

## SENATE BILL No. 413

By Committee on Assessment and Taxation

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9 AN ACT concerning sales taxation; relating to exemptions; identification  
10 numbers and certificates; amending K.S.A. 2003 Supp. 79-3651 and  
11 repealing the existing section.

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

14 New Section 1. On and after January 1, 2005, any entity or organi-  
15 zation claiming an exemption from sales tax on its purchases of tangible  
16 personal property or services under the specific exemptions listed in this  
17 section, shall prior to claiming any such exemption, apply to and obtain  
18 from the secretary of revenue an exempt organization identification num-  
19 ber. Such exemptions are subsections (b), (c), (s), (z), (hh), (ii), (jj), (ll),  
20 (oo), (qq), (ss), (tt), (uu), (vv), (ww), (xx), (yy), (zz), (aaa), (ccc) and (ggg)  
21 of K.S.A. 79-3606, and amendments thereto. The secretary shall prescribe  
22 the application form for such number, and such entity or organization  
23 shall provide with the application information sufficient to establish that  
24 such entity or organization qualifies for the sales tax exemption. Such  
25 entity shall enter the issued identification number on any exemption cer-  
26 tificate presented to any retailer when claiming the sales tax exemption  
27 on any purchases.

28 Sec. 2. K.S.A. 2003 Supp. 79-3651 is hereby amended to read as  
29 follows: 79-3651. (a) For the purpose of the proper administration of the  
30 Kansas retailers' sales tax act and to prevent evasion of the tax imposed  
31 thereunder, it shall be presumed that all gross receipts from the sale of  
32 tangible personal property or enumerated services are subject to tax until  
33 the contrary is established. The burden of proving that a sale is not subject  
34 to tax is upon the seller unless the seller takes from the purchaser an  
35 exemption certificate to the effect that the property or service purchased  
36 is not subject to tax.

37 (b) An exemption certificate shall relieve the seller from collecting  
38 and remitting tax if the seller has obtained the required identifying in-  
39 formation as determined by the director, from the purchaser and the  
40 reason for claiming the exemption at the time of purchase and has main-  
41 tained proper records of exempt transactions pursuant to subsection (a)  
42 of K.S.A. 79-3609, and amendments thereto and provided them to the  
43 director when requested, except that a seller who fraudulently fails to

1 collect the tax or solicits purchasers to participate in the unlawful claim  
2 of an exemption shall not be relieved from such liability. The seller shall  
3 obtain the same information for proof of a claimed exemption regardless  
4 of the medium in which the transaction occurred. The purchaser im-  
5 properly claiming an exemption shall remain liable for the nonpayment  
6 of tax.

7 (c) The exemption certificate shall be substantially in such form as  
8 the director may prescribe. The seller shall use the standard form for  
9 claiming an exemption electronically as adopted by the director. A seller  
10 may require a purchaser to provide a copy of the purchaser's sales tax  
11 registration certificate with a resale certificate as a condition for honoring  
12 the purchaser's resale exemption claim. A purchaser is not required to  
13 provide a signature to claim an exemption from tax unless a paper ex-  
14 emption certificate is used.

15 (d) To lawfully present a resale exemption certificate the purchaser  
16 must be engaged in the business of selling property or services of the  
17 same kind that is purchased, hold a registration certificate, and at the  
18 time of purchase, either intend to resell the property in the regular course  
19 of business or be unable to ascertain whether the property will be resold  
20 or used for some other purpose.

21 (e) Any person who issues a resale certificate or other exemption  
22 certificate in order to unlawfully avoid payment of tax for business or  
23 personal gain shall be guilty of a misdemeanor and upon conviction shall  
24 be punished by a fine of not more than \$1,000 or imprisonment for not  
25 more than one year, or by both. In addition, if the director determines  
26 that a person issued a resale certificate in order to unlawfully avoid pay-  
27 ment of tax for business or personal gain, the director shall increase any  
28 penalty that is due from the person under K.S.A. 79-3615, and amend-  
29 ments thereto, by \$250 or 10 times the tax due, whichever is greater, on  
30 each transaction where the misuse of a resale certificate occurred.

31 (f) Exemption certificates issued by ~~a nonprofit~~ *an* entity claiming a  
32 specific exemption under K.S.A. 79-3606, and amendments thereto,  
33 *based on the status of the entity* shall bear the name ~~and~~, address of the  
34 *entity and identification number issued to the entity pursuant to section*  
35 *1, and amendments thereto*, and indicate the subsection under which the  
36 exemption is being claimed. Such certificate shall be signed by an officer,  
37 office manager or other administrator of the nonprofit entity, if in paper  
38 form, and contain the driver's license number of the signer. The certifi-  
39 cate shall be substantially in such form as the director may prescribe.  
40 Payments made on an exempt entity's check, warrant, voucher or is  
41 charged to the entity's account shall relieve the seller from collecting and  
42 remitting the tax if it is taken in good faith.

43 (g) It shall be the duty of every person who purchases tangible per-

1 sonal property or services that are taxable under this act to pay the full  
2 amount of tax that is lawfully due to the retailer making the sale. Any  
3 person who willfully and intentionally refuses to pay such tax to the re-  
4 tailer shall be guilty of a misdemeanor and upon conviction shall be pun-  
5 ished and fined as provided by subsection (g) of K.S.A. 79-3615, and  
6 amendments thereto.

7 Sec. 3. K.S.A. 2003 Supp. 79-3651 is hereby repealed.

8 Sec. 4. This act shall take effect and be in force from and after its  
9 publication in the statute book.