

## SENATE BILL No. 31

By Senators Hensley, Barone, Betts, Goodwin, Haley, Kelly, Lee and  
Steineger

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

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

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

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

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

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

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

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

1 are regularly sold to the public;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 For the purposes of this subsection:

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

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