

HOUSE BILL No. 2101

By Committee on Taxation

1-20

9 AN ACT concerning sales tax on isolated or occasional sales of motor
10 vehicles; relating to base of computation; sales tax refunds; amending
11 K.S.A. 2004 Supp. 79-3603 and repealing the existing section.
12

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

14 Section 1. K.S.A. 2004 Supp. 79-3603 is hereby amended to read as
15 follows: 79-3603. For the privilege of engaging in the business of selling
16 tangible personal property at retail in this state or rendering or furnishing
17 any of the services taxable under this act, there is hereby levied and there
18 shall be collected and paid a tax at the rate of 5.3%. Within a redevelop-
19 ment district established pursuant to K.S.A. 74-8921, and amendments
20 thereto, there is hereby levied and there shall be collected and paid an
21 additional tax at the rate of 2% until the earlier of the date the bonds
22 issued to finance or refinance the redevelopment project have been paid
23 in full or the final scheduled maturity of the first series of bonds issued
24 to finance any part of the project upon:

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

27 (b) (1) the gross receipts from intrastate telephone or telegraph serv-
28 ices; (2) the gross receipts received from the sale of interstate telephone
29 or telegraph services, which (A) originate within this state and terminate
30 outside the state and are billed to a customer's telephone number or
31 account in this state; or (B) originate outside this state and terminate
32 within this state and are billed to a customer's telephone number or ac-
33 count in this state except that the sale of interstate telephone or telegraph
34 service does not include: (A) Any interstate incoming or outgoing wide
35 area telephone service or wide area transmission type service which en-
36 titles the subscriber to make or receive an unlimited number of com-
37 munications to or from persons having telephone service in a specified
38 area which is outside the state in which the station provided this service
39 is located; (B) any interstate private communications service to the per-
40 sons contracting for the receipt of that service that entitles the purchaser
41 to exclusive or priority use of a communications channel or group of
42 channels between exchanges; (C) any value-added nonvoice service in
43 which computer processing applications are used to act on the form, con-

1 tent, code or protocol of the information to be transmitted; (D) any tel-
2 ecommunication service to a provider of telecommunication services
3 which will be used to render telecommunications services, including car-
4 rier access services; or (E) any service or transaction defined in this sec-
5 tion among entities classified as members of an affiliated group as pro-
6 vided by section 1504 of the federal internal revenue code of 1986, as in
7 effect on January 1, 2001; and (3) the gross receipts from the provision
8 of services taxable under this subsection which are billed on a combined
9 basis with nontaxable services, shall be accounted for and the tax remitted
10 as follows: The taxable portion of the selling price of those combined
11 services shall include only those charges for taxable services if the selling
12 price for the taxable services can be readily distinguishable in the retailer's
13 books and records from the selling price for the nontaxable services. Oth-
14 erwise, the gross receipts from the sale of both taxable and nontaxable
15 services billed on a combined basis shall be deemed attributable to the
16 taxable services included therein. Within 90 days of billing taxable services
17 on a combined basis with nontaxable services, the retailer shall enter into
18 a written agreement with the secretary identifying the methodology to be
19 used in determining the taxable portion of the selling price of those com-
20 bined services. The burden of proving that any receipt or charge is not
21 taxable shall be upon the retailer. Upon request from the customer, the
22 retailer shall disclose to the customer the selling price for the taxable
23 services included in the selling price for the taxable and nontaxable serv-
24 ices billed on a combined basis;

25 (c) the gross receipts from the sale or furnishing of gas, water, elec-
26 tricity and heat, which sale is not otherwise exempt from taxation under
27 the provisions of this act, and whether furnished by municipally or pri-
28 vately owned utilities, except that, on and after January 1, 2006, for sales
29 of gas, electricity and heat delivered through mains, lines or pipes to
30 residential premises for noncommercial use by the occupant of such
31 premises, and for agricultural use and also, for such use, all sales of pro-
32 pane gas, the state rate shall be 0%; and for all sales of propane gas, LP
33 gas, coal, wood and other fuel sources for the production of heat or light-
34 ing for noncommercial use of an occupant of residential premises, the
35 state rate shall be 0%, but such tax shall not be levied and collected upon
36 the gross receipts from: (1) The sale of a rural water district benefit unit;
37 (2) a water system impact fee, system enhancement fee or similar fee
38 collected by a water supplier as a condition for establishing service; or (3)
39 connection or reconnection fees collected by a water supplier;

40 (d) the gross receipts from the sale of meals or drinks furnished at
41 any private club, drinking establishment, catered event, restaurant, eating
42 house, dining car, hotel, drugstore or other place where meals or drinks
43 are regularly sold to the public;

- 1 (e) the gross receipts from the sale of admissions to any place pro-
2 viding amusement, entertainment or recreation services including admis-
3 sions to state, county, district and local fairs, but such tax shall not be
4 levied and collected upon the gross receipts received from sales of ad-
5 missions to any cultural and historical event which occurs triennially;
- 6 (f) the gross receipts from the operation of any coin-operated device
7 dispensing or providing tangible personal property, amusement or other
8 services except laundry services, whether automatic or manually operated;
- 9 (g) the gross receipts from the service of renting of rooms by hotels,
10 as defined by K.S.A. 36-501 and amendments thereto, or by accommo-
11 dation brokers, as defined by K.S.A. 12-1692, and amendments thereto
12 but such tax shall not be levied and collected upon the gross receipts
13 received from sales of such service to the federal government and any
14 agency, officer or employee thereof in association with the performance
15 of official government duties;
- 16 (h) the gross receipts from the service of renting or leasing of tangible
17 personal property except such tax shall not apply to the renting or leasing
18 of machinery, equipment or other personal property owned by a city and
19 purchased from the proceeds of industrial revenue bonds issued prior to
20 July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through
21 12-1749, and amendments thereto, and any city or lessee renting or leas-
22 ing such machinery, equipment or other personal property purchased
23 with the proceeds of such bonds who shall have paid a tax under the
24 provisions of this section upon sales made prior to July 1, 1973, shall be
25 entitled to a refund from the sales tax refund fund of all taxes paid
26 thereon;
- 27 (i) the gross receipts from the rendering of dry cleaning, pressing,
28 dyeing and laundry services except laundry services rendered through a
29 coin-operated device whether automatic or manually operated;
- 30 (j) the gross receipts from the rendering of the services of washing
31 and washing and waxing of vehicles;
- 32 (k) the gross receipts from cable, community antennae and other sub-
33 scriber radio and television services;
- 34 (l) (1) except as otherwise provided by paragraph (2), the gross re-
35 cepts received from the sales of tangible personal property to all con-
36 tractors, subcontractors or repairmen for use by them in erecting struc-
37 tures, or building on, or otherwise improving, altering, or repairing real
38 or personal property.
- 39 (2) Any such contractor, subcontractor or repairman who maintains
40 an inventory of such property both for sale at retail and for use by them
41 for the purposes described by paragraph (1) shall be deemed a retailer
42 with respect to purchases for and sales from such inventory, except that
43 the gross receipts received from any such sale, other than a sale at retail,

1 shall be equal to the total purchase price paid for such property and the
2 tax imposed thereon shall be paid by the deemed retailer;

3 (m) the gross receipts received from fees and charges by public and
4 private clubs, drinking establishments, organizations and businesses for
5 participation in sports, games and other recreational activities, but such
6 tax shall not be levied and collected upon the gross receipts received from:
7 (1) Fees and charges by any political subdivision, by any organization
8 exempt from property taxation pursuant to paragraph *Ninth* of K.S.A. 79-
9 201, and amendments thereto, or by any youth recreation organization
10 exclusively providing services to persons 18 years of age or younger which
11 is exempt from federal income taxation pursuant to section 501(c)(3) of
12 the federal internal revenue code of 1986, for participation in sports,
13 games and other recreational activities; and (2) entry fees and charges for
14 participation in a special event or tournament sanctioned by a national
15 sporting association to which spectators are charged an admission which
16 is taxable pursuant to subsection (e);

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

27 (o) the gross receipts received from the isolated or occasional sale of
28 motor vehicles or trailers but not including: (1) The transfer of motor
29 vehicles or trailers by a person to a corporation or limited liability com-
30 pany solely in exchange for stock securities or membership interest in
31 such corporation or limited liability company; or (2) the transfer of motor
32 vehicles or trailers by one corporation or limited liability company to
33 another when all of the assets of such corporation or limited liability
34 company are transferred to such other corporation or limited liability
35 company; or (3) the sale of motor vehicles or trailers which are subject
36 to taxation pursuant to the provisions of K.S.A. 79-5101 *et seq.*, and
37 amendments thereto, by an immediate family member to another im-
38 mediate family member. For the purposes of clause (3), immediate family
39 member means lineal ascendants or descendants, and their spouses. ~~The~~
40 ~~base for computing the tax shall be the stated selling price of the motor~~
41 ~~vehicle or trailer or the value pursuant to subsections (a), (b)(1) and (b)(2)~~
42 ~~of K.S.A. 79-5105, and amendments thereto, whichever amount is higher.~~
43 ~~The actual selling price shall be the base for computing the tax on the~~

1 ~~isolated or occasional sale of wrecked or damaged vehicles.~~ Any amount
2 of sales tax paid pursuant to the Kansas retailers sales tax act on the
3 isolated or occasional sale of motor vehicles or trailers on and after July
4 1, 2004, which the base for computing the tax was the value pursuant to
5 subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105, and amendments
6 thereto, when such amount was higher than the amount of sales tax which
7 would have been paid under the law as it existed on June 30, 2004, shall
8 be refunded to the taxpayer pursuant to the procedure prescribed by this
9 section. Such refund shall be in an amount equal to the difference between
10 the amount of sales tax paid by the taxpayer and the amount of sales tax
11 which would have been paid by the taxpayer under the law as it existed
12 on June 30, 2004. Each claim for a sales tax refund shall be verified and
13 submitted to the director of taxation upon forms furnished by the director
14 and shall be accompanied by any additional documentation required by
15 the director. The director shall review each claim and shall refund that
16 amount of tax paid as provided by this act. All such refunds shall be paid
17 from the sales tax refund fund, upon warrants of the director of accounts
18 and reports pursuant to vouchers approved by the director of taxation or
19 the director's designee. In determining the base for computing the tax on
20 such isolated or occasional sale, the fair market value of any motor vehicle
21 or trailer traded in by the purchaser to the seller may be deducted from
22 the selling price;

23 (p) the gross receipts received for the service of installing or applying
24 tangible personal property which when installed or applied is not being
25 held for sale in the regular course of business, and whether or not such
26 tangible personal property when installed or applied remains tangible
27 personal property or becomes a part of real estate, except that no tax shall
28 be imposed upon the service of installing or applying tangible personal
29 property in connection with the original construction of a building or
30 facility, the original construction, reconstruction, restoration, remodeling,
31 renovation, repair or replacement of a residence or the construction, re-
32 construction, restoration, replacement or repair of a bridge or highway.

33 For the purposes of this subsection:

34 (1) "Original construction" shall mean the first or initial construction
35 of a new building or facility. The term "original construction" shall include
36 the addition of an entire room or floor to any existing building or facility,
37 the completion of any unfinished portion of any existing building or fa-
38 cility and the restoration, reconstruction or replacement of a building or
39 facility damaged or destroyed by fire, flood, tornado, lightning, explosion
40 or earthquake, but such term, except with regard to a residence, shall not
41 include replacement, remodeling, restoration, renovation or reconstruc-
42 tion under any other circumstances;

43 (2) "building" shall mean only those enclosures within which individ-

- 1 uals customarily are employed, or which are customarily used to house
2 machinery, equipment or other property, and including the land improve-
3 ments immediately surrounding such building;
- 4 (3) “facility” shall mean a mill, plant, refinery, oil or gas well, water
5 well, feedlot or any conveyance, transmission or distribution line of any
6 cooperative, nonprofit, membership corporation organized under or sub-
7 ject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto,
8 or of any municipal or quasi-municipal corporation, including the land
9 improvements immediately surrounding such facility; and
- 10 (4) “residence” shall mean only those enclosures within which indi-
11 viduals customarily live;
- 12 (q) the gross receipts received for the service of repairing, servicing,
13 altering or maintaining tangible personal property which when such serv-
14 ices are rendered is not being held for sale in the regular course of busi-
15 ness, and whether or not any tangible personal property is transferred in
16 connection therewith. The tax imposed by this subsection shall be appli-
17 cable to the services of repairing, servicing, altering or maintaining an
18 item of tangible personal property which has been and is fastened to,
19 connected with or built into real property;
- 20 (r) the gross receipts from fees or charges made under service or
21 maintenance agreement contracts for services, charges for the providing
22 of which are taxable under the provisions of subsection (p) or (q);
- 23 (s) on and after January 1, 2005, the gross receipts received from the
24 sale of prewritten computer software and the sale of the services of mod-
25 ifying, altering, updating or maintaining prewritten computer software,
26 whether the prewritten computer software is installed or delivered elec-
27 tronically by tangible storage media physically transferred to the pur-
28 chaser or by load and leave;
- 29 (t) the gross receipts received for telephone answering services, mo-
30 bile telecommunication services, beeper services and other similar serv-
31 ices. On and after August 1, 2002, the provisions of the federal mobile
32 telecommunications sourcing act as in effect on January 1, 2002, shall be
33 applicable to all sales of mobile telecommunication services taxable pur-
34 suant to this subsection. The secretary of revenue is hereby authorized
35 and directed to perform any act deemed necessary to properly implement
36 such provisions;
- 37 (u) the gross receipts received from the sale of prepaid calling service
38 as defined in K.S.A. 2004 Supp. 79-3673, and amendments thereto; and
- 39 (v) the gross receipts received from the sales of bingo cards, bingo
40 faces and instant bingo tickets by licensees under K.S.A. 79-4701, *et seq.*,
41 and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1,
42 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before
43 July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo

1 faces and instant bingo tickets by licensees under K.S.A. 79-4701 *et seq.*,
2 and amendments thereto, shall be exempt from taxes imposed pursuant
3 to this section.

4 Sec. 2. K.S.A. 2004 Supp. 79-3603 is hereby repealed.

5 Sec. 3. This act shall take effect and be in force from and after its
6 publication in the Kansas register.