursuant to section 501(c)(3) of the federal internal rev-
28 enue code of 1986, for the sole purpose of constructing a Kansas Korean
29 War memorial;
- 30 (uu) all sales of tangible personal property and services purchased by
31 or on behalf of any rural volunteer fire-fighting organization for use ex-
32 clusively in the performance of its duties and functions;
- 33 (vv) all sales of tangible personal property purchased by any of the
34 following organizations which are exempt from federal income taxation
35 pursuant to section 501 (c)(3) of the federal internal revenue code of
36 1986, for the following purposes, and all sales of any such property by or
37 on behalf of any such organization for any such purpose:
- 38 (1) The American Heart Association, Kansas Affiliate, Inc. for the
39 purposes of providing education, training, certification in emergency car-
40 diac care, research and other related services to reduce disability and
41 death from cardiovascular diseases and stroke;
- 42 (2) the Kansas Alliance for the Mentally Ill, Inc. for the purpose of
43 advocacy for persons with mental illness and to education, research and

1 support for their families;

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

5 (4) the American Diabetes Association Kansas Affiliate, Inc. for the
6 purpose of eliminating diabetes through medical research, public edu-
7 cation focusing on disease prevention and education, patient education
8 including information on coping with diabetes, and professional education
9 and training;

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

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

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

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

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

28 (xx) all sales of tangible personal property and services purchased by
29 a nonprofit zoo which is exempt from federal income taxation pursuant
30 to section 501(c)(3) of the federal internal revenue code of 1986, or on
31 behalf of such zoo by an entity itself exempt from federal income taxation
32 pursuant to section 501(c)(3) of the federal internal revenue code of 1986
33 contracted with to operate such zoo and all sales of tangible personal
34 property or services purchased by a contractor for the purpose of con-
35 structing, equipping, reconstructing, maintaining, repairing, enlarging,
36 furnishing or remodeling facilities for any nonprofit zoo which would be
37 exempt from taxation under the provisions of this section if purchased
38 directly by such nonprofit zoo or the entity operating such zoo. Nothing
39 in this subsection shall be deemed to exempt the purchase of any con-
40 struction machinery, equipment or tools used in the constructing, equip-
41 ping, reconstructing, maintaining, repairing, enlarging, furnishing or re-
42 modeling facilities for any nonprofit zoo. When any nonprofit zoo shall
43 contract for the purpose of constructing, equipping, reconstructing, main-

1 taining, repairing, enlarging, furnishing or remodeling facilities, it shall
2 obtain from the state and furnish to the contractor an exemption certifi-
3 cate for the project involved, and the contractor may purchase materials
4 for incorporation in such project. The contractor shall furnish the number
5 of such certificate to all suppliers from whom such purchases are made,
6 and such suppliers shall execute invoices covering the same bearing the
7 number of such certificate. Upon completion of the project the contractor
8 shall furnish to the nonprofit zoo concerned a sworn statement, on a form
9 to be provided by the director of taxation, that all purchases so made were
10 entitled to exemption under this subsection. All invoices shall be held by
11 the contractor for a period of five years and shall be subject to audit by
12 the director of taxation. If any materials purchased under such a certifi-
13 cate are found not to have been incorporated in the building or other
14 project or not to have been returned for credit or the sales or compen-
15 sating tax otherwise imposed upon such materials which will not be so
16 incorporated in the building or other project reported and paid by such
17 contractor to the director of taxation not later than the 20th day of the
18 month following the close of the month in which it shall be determined
19 that such materials will not be used for the purpose for which such cer-
20 tificate was issued, the nonprofit zoo concerned shall be liable for tax on
21 all materials purchased for the project, and upon payment thereof it may
22 recover the same from the contractor together with reasonable attorney
23 fees. Any contractor or any agent, employee or subcontractor thereof,
24 who shall use or otherwise dispose of any materials purchased under such
25 a certificate for any purpose other than that for which such a certificate
26 is issued without the payment of the sales or compensating tax otherwise
27 imposed upon such materials, shall be guilty of a misdemeanor and, upon
28 conviction therefor, shall be subject to the penalties provided for in sub-
29 section (g) of K.S.A. 79-3615, and amendments thereto;

30 (yy) all sales of tangible personal property and services purchased by
31 a parent-teacher association or organization, and all sales of tangible per-
32 sonal property by or on behalf of such association or organization;

33 (zz) all sales of machinery and equipment purchased by over-the-air,
34 free access radio or television station which is used directly and primarily
35 for the purpose of producing a broadcast signal or is such that the failure
36 of the machinery or equipment to operate would cause broadcasting to
37 cease. For purposes of this subsection, machinery and equipment shall
38 include, but not be limited to, that required by rules and regulations of
39 the federal communications commission, and all sales of electricity which
40 are essential or necessary for the purpose of producing a broadcast signal
41 or is such that the failure of the electricity would cause broadcasting to
42 cease;

43 (aaa) all sales of tangible personal property and services purchased

1 by a religious organization which is exempt from federal income taxation
2 pursuant to section 501(c)(3) of the federal internal revenue code, and
3 used exclusively for religious purposes, and all sales of tangible personal
4 property or services purchased by a contractor for the purpose of con-
5 structing, equipping, reconstructing, maintaining, repairing, enlarging,
6 furnishing or remodeling facilities for any such organization which would
7 be exempt from taxation under the provisions of this section if purchased
8 directly by such organization. Nothing in this subsection shall be deemed
9 to exempt the purchase of any construction machinery, equipment or
10 tools used in the constructing, equipping, reconstructing, maintaining,
11 repairing, enlarging, furnishing or remodeling facilities for any such or-
12 ganization. When any such organization shall contract for the purpose of
13 constructing, equipping, reconstructing, maintaining, repairing, enlarg-
14 ing, furnishing or remodeling facilities, it shall obtain from the state and
15 furnish to the contractor an exemption certificate for the project involved,
16 and the contractor may purchase materials for incorporation in such pro-
17 ject. The contractor shall furnish the number of such certificate to all
18 suppliers from whom such purchases are made, and such suppliers shall
19 execute invoices covering the same bearing the number of such certifi-
20 cate. Upon completion of the project the contractor shall furnish to such
21 organization concerned a sworn statement, on a form to be provided by
22 the director of taxation, that all purchases so made were entitled to ex-
23 emption under this subsection. All invoices shall be held by the contractor
24 for a period of five years and shall be subject to audit by the director of
25 taxation. If any materials purchased under such a certificate are found
26 not to have been incorporated in the building or other project or not to
27 have been returned for credit or the sales or compensating tax otherwise
28 imposed upon such materials which will not be so incorporated in the
29 building or other project reported and paid by such contractor to the
30 director of taxation not later than the 20th day of the month following
31 the close of the month in which it shall be determined that such materials
32 will not be used for the purpose for which such certificate was issued,
33 such organization concerned shall be liable for tax on all materials pur-
34 chased for the project, and upon payment thereof it may recover the same
35 from the contractor together with reasonable attorney fees. Any contrac-
36 tor or any agent, employee or subcontractor thereof, who shall use or
37 otherwise dispose of any materials purchased under such a certificate for
38 any purpose other than that for which such a certificate is issued without
39 the payment of the sales or compensating tax otherwise imposed upon
40 such materials, shall be guilty of a misdemeanor and, upon conviction
41 therefor, shall be subject to the penalties provided for in subsection (g)
42 of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after
43 July 1, 1998, but prior to the effective date of this act upon the gross

1 receipts received from any sale exempted by the amendatory provisions
2 of this subsection shall be refunded. Each claim for a sales tax refund
3 shall be verified and submitted to the director of taxation upon forms
4 furnished by the director and shall be accompanied by any additional
5 documentation required by the director. The director shall review each
6 claim and shall refund that amount of sales tax paid as determined under
7 the provisions of this subsection. All refunds shall be paid from the sales
8 tax refund fund upon warrants of the director of accounts and reports
9 pursuant to vouchers approved by the director or the director's designee;

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

16 (ccc) on and after July 1, 1999, all sales of tangible personal property
17 and services purchased by a primary care clinic or health center the pri-
18 mary purpose of which is to provide services to medically underserved
19 individuals and families, and which is exempt from federal income taxa-
20 tion pursuant to section 501 (c)(3) of the federal internal revenue code,
21 and all sales of tangible personal property or services purchased by a
22 contractor for the purpose of constructing, equipping, reconstructing,
23 maintaining, repairing, enlarging, furnishing or remodeling facilities for
24 any such clinic or center which would be exempt from taxation under the
25 provisions of this section if purchased directly by such clinic or center.
26 Nothing in this subsection shall be deemed to exempt the purchase of
27 any construction machinery, equipment or tools used in the constructing,
28 equipping, reconstructing, maintaining, repairing, enlarging, furnishing
29 or remodeling facilities for any such clinic or center. When any such clinic
30 or center shall contract for the purpose of constructing, equipping, re-
31 constructing, maintaining, repairing, enlarging, furnishing or remodeling
32 facilities, it shall obtain from the state and furnish to the contractor an
33 exemption certificate for the project involved, and the contractor may
34 purchase materials for incorporation in such project. The contractor shall
35 furnish the number of such certificate to all suppliers from whom such
36 purchases are made, and such suppliers shall execute invoices covering
37 the same bearing the number of such certificate. Upon completion of the
38 project the contractor shall furnish to such clinic or center concerned a
39 sworn statement, on a form to be provided by the director of taxation,
40 that all purchases so made were entitled to exemption under this subsec-
41 tion. All invoices shall be held by the contractor for a period of five years
42 and shall be subject to audit by the director of taxation. If any materials
43 purchased under such a certificate are found not to have been incorpo-

1 rated in the building or other project or not to have been returned for
2 credit or the sales or compensating tax otherwise imposed upon such
3 materials which will not be so incorporated in the building or other pro-
4 ject reported and paid by such contractor to the director of taxation not
5 later than the 20th day of the month following the close of the month in
6 which it shall be determined that such materials will not be used for the
7 purpose for which such certificate was issued, such clinic or center con-
8 cerned shall be liable for tax on all materials purchased for the project,
9 and upon payment thereof it may recover the same from the contractor
10 together with reasonable attorney fees. Any contractor or any agent, em-
11 ployee or subcontractor thereof, who shall use or otherwise dispose of
12 any materials purchased under such a certificate for any purpose other
13 than that for which such a certificate is issued without the payment of
14 the sales or compensating tax otherwise imposed upon such materials,
15 shall be guilty of a misdemeanor and, upon conviction therefor, shall be
16 subject to the penalties provided for in subsection (g) of K.S.A. 79-3615,
17 and amendments thereto;

18 (ddd) on and after January 1, 1999, and before January 1, 2000, all
19 sales of materials and services purchased by any class II or III railroad as
20 classified by the federal surface transportation board for the construction,
21 renovation, repair or replacement of class II or III railroad track and
22 facilities used directly in interstate commerce. In the event any such track
23 or facility for which materials and services were purchased sales tax ex-
24 empt is not operational for five years succeeding the allowance of such
25 exemption, the total amount of sales tax which would have been payable
26 except for the operation of this subsection shall be recouped in accord-
27 ance with rules and regulations adopted for such purpose by the secretary
28 of revenue;

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

33 (fff) all sales of material handling equipment, racking systems and
34 other related machinery and equipment that is used for the handling,
35 movement or storage of tangible personal property in a warehouse or
36 distribution facility in this state; all sales of installation, repair and main-
37 tenance services performed on such machinery and equipment; and all
38 sales of repair and replacement parts for such machinery and equipment.
39 For purposes of this subsection, a warehouse or distribution facility means
40 a single, fixed location that consists of buildings or structures in a contig-
41 uous area where storage or distribution operations are conducted that are
42 separate and apart from the business' retail operations, if any, and which
43 do not otherwise qualify for exemption as occurring at a manufacturing

1 or processing plant or facility. Material handling and storage equipment
2 shall include aeration, dust control, cleaning, handling and other such
3 equipment that is used in a public grain warehouse or other commercial
4 grain storage facility, whether used for grain handling, grain storage, grain
5 refining or processing, or other grain treatment operation; and
6 (ggg) all sales of tangible personal property and services purchased
7 by or on behalf of the Kansas Academy of Science which is exempt from
8 federal income taxation pursuant to section 501(c)(3) of the federal in-
9 ternal revenue code of 1986, and used solely by such academy for the
10 preparation, publication and dissemination of education materials.
11 Sec. 2. K.S.A. 2003 Supp. 79-3606 is hereby repealed.
12 Sec. 3. This act shall take effect and be in force from and after its
13 publication in the statute book.